COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CPT/Inf (2011) 5

Report

to the Maltese Government 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 19 to 26 May 2008

The Maltese Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2011) 6.

Strasbourg, 17 February 2011

CONTENTS

Copy of the letter transmitting the CPT's report 5

I. INTRODUCTION 7

A. Dates of the visit and composition of the delegation 7

B. Establishments visited 7

C. Consultations held by the delegation 8

D. Cooperation between the CPT and the Maltese authorities 8

E. Immediate observations under Article 8, paragraph 5, of the Convention 10

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED 11

A. Law enforcement establishments 11

1. Preliminary remarks 11
2. Ill-treatment 12
3. Safeguards against the ill-treatment of persons deprived of their liberty 14
4. Conditions of detention 17
5. Complaints and monitoring procedures 18

B. Establishments for foreign nationals detained under aliens legislation 19

1. Preliminary remarks 19
2. Ill-treatment 19
3. Conditions of detention 22
   a. material conditions 22
   b. activities 25
4. Health care 25
5. Other issues 27
   a. staff 27
   b. information to detainees 27
   c. contact with the outside world 28
   d. discipline and use of restraint 29
   e. Board of Visitors for Detained Persons 29
   f. detention orders and files 30
6. Final remarks 30

C. Corradino Correctional Facility 31

1. Preliminary remarks 31
2. Independent audit of the CCF 31
3. Ill-treatment 32
4. Material conditions 35
5. Prisoners' allocation and classification, and activities 39
6. Health care 42
7. Other issues 44
   a. staffing and management issues 44
   b. discipline 45
   c. "suicide watch" cell 46
   d. complaints and inspection procedures 47

D. Fejda Programme and Jeanne Antide establishments 48

1. Preliminary remarks 48
2. Living conditions 49
3. Health care 50
4. Other issues related to the CPT's mandate 52
   a. staff 52
   b. discipline and use of force 52
   c. complaints and inspection procedures 53
   d. contacts with the outside world 53

E. Mount Carmel Hospital 54

1. Preliminary remarks 54
2. Living conditions and treatment 55
3. Staff resources 59
4. Means of physical restraint and seclusion/"time out" rooms 60
5. Legal safeguards 61

APPENDIX I : LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION 67

APPENDIX II: LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS 83

Copy of the letter transmitting the CPT's report

Ministry of Foreign Affairs
Palazzo Parisio
Merchants Street
Valletta
Malta

Strasbourg, 22 December 2008

Dear Sirs

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Malta drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Malta from 19 to 26 May 2008. The report was adopted by the CPT at its 67th meeting, held from 3 to 7 November 2008.

The recommendations, comments and requests for information made by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Maltese authorities to provide **within six months** a response giving a full account of action taken to implement them; however, the response to the recommendation made in paragraph 29 of the report is requested **within three months**.

The CPT trusts that it will also be possible for the Maltese authorities to provide **within six months** reactions to the comments formulated in this report as well as replies to the requests for information made.

I am at your entire disposal if you have any questions concerning either the CPT's visit report or the future procedure.

Yours faithfully

Mauro Palma
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Malta from 19 to 26 May 2008. It was the fourth periodic visit carried out by the CPT to Malta since 1990.

2. The visit was carried out by the following members of the CPT:

- Mauro PALMA, President of the CPT (Head of the delegation)
- Roland MARQUET
- Marc NÈVE
- Ilvija PŪCE
- Pierre SCHMIT.

They were supported by Fabrice KELLENS, Deputy Executive Secretary, and Kristian BARTHOLIN, of the CPT's Secretariat, and assisted by:

- Gérard LAURENCIN, Psychiatrist, Head of the Regional Medical and Psychological Service (SMPR), Toulouse (France) (expert)
- Sylvie SAROLEA, Lawyer, Professor at the Faculty of Law, Louvain-la-Neuve University (Belgium) (expert)
- Salim GHOSTINE (interpreter)
- Fiona NAVARRO (interpreter).

B. Establishments visited

3. The CPT's delegation visited the following establishments:

Ministry of Justice and Home Affairs

- Corradino Correctional Facility (CCF)
- Police Headquarters Lock-Up, Floriana
- Valletta Police Station
- St Julian Police Station
- Malta International Airport Detention Facility
- Ta' Kandja Detention Centre for Immigrants
- Lyster Barracks Detention Centre for Immigrants
- Safi Barracks Detention Centre for Immigrants

Ministry for Social Policy

- Mount Carmel Hospital (MCH)
- "Fejda Programme" and "Jeanne Antide" establishments, Conservatorio Vincenzo Bugeja, St Venera.

C. Consultations held by the delegation

4. In the course of the visit, the delegation held consultations with Carmelo MIFSUD BONNICI, Minister for Justice and Home Affairs, and Frank MIFSUD, Permanent Secretary (Health, the Elderly and Community Care) of the Ministry for Social Policy, as well as with senior officials from both Ministries, the Malta Police Force and the Detention Service.

Further, the delegation met Silvio CAMILLERI, Attorney-General, Magistrate Anthony J. VELLA, Joseph SAID PULLICINO, Ombudsman, and Carmen ZAMMIT, Commissioner for Children. Discussions were also held with representatives of the UNHCR, the Jesuit Refugee Service and Mid-Dlam ghad-Dawl.

The delegation would like to highlight the assistance provided to the delegation before, during and after the visit by Joseph ELLUL, the CPT's liaison officer at the Ministry of Justice and Home Affairs.

A list of the authorities and organisations met by the delegation is set out in Appendix II to this report.

D. Cooperation between the CPT and the Maltese authorities

5. The level of cooperation received during the visits to Mount Carmel Hospital, Corradino Correctional Facility and Floriana Police Headquarters Lock-Up can be qualified as very good. The delegation had immediate access to these establishments and to the information necessary to carry out its task.

6. However, the delegation encountered delays in gaining access to Valletta Police Station and the "Fejda Programme" and "Jeanne Antide" establishments, as they had not been informed about the possibility of a visit by the CPT or of the Committee's mandate and powers.

Moreover, and contrary to previous visits, the delegation encountered some difficulties when visiting detention centres for immigrants. More precisely, at Lyster Barracks (Hermes Block), the delegation was informed on the first day of its visit that the "isolation unit" situated on the ground floor of the block was no longer in use, although it discovered in the unit the following day an irregular immigrant who had already been there for several days.

Further, the delegation had to make repeated requests for a copy of the internal rules governing the detention centres for immigrants, and only obtained this document just before its departure from the centres. The delegation's request for a copy of the internal regulations governing the "Fejda Programme" establishment has still not been met.

It also noteworthy that neither a list of all police stations nor a list of places where minors/juveniles may be held involuntarily by court order or administrative care order were provided to the delegation prior to the visit.

7. In the light of the above remarks, **the CPT recommends that measures be taken:**

- **to provide the Committee with an updated list of all places of deprivation of liberty;**
- **to ensure that the authorities in charge of all the establishments included in the above-mentioned list are informed of the mandate and powers of the CPT;**
- **to make available to the CPT a copy of the internal regulations governing the "Fejda Programme" establishment.**

8. The delegation also encountered failures of cooperation on the part of the Maltese authorities when collecting information from bodies investigating possible cases of ill-treatment of persons deprived of their liberty. In its letter of 7 May 2008, the President of the CPT specifically asked the Maltese authorities to arrange for meetings between the delegation and "the judicial and/or administrative authorities responsible for the investigations concerning two incidents that occurred respectively on 24 March 2008 at Safi Barracks (alleged ill-treatment of 13 immigration detainees) and on 8 April 2008 (alleged ill-treatment of Mr Nicholas Azzopardi at the Floriana Police HQ)". It is with great concern that the CPT notes the failure of the Maltese authorities to facilitate meetings with Mr Martin Scicluna and Mr Justice Albert Manche, despite the delegation's repeated requests. Such a state of affairs is not consistent with the principle of cooperation set out in Article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

9. More generally, the principle of cooperation set out in the Convention is not limited to taking steps to facilitate the task of a visiting delegation. It also requires that decisive action be taken, including at the highest political level, to improve the situation in the light of the Committee's recommendations.

The CPT has been carrying out visits to Malta since 1990. Undoubtedly, progress has been made on a number of issues. However, key recommendations made by the CPT for many years have still not been implemented, in particular as regards access to a lawyer for persons in police custody, the material conditions and regime prevailing in the detention centres for foreigners, and several important issues concerning the Corradino Correctional Facility (eg. staffing and management, allocation and classification of prisoners, activities, the health-care service).

Unless the Maltese authorities take decisive action in the near future in the light of the CPT's recommendations, the Committee will have no choice but to consider having recourse to the procedure provided for in Article 10, paragraph 2, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[1]

[1] Article 10, paragraph 2, provides as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter".

E. Immediate observations under Article 8, paragraph 5, of the Convention

10. At the end-of-visit talks on 26 May 2008, the delegation made five immediate observations under Article 8, paragraph 5, of the Convention. These were later confirmed by letter of 10 June 2008.

The delegation requested the Maltese authorities:

- to immediately take measures to provide a specific prisoner with a safe environment within the CCF. The delegation asked for confirmation by no later than 16 June 2008 that appropriate measures had been taken;

- to provide as a matter of urgency the necessary medical treatment and care for two specific prisoners. The delegation asked for confirmation by no later than 16 June 2008 that appropriate measures had been taken;

- to provide as a matter of urgency access to outdoor exercise for the two prisoners accommodated in the "New Location" Department of the CCF. The delegation asked for confirmation by no later than 16 June 2008 that appropriate measures had been taken;

- to immediately discontinue the practice, in the special security/suicide watch cells at both the CCF and the Forensic Unit at MCH, of sometimes keeping prisoners and patients at risk of suicide naked and only issuing them with a "Luna blanket"; these prisoners/patients should instead benefit from clothing appropriate to their specific needs. The delegation asked for confirmation by no later than 30 June 2008 that appropriate measures had been taken;

- to close down as a matter of urgency the Hermes Block at the Lyster Barracks Detention Centre. The delegation asked for confirmation by no later than 30 June 2008 that appropriate measures had been taken.

11. By two e-mails dated 16 and 29 June 2008 respectively, the Maltese authorities provided the Committee with short replies to the above requests.

The President of the CPT made further requests for clarification and more information on 26 June 2008. A reply to this letter was provided by the Maltese authorities by e-mail of 8 July 2008.

The content of the respective responses addressed to the CPT will be dealt with in the report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement establishments

1. Preliminary remarks

12. During its fourth periodic visit to Malta, the CPT's delegation visited Floriana Police Headquarters Lock-Up, St Julian Police Station, Valletta Police Station and the detention area of Malta International Airport. The delegation only met one person (a criminal suspect) in police custody during its visits to police establishments (i.e. at Floriana Police Headquarters Lock-Up).

13. At the outset, the CPT considers it necessary to recall the relevant provisions governing arrest and detention of persons by the Malta Police Force, as set out in the Criminal Code (Chapter 9) and the Police Act (Chapter 164). Under the Criminal Code (Article 355AJ), a magistrate shall be informed about an arrest carried out by the police within six hours from the moment of the arrest; otherwise, the person concerned shall be released. Further, persons deprived of their liberty by the police shall be brought before a court within 48 hours from the moment of the arrest, or otherwise released. Release from police custody is under the responsibility of police custody officers. They are also responsible for the health and safety of detained persons and shall personally carry out reviews - together with the relevant investigating officers - of the justification for the continued detention of a person. The first such review shall take place after 12 hours of detention and will be followed by other reviews, scheduled at least every 12 hours.

14. Articles 355AB and AC of the Criminal Code govern the conduct of police officers towards arrested persons and, in particular, the use of force. It is stipulated that officers "shall not use any harshness, bond or other means of restraint unless indispensably required to secure, or rendered necessary by the insubordination of the person arrested." Further regulation concerning the use of force can be found in Part V of the Police Act, where it is specifically stipulated that "the use of force is considered a remedy of last resort and shall be moderate and proportionate, for the duration strictly necessary. In exceptional circumstances, officers of the Malta Police Force may use fire-arms and other offensive weapons or materials".

15. The CPT has recently learned that the Malta Police Force intends to arm a number of its officers with electro-shock weapons ("X26 Taser Guns")[2]. Without prejudice to the broader question of whether such a decision is advisable, the CPT wishes to emphasise that the criteria for any use of electro-shock weapons by police officers should exactly mirror those governing the use of firearms; their use must therefore be thoroughly regulated and monitored. Furthermore, only specially selected and trained[3] police officers should be allowed to use such electro-shock weapons and all necessary precautions should be taken when such weapons are used. **The CPT recommends that the Maltese authorities take due account of the above-mentioned comments when drafting their policy and regulations governing the use of electro-shock weapons by police officers. It would like to receive detailed information on the policy and regulations concerned, the selection and training of police officers involved, and the reporting and monitoring procedures that will be put in place.**

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2 See "Police to get Taser Guns", The Times of Malta, 12 September 2008.

3 Such training should include instruction in first aid.

2. Ill-treatment

16. Torture and inhuman or degrading treatment is expressly prohibited under Maltese law (cf. Article 139A of the Criminal Code). In addition, the Code of Practice appended to the Police Act (as "Fourth Schedule") prohibits, *inter alia*, "any form of behaviour which may amount to inhuman or degrading treatment, or any form of physical or mental torture".

17. As already indicated, in the course of its visits to police establishments, the CPT's delegation encountered only one person deprived of his liberty. The detainee in question did not make any allegations of ill-treatment in relation to his arrest and subsequent detention in police custody. Further, the great majority of prisoners with whom the CPT spoke made no complaints about the manner in which they had been treated by the police. Notwithstanding this, the delegation received from other sources some allegations of ill-treatment of persons deprived of their liberty by police officers. They include the well-known case of Nicholas Azzopardi (N.A.). The CPT's delegation met N.A.'s father on the first day of its visit to Malta, at his request.

18. On 8 April 2008, N.A. was taken into custody at Floriana Police Headquarters, as confirmed by the custody records of the Floriana Police Lock-Up consulted by the delegation. According to allegations made by N.A. himself and his family, he was at some point during the evening of the same day beaten by two police officers in the Lock-Up. On the evening of 9 April 2008, N.A.'s parents were informed by the Malta Police Force that their son was in a serious condition after having jumped over a three-storey-high wall surrounding the police compound earlier in the day, apparently in an attempt to escape. N.A. was subsequently taken to Mater Dei Hospital, where he underwent treatment for his injuries. After some days, N.A., who was unconscious and being held in an artificial coma, regained consciousness and told a number of visitors to the hospital, including Anthony Vella the magistrate on duty, that he had been beaten and thrown over the wall by police officers. He also claimed to be in fear of his life. On 22 April 2008, N.A. died as a result of complications from the serious injuries he had sustained.

19. The case of the alleged ill-treatment of N.A. has been the subject of both a criminal investigation[4] and a special inquiry under the Inquiries Act (Chapter 273)[5]. On 12 August 2008, the results of the criminal investigation were made public by the Maltese Government[6]. In his report, the magistrate concludes "iii) that there was no aggression, beating, or violence on [N.A.] from a member or members of the Police, while he was in their custody on Tuesday 8 April at 3.15 pm till the following day, 9 April 2008 at 5.59 pm, when he escaped and jumped as indicated hereunder; iv) This is also corroborated by the injuries [N.A.] suffered which are compatible with a trauma after a fall from a height…. ; v) A *tempo vergine*, immediately after the fall, [N.A.] was still conscious and in his senses until he was taken to Mater Dei Hospital. At no stage while he was conscious did he state that he had been beaten or was attacked or hit by the Police."

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4 The criminal investigation was conducted by Magistrate Anthony Vella, whom the delegation met on 22 May 2008.

5 The inquiry was carried out by Mr Justice Albert Manche, a retired judge appointed by the Minister for Justice and Home Affairs.

6 See Press Release No. 1162 from the Maltese Government.

20. As regards the special inquiry[7], the Board of Inquiry was tasked to:

- "examine all actions taken by the Police in respect of Nicholas Azzopardi from the moment of his arrest till his death on 22 April, 2008;

- examine if there was any negligence or abuse of power entrusted to the Corp in question by law;

- examine any issues ancillary to the matters mentioned in the first two paragraphs; and

- make those recommendations that he deems necessary as a result of the conclusions he reaches."

On 21 August 2008, the report of the Board of Inquiry was made public. In its report, the Board of Inquiry confirmed the findings of the Investigating Magistrate.

21. The CPT welcomes the promptness of the criminal investigation into the case of N.A and takes due note of the results of that investigation.

However, after having examined the results of both the criminal investigation and the above-mentioned special inquiry, the CPT would like to underline the utmost importance of subjecting the events of 8 and 9 April 2008 to further analysis, with the aim of preventing any repetition of similar incidents. In particular, the Committee would like to highlight the importance of police officers (responsible for either custody or investigation) taking into account all factors which can lead to a possible increased vulnerability of suspects under their authority, either due to their physical condition, age, mental health or capacity, or because of the type of charges brought against them. The last-mentioned factor was relevant to the case of N.A.

22. Scientific studies[8] have shown that persons charged with crimes which are generally considered by society to carry a particular stigma are more likely to harm themselves and, in particular, to commit suicide during the initial period of their deprivation of liberty. They therefore require extra monitoring (and, if necessary, medico-psycho-social intervention).

It does not appear from the custody register consulted by the delegation during its visit to the Floriana Police HQ Lock-Up that additional precautions were taken as regards N.A. In addition, as far as the delegation could ascertain from its discussions with police officers, no specific directive or regulation governing the approach to be followed vis-à-vis vulnerable suspects was in force at the time of the incident. **The CPT recommends that the Maltese authorities draw up a specific directive on how to deal with vulnerable suspects in police custody, including enhanced monitoring procedures.**

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[7] On 21 October 2008, the CPT received from the Maltese authorities a copy of the Board of Inquiry Report drawn up by Judge Albert Manche.

[8] See for example, the studies « Suicide and murder in child murderers and child sexual abusers », Colin Pritchard and Christopher Bagley, Journal of Forensic Psychiatry, 2001, Volume 12, pp. 269-286, and "Differential suicide rates in typologies of child sex offenders in a 6-year consecutive cohort of male suicides", Colin Pritchard and Elizabeth King, Archives of Suicide Research, Volume 9, pp. 35-43, Number 1, 1st January 2004.

23. Secondly, the fact that a special inquiry ordered by the Minister for Justice and Home Affairs was carried out in parallel to a criminal investigation is of some concern to the Committee. In the CPT's view, this situation can potentially affect the integrity of the criminal investigation[9]. The risk is particularly high when, as was the case with the inquiry into the allegations of N.A., the mandate of the Board of Inquiry overlaps with the ongoing criminal investigation in several ways. In order to reduce to a strict minimum any potential risk of interference with ongoing criminal investigations, **the CPT recommends that particular care be taken when drafting the mandate of Boards of Inquiries, which should primarily aim at examining issues relating to systemic and/or structural deficiencies.**

24. Thirdly, the CPT wishes to raise the issue of "the police investigating the police". In the CPT's view, for an investigation into possible ill-treatment to be effective, it is essential that the persons responsible for carrying it out be independent from those implicated in the events. In N.A.'s case, as far as the delegation could ascertain, the magistrate in charge was exercising close and effective supervision of the police officers responsible for the operational conduct of the investigation. However, ideally, the latter persons should have been completely independent from the police force implicated.

Several European countries have chosen to entrust independent bodies[10] with investigating tasks when their police force(s) are under scrutiny. In other countries, the existence of several police forces makes it possible to entrust a police force other than the one under investigation with such tasks. Some countries with only one police force have chosen to set up a special department under the direct responsibility of the Attorney General, and to second specially selected and trained police officers to this department. **The CPT would like to receive the views of the Maltese authorities on the above-mentioned approaches and their possible applicability in Malta.**

3. Safeguards against the ill-treatment of persons deprived of their liberty

25. The CPT attaches particular importance to the safeguards against ill-treatment offered to persons deprived of their liberty by the police, in particular the right of detained persons to inform a close relative or another third party of their situation, to have access to a lawyer, and to have access to a doctor. As the Committee has repeatedly stressed, these are fundamental rights which should be enjoyed by all categories of persons from the very outset of deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with the police). Furthermore, it is axiomatic that persons deprived of their liberty by the police should be informed in a language that they understand of all of the above rights. At the time of the 2008 visit, only the first and third of the above rights were guaranteed[11].

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9 By way of example, persons may be asked to give testimony before the Board of Inquiry before doing so in front of the investigating magistrate.

10 Such as the Independent Police Complaints Commission (IPCC) in the United Kingdom.

11 See "Rights of the persons detained", Criminal Code, Subtitle IX, amendments adopted in 2002.

26. Under Article 355AS of the Criminal Code, persons deprived of their liberty have the right to inform a third person (relative or friend) of the fact that they have been arrested (and of their whereabouts). Further, they shall be informed of this right, and the time and date of the information shall be entered in their detention records. Likewise, it shall be noted whether the detainees availed themselves of this right, together with the details of the persons to be informed and the time and date when the information was passed on to the persons concerned. However, the exercise of the right to notify a third party of one's arrest may be delayed for a maximum of six hours, for investigative purposes, upon the decision of a magistrate. **The CPT would like to receive more information on the criteria applied by magistrates in such cases.**

27. In Malta, any person in police custody has the right to have access to a doctor called by the police (see CPT/Inf (92) 5, paragraph 88 and CPT/Inf (96) 25, paragraph 32). Since 2002, any person in police custody also has the right to consult a medical adviser of his own choice, provided that the medical adviser is readily available (see Article 355AS). During the visit, the delegation was able to verify that the right of access to a doctor for a person in police custody (whether at the Lock Up at Floriana or at other police stations) was generally respected[12]; **however, further efforts are required with regard to respecting the confidentiality of medical examinations in police facilities**.

28. Article 355AT of the Criminal Code provide for the right of a detained person to consult in private with a lawyer, as soon as practicable, by telephone or in person for a period not exceeding one hour. A request to consult a lawyer shall be recorded in the custody record, together with the time that it was made. If the detained person chooses not to seek legal assistance, the investigating officer shall record this fact in writing in the presence of two witnesses. However, at the time of the visit, the right of access to a lawyer was still not in force, despite the Maltese Parliament's adoption of this provision in April 2002[13]. Moreover, senior police officials met by the CPT's delegation confirmed that access to a lawyer is currently not offered during the first 48 hours following arrest[14].

29. The CPT would like to recall that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer as from the outset of their deprivation of liberty is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect on those minded to ill treat detained persons; moreover, a lawyer is well-placed to take appropriate action if ill-treatment actually occurs. **The Committee calls upon the Maltese authorities to bring Article 355AT of the Criminal Code into force without any further delay; this measure should be implemented in full consultation with the Bar Association.**

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12 In some cases, the persons concerned were brought directly to the casualty department of a general hospital.

13 According to Article 697 of the Criminal Code, the power to indicate when the provision will come into force was delegated to the Minister for Justice and Home Affairs. The provision may be brought into effect by the issuance of a Legal Notice (subsidiary legislation) published in the Government Gazette.

14 Several prisoners met by the delegation at the CCF indicated that access to a lawyer was in practice not even guaranteed in court, as ex officio lawyers often failed to appear to represent their clients. This state of affairs was recently confirmed by Magistrate Anthony Vella (see The Times of Malta, 24 September 2008).

30. Although the immediate entry into force of Article 355AT will be a very positive development, it will not be sufficient. The CPT is indeed very concerned to note that this Article, in its current form, also provides potential limitations to the right of access to a lawyer when the person concerned is suspected of having committed a crime[15]. More particularly, compliance with a request made by a criminal suspect to have access to a lawyer may be delayed for a maximum period of 36 hours. Such a measure can only be taken by an officer not below the rank of superintendent.

In the CPT's view, the more serious the suspected offence or the charges laid, the more important is access to a lawyer for the person concerned. As Article 355AT is currently worded, the right to consult in private with a lawyer can be emptied of its substance in the most serious cases.

31. The CPT recognises that in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another, independent, lawyer who can be trusted not to jeopardise the police investigation should be arranged.

In addition to the right to talk to a lawyer in private, the person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police (whether this be during or after the initial period of police custody). Naturally, this should not prevent the police from questioning a suspect on urgent matters, even in the absence of a lawyer, nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation, it being understood that this possibility should be narrowly circumscribed and subject to appropriate safeguards.

The CPT recommends that the Maltese authorities consider amending Article 355AT in the light of the above remarks.

32. As long ago as 1995 (see CPT/Inf (96) 25, paragraph 35) the CPT recommended that a form setting out the rights listed in paragraph 25 above be systematically given to all persons deprived of their liberty by the police, at the outset of their custody, and that this form be made available in different languages. Furthermore, the persons concerned should certify that they have been informed of their rights**.** Since then, the Maltese authorities have repeatedly indicated that they have, in principle, no objection to introducing a form setting out the rights of persons in police custody, in accordance with the CPT's recommendation. The delegation was therefore very disappointed to note that such a simple but efficient safeguard was still not in force in 2008 (i.e. some thirteen years later). **The CPT calls upon the Maltese authorities to implement this measure without further delay.**

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[15] The Maltese criminal system distinguishes between "crimes" and "contraventions", crimes being the more serious infractions.

33. Under the Police Act (Articles 62 to 65), police custody officers are responsible for keeping a custody register containing all necessary information about detained persons, including any allegations made by the detainees concerning ill-treatment during the period of police detention. At Floriana Police Headquarters, several types of police (custody) records were being meticulously kept. On the other hand, at St Julian and Valletta Police Stations, the custody records were incomplete and/or very poorly kept. **The Committee recommends that the Maltese authorities take steps to ensure that custody records in all police establishments are kept in accordance with CPT standards[16].**

4. Conditions of detention

34. The CPT notes that the situation as regards conditions of detention in police establishments has significantly improved since the Committee's previous periodic visit to Malta in 2001. The Committee also notes that the transfer of detained persons to the CCF or to detention centres for immigrants generally takes place within a short period of time (less than 24 hours).

35. Floriana Police Headquarters Lock-Up has already been visited several times by the CPT[17]. At present it consists of 49 cells and common areas, which are relatively spacious, well-lit, clean and generally in good condition. Each cell has a bed with a mattress, pillow and blanket. Washbasins and toilets are provided in the cells. Furthermore, four police officers are on duty at a time at the Lock-Up. To sum up, the general conditions prevailing in the Lock-Up are satisfactory for short periods of custody (of up to 24 or 48 hours). However, the delegation noted that on some (rare) occasions, persons are held in the Lock-Up for prolonged periods[18]. **The absence of any secure outdoor exercise facility renders such prolonged stays in the police Lock-Up undesirable; alternative solutions should be found.**

36. Valletta Police Station has two cells, both equipped with a bed, mattress and pillow. Each cell has a washbasin and a toilet. However, neither of the cells has access to natural light or a call-button, and both were very dirty and dilapidated. The delegation was informed that these two cells were only occasionally used, for sobering up of drunken persons. **The Committee recommends that these two cells be taken out of use until they have been renovated. The renovation should preferably include providing access to natural light.**

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16 "The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person's possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record" (CPT/Inf/E (2002) 1 – Rev 2006, page 7, paragraph 40).

17 In 1990, 1995, 2004, and 2005.

18 An example is the case of an Egyptian detainee arrested at the airport, held at the Police Lock-Up from 30 April to 7 May 2008, and who had only 35 minutes outdoor exercise - on 5 May 2008 - during his whole stay. Further, young Lithuanian deaf-mute boy was kept in the Lock-Up from 1 to 5 February 2008.

37. St Julian Police Station has only one cell, equipped with a bed, mattress, pillow and blanket. Detainees had access to an adjoining sanitary annexe, equipped with a washbasin and a toilet, which were new and clean. However, the cell did not have access to natural light nor a call system. In the CPT's view, **a call system should be installed. Further, it would be preferable for the cell to be provided with access to natural light.**

38. The detention facility of Malta International Airport consisted of a room, located in the basement of the airport building, equipped with eight beds, six chairs, two tables, two showers and two toilets. According to the registers, only four immigration detainees had been held there during May 2008, for periods of less than 24 hours (they were subsequently transferred to Ta' Kandja Detention Centre for Immigrants). The conditions of detention were adequate for such short stays.

5. Complaints and monitoring procedures

39. The CPT has consistently advocated the establishment of national bodies tasked with the monitoring, on a regular basis, of places where persons may be deprived of their liberty by the police. In this context, the CPT is aware of the existence of two Boards of Visitors established by the Maltese authorities in order to monitor respectively the CCF (see paragraph 137) and the closed detention centres for irregular migrants (see paragraphs 77 and 78), as well of the existence of a Police Board. However, the latter is not entrusted with the task of regularly visiting police establishments. **The CPT recommends that the Maltese authorities entrust this task to the Police Board or set up a specific body to monitor places where persons may be deprived of their liberty by the police.**

40. More generally, **the CPT would like to receive information on the intentions of the Maltese authorities as regards the setting up of the "national prevention mechanism(s)" provided for under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).**

B. Establishments for foreign nationals detained under aliens legislation

1. Preliminary remarks

41. The delegation carried out follow-up visits to the three detention centres for foreigners in Malta designated for holding long-term immigration detainees, namely Lyster Barracks Detention Centre, Safi Barracks Detention Centre and the Ta' Kandja Detention Centre for Immigrants. All three detention centres had been visited by the CPT in 2004 and 2005; hence the focus of this visit was on evaluating progress made. It should also be noted that the aliens' legislation has remained basically unaltered since the last CPT visit.

42. One significant change has been introduced in terms of organisation since the CPT's last visit, with the creation in August 2005 of a specific Detention Service under the authority of the Ministry for Justice and Home Affairs, which is responsible for the management of the detention facilities formerly under joint military and police authority. In addition, a Board of Visitors for Detained Persons was set up in 2007[19] (see paragraphs 77 and 78). The CPT welcomes these developments.

2. Ill-treatment

43. The CPT's delegation did not receive any allegations of recent deliberate physical ill-treatment by staff from the detained persons interviewed. However, the delegation did receive detailed information concerning the alleged ill-treatment of 13 immigration detainees at Safi Barracks on 24 March 2008. At the time of the visit, this incident was the subject of a special inquiry.

44. The Minister for Justice and Home Affairs had entrusted Mr Martin Scicluna, a former civil servant and currently expert on security issues at the Prime Minister's Office, with an independent inquiry into the 24 March 2008 incident. His terms of reference were: "to investigate allegations of beatings carried out on detainees at Safi Detention Centre by members of the Detention Service on 24 March 2008 and to make any recommendations necessary in the light of [his] findings".

45. On 23 May 2008, the Maltese Government made public the results of the inquiry of Mr Scicluna[20], who concluded that some immigration detainees "were subjected to undue physical treatment resulting in abrasions, bruising and tenderness"[21]. Moreover, he found that "the medical evidence indicates that in a number of cases blows to the body were indeed inflicted"[22], and that "in a number of cases excessive force was used by the Detention Service personnel"[23]. Mr Scicluna concluded, however, that he was "not convinced beyond reasonable doubt as to who committed these acts of excessive force, although it is possible that L/Bdr X, Y. and Z. may have been involved. The case cannot be proven beyond reasonable doubt"[24].

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19 Subsidiary Legislation 217.08 Board of Visitors for Detained Persons Regulations of 18 September 2007.

20 "Inquiry into allegations of beatings of immigrants detained at Safi Detention Centre on 24 March 2008", Report to the Permanent Secretary of the Ministry of Justice and Home Affairs, 8 May 2008.

21 *Ibidem*, paragraph 22.

22 *Ibidem*, paragraph 23.

23 *Ibidem*, paragraph 24.

24 *Ibidem*, paragraph 35, second indent.

He recommended in particular that "action as appropriate should be taken to reprimand the Detention Service officers involved in this operation and the relevant Senior NCOs for the acts of excessive force used by some personnel in their charge"[25].

46. In the CPT's view, the opinion given by Mr Scicluna in his "Summary of Conclusions" concerning the possible authors of the ill-treatment in question and the assessment of responsibility at management level, may easily be seen as prejudicial to any future criminal investigation of the allegations made by the immigration detainees concerned.

The CPT is all the more concerned when it looks back at the results of several independent inquiries carried out in recent years after allegations of ill-treatment were made against the police force or the armed forces by immigration detainees, in 2002, 2003 and 2005 respectively. The Police Board inquiry into the incident on 28 December 2003 at Ta' Kandja involving allegations of mistreatment by police officers has - as far as the CPT is aware - not yet been concluded; the Police Board inquiry into the incident that took place on 4 September 2002 at Ta' Kandja (involving the use of firearms against unarmed immigration detainees, two of whom were wounded), which was concluded on 9 November 2006, justified the use of firearms in this particular case; the inquiry carried out by Judge Depasquale into the incidents involving extensive ill-treatment of immigration detainees during a "policing" operation carried out by members of the Armed Forces at Block B (Safi Barracks) on 13 January 2005 let to a somewhat lenient conclusion[26].

47. Combating impunity is at the very core of prevention of torture and ill-treatment of persons deprived of their liberty. The CPT has repeatedly stated that the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. The Committee is of the opinion that a criminal investigation into the events at Safi Barracks on 24 March 2008 aimed at identifying and, where warranted, prosecuting individual officers responsible for ill-treatment of immigration detainees is of the utmost importance in terms of preventing future ill-treatment. **The CPT calls upon the Maltese authorities to launch such a criminal investigation without delay. The Committee would like to be kept informed of the steps taken by the Maltese authorities in this regard.**

More generally, **the CPT is of the opinion that a criminal investigation should be launched *ex officio* every time credible allegations of ill-treatment by public officials are made by persons deprived of their liberty.**

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25 *Ibidem*, paragraphs 35 and 36.

26 Some 26 immigration detainees suffered injuries and one detainee was severely wounded. Judge Depasquale established that "the force used by various soldiers was excessive with what was required in those circumstances". Some particularly critical comments were made vis-à-vis a particular soldier whose behaviour went against "established principles, namely that minimum force should be used in the control of such incidents; he hit an immigrant who was lying on the ground and under the control of other soldiers with a truncheon". However, the CPT is not aware of any disciplinary sanctions other than a reprimand that would have been taken following the report at either the execution or management levels within the Armed Forces or of any criminal investigation initiated against the above-mentioned soldier or any other person involved.

48. It should also be noted that the delegation received several allegations from immigration detainees - and was able to observe for itself - that members of staff were making racist remarks against detainees. **The CPT recommends that the Maltese authorities remind all members of staff working in detention centres for immigration detainees that such behaviour is totally unacceptable.**

49. Further, the CPT is concerned by the fact that the practice of calling detainees by their immigration file/tag numbers - and of referring to them similarly in all official documents, including medical files - has still not ceased, despite the explicit recommendation made to this effect after the CPT visit in 2004[27]. As was the case in the past, this practice is not only felt by many immigration detainees to be humiliating and degrading, but is also not conducive to the establishment of positive staff/detainee relations. The same goes for the practice of addressing detainees by their presumed nationality, a practice which was once again observed by the delegation.

50. In their response to the 2004 visit report, the Maltese authorities indicated in particular that: "Detainees are sometimes addressed by their Tag Number mostly due to practical reasons, and definitely not to humiliate them in any way….'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". The Maltese authorities added that "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"[28].

In the CPT's view, the above arguments are not convincing. It is clear from the information gathered by the delegation that - save in exceptional cases - immigration detainees are systematically called by their tag number during the whole of their period of custody (for periods of up to 18 months). Suffice it to say that during its numerous visits to detention centres for immigration detainees in neighbouring countries coping with similar "mass arrivals", such a practice has not been observed by the Committee. The detainee is registered under the name given on arrival and aliases are added to his/her identification file during the procedure if necessary.

The CPT calls upon the Maltese authorities to put an end to the practices described in paragraph 49.

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[27] See CPT/Inf (2005) 15, paragraph 27.

[28] See CPT/Inf (2005) 16, paragraph 27.

3. Conditions of detention

51. At the outset, the CPT wishes to reiterate its position that persons detained under aliens' legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. As regards in particular asylum seekers, they should only be detained as a last resort, for the shortest possible duration, and after other, less coercive, measures have proven insufficient to ensure their presence.

52. In accordance with Maltese policy on administrative detention of foreigners under aliens' legislation, all foreigners arriving illegally in Malta are still detained for prolonged periods, in the case of asylum seekers until such time as their request for refugee status is determined (normally 12 months) and for irregular immigrants for up to a maximum of 18 months. In practice, however, some may spend even longer periods in detention[29]. The only declared exceptions to this general rule concern persons deemed to be vulnerable because of their age and/or physical condition, unaccompanied minors and pregnant women (see, however, paragraph 68).

53. The situation found in the detention centres visited by the delegation had not substantially improved since the CPT's previous visit in 2005. Indeed, many of the problems identified in the report on that visit still remain unresolved. In several parts of the detention centres, the combined effects of prolonged periods of detention in poor, if not very poor, material conditions, with a total absence of purposeful activities, not to mention other factors, could well be considered to amount to inhuman and degrading treatment.

a. material conditions

54. At the time of the visit, Lyster Barracks Detention Centre[30] was accommodating a total of 477 detainees distributed in two parts of the detention centre, namely the "Hermes Block" (173 detainees) and a tent compound (304 detainees). It should be noted that all the immigration detainees (around one hundred) accommodated on the first and second floors of Hermes Block were transferred on the day of the delegation's arrival to Safi Barracks Detention Centre, as renovation work was planned.

55. The *Hermes Block* is divided into three so-called "zones". In Zone A, on the ground floor, families, married couples and women were accommodated, 66 persons in all. Six persons were sharing each room in this zone. In Zone B, on the first floor, 23 single men were accommodated in small dormitory-style rooms. In Zone C, 84 single men were living in six dormitory-style rooms, each accommodating 14 persons. Hermes Block also has an "isolation ward" (two cell-like isolation rooms, showers and toilets), situated on the ground floor, near the entrance of the building. This isolation ward is used both for medical isolation and for disciplinary purposes. One immigration detainee infected with scabies was being held there at the time of the visit.

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[29] This is in particular the case when detainees escape and are later brought back to the detention facility or when a detainee has been diagnosed with tuberculosis and is receiving DOTS treatment.

[30] The centre has already been extensively described in the 2004 and 2005 visit reports.

56. Hermes Block is still in a very dilapidated state, dirty and infested with rats. All the rooms and common areas are in need of thorough cleaning and proper ventilation. Toilets and showers are in such a poor state of repair that it is practically impossible to ensure basic standards of hygiene. In Zone C, detainees complained that they could not drink the water from the taps without getting ill. However, the worst living conditions were observed on the ground floor in Zone A (including the isolation/disciplinary ward), the zone which was planned to be the last to be renovated.

57. The CPT's delegation formed the view that in its present state, Hermes Block could not be considered as fit for detention purposes and consequently made an immediate observation under Article 8, paragraph 5, of the Convention, requesting the Maltese authorities to close it down as a matter of urgency (see paragraph 10). On 29 June 2008, the Maltese authorities replied to the Committee stating that "(i)n view of the lack of alternative places where to house immigrants, and considering also the current ever-increasing flow of arrivals, it is not deemed possible to close down the Hermes Block. On the other hand, preparations are being made for the refurbishment of the Block in order to improve the level of accommodation. Such works are expected to commence as soon as possible."

The CPT calls upon the Maltese authorities to refrain from accommodating detainees in the Hermes Block until the announced refurbishment has been carried out. In the context of the envisaged renovation works, fundamental structural changes should be made to the building, providing for common recreational areas and a proper outdoor exercise yard. The Committee requests that it be kept informed on a regular basis about the progress in refurbishing the Hermes Block.

58. The *tent compound* at Lyster Barracks consists of fourteen tents, each accommodating on average twenty-eight persons. A separate building contains the dining hall, a TV room, and thirty-six toilets and a similar number of showers.

Living conditions in this part of the detention centre can only be described as rudimentary. It is particularly noteworthy that the tents did not provide sufficient insulation against the weather during the summer and winter months. In addition, although cold running water was provided on a permanent basis, this was not the case for hot water.

59. The delegation was informed by the Maltese authorities that the tent compound is considered only a temporary solution to the problem of where to house the large number of immigration detainees and that it will eventually be replaced by a more permanent type of accommodation. Exactly the same statement was made several years ago. **The CPT recommends that the Maltese authorities replace as a matter of urgency the tent compound by a new permanent structure, with a view to accommodating immigration detainees under satisfactory conditions (and decommission the tent compound as soon as possible), taking fully into account the principles set out in paragraph 51 above.**

The CPT requests that it be kept informed on a regular basis about the progress made in this regard.

60. At Safi Barracks Detention Centre[31], which at the time of the visit accommodated a total of 507 immigration detainees, living conditions for detainees had slightly improved in comparison to the situation observed by the CPT in 2005.

At *Warehouse No. 1*[32], living conditions were less cramped than when last visited by the CPT, and the toilet facilities were new and clean. That said, the Committee has strong reservations as regards the use of converted warehouses to accommodate detainees. **This should only be seen as a temporary - and short term - solution.**

B Block has been refurbished since the CPT's last visit. The sanitary facilities have been renovated and a large exercise area is at the disposal of the immigration detainees. However, conditions were still difficult in certain rooms, where immigration detainees were sleeping on mattresses on the floor.

Surprisingly, poor conditions of detention were observed in the new *C Block*. Living conditions were cramped, access to natural light was insufficient and ventilation very poor. Further, access to running water was limited, as well as access to hot water, the latter being unavailable for prolonged periods.

In addition, the internal regulation in force at Safi Barracks provided for the compulsory closing of the doors in B and C Blocks every afternoon at 5 p.m., thereby preventing access to the outdoor yard. This exacerbated significantly the already far from ideal living conditions in these blocks.

The Committee recommends that the Maltese authorities take steps to remedy the deficiencies observed in C Block (fewer detainees per room; better access to natural light and better ventilation; better access to hot and cold water, at all times). Furthermore, the CPT invites the Maltese authorities to increase the hours of access to the outdoor yard for detainees held in B and C Blocks.

61. Since 2001, the CPT has repeatedly recommended that Ta' Kandja Police Complex Detention Centre be closed[33]. In 2008, the Centre was nevertheless still accommodating some 60 immigration detainees. The facility remained a cage-like, grim and oppressive place, affected by severe overcrowding. Dry-rot and mould could be observed on the interior walls of the two dormitories, and the toilets and showers were in a dilapidated state. Immigration detainees were spending 22 hours a day confined to these two dormitories. The two hours of outdoor exercise were not sufficient to alleviate the very poor living conditions. This said, the CPT is aware that a new, rather spacious, detention centre for foreigners is under construction on the premises of the Ta' Kandja Police Complex. **The CPT calls upon the Maltese authorities to finalise the construction of this new detention centre, thereby allowing the definitive decommissioning of the present facility.**

62. According to the instructions of the Maltese authorities, the food served to immigration detainees should be "wholesome, nutritious, well prepared and served, reasonably varied, sufficient in quantity and, insofar as possible, meet all religious, dietary, cultural and medical needs". The CPT's delegation formed the opinion that the food provided to detainees was generally sufficient in terms of quantity and quality. Meals were prepared outside the detention centres and distributed to detainees three times a day (morning, noon and late afternoon).

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31 This centre has already been extensively described in the 2004 and 2005 visit reports.

32 A second "warehouse" accommodation structure was not in use at the time of the visit.

33 See the reports drawn up after the 2001, 2004 and 2005 visits.

However, detainees were not allowed to receive any food other than that provided by the authorities. **The CPT invites the Maltese authorities to reconsider this limitation, thereby enabling immigration detainees to receive food parcels from families and friends, and, if possible, to prepare their own food.**

b. activities

63. The stated intention of the Maltese authorities is to provide all immigration detainees with an opportunity to participate in activities to meet, as far as possible, their recreational needs and give relief from boredom. However, despite the repeated recommendations made by the CPT in its previous reports, immigration detainees are still not benefiting from any regime providing meaningful activities or education[34]. Given the long periods of deprivation of liberty to which immigration detainees in Malta are, as a rule, subject (up to 18 months), the CPT must stress once again that a proper regime of activities and education should be provided in all the closed detention centres. The longer the period of detention, the more developed should be the activities offered to immigration detainees. In particular, education offered to immigration detainees should preferably include the possibility to acquire skills that may prepare them for reintegration in their countries of origin upon return. **The CPT calls upon the Maltese authorities to introduce a regime of activities for detainees in the three centres visited, in the light of the above remarks.**

4. Health care

64. There is no doubt that the new medical service - provided by an external contractor, Medicare Ltd - introduced in April 2007 constitutes a significant improvement as compared to the previous situation. However, in the CPT's opinion, much still remains to be done.

In principle, on weekdays (from 8 a.m. to 1 p.m.), a doctor and a nurse visit Lyster Barracks and Safi Barracks Detention Centres. At Ta' Kandja Police Complex Detention Centre, medical staff carry out weekly visits. In view of the high number of detainees involved, in particular at Lyster and Safi Barracks Detention Centres, such health-care resources are clearly inadequate. Not surprisingly, many detainees in the three centres visited complained of insufficient or delayed access to medical services (including dental care). These complaints were corroborated both by interviews with members of the medical staff responsible for the detention centres and by the delegation's observations on the spot[35].

65. Reference should also be made to Mr Scicluna's report (see paragraph 45) which addresses the manner in which the medical cover of immigration detainees at Safi Barracks is ensured. Mr Scicluna states in particular: "*30. Was access by the complainants to medical treatment adequate? I am in no doubt that access to medical treatment by the complainant after the incident on 24th March was not properly handled. Priority was given by the officer in charge of the Detention Service at Safi, Captain B., to the interviews by the Zurrieq Police, rather than medical examinations by Doctor Apap, who was thus only able to see three of the complainants on the 27th March. The ten complainants were all examined by Dr Delia on 2nd April, nine days after the event.*

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[34] The CPT does not consider access to television, a newspaper and board games to constitute a regime providing meaningful activities.

[35] One of the many examples found is the case already mentioned of a detainee suffering from scabies, who landed in Malta and was immediately seen by a police doctor on arrival at the harbour. Four days later, held at the "isolation ward" in the Hermes Block, he had still not been through the regular medical admission procedure.

31. Although the complainants' access to medical treatment was not well handled, I must also accept – in mitigation of the Detention Service's difficulties – that the whole process of access to the doctors at the detention compounds is ponderous, with Medicare only prepared to examine a maximum of 30 detainees drawn up on a first come first served basis [based on lists drawn up by the Detention Service]. Any urgent cases are taken directly to the Floriana Health Centre for treatment. One complainant did ask to go to the Health Centre on 27th March and this was done".

66. The Committee would like to underline once again that it is the responsibility of the Maltese authorities to provide adequate medical assistance to all immigration detainees in their care. **The CPT therefore calls upon the Maltese authorities to take immediate steps to increase the presence, in all the detention centres, of medical and nursing staff. As regards more particularly Lyster and Safi Barracks Detention Centres, they should each have the equivalent of at least one full-time doctor as well as an adequate team of nurses; the level of nursing staff resources should take into account the number of immigration detainees at any given moment. The health-care team as a whole should be in a position to deal in a timely and effective manner with all health problems affecting the detainees.**

67. Several other deficiencies were observed by the delegation, many of which were already present during previous CPT visits:

- while access to primary care is now better ensured, access to specialised care is still cumbersome as it depends upon the availability of escort staff and means of transport;
- the delay between the prescription of a medication by the medical practitioner and the actual delivery of the medicine to the patient (who may be in an acute medical condition) is still too long, as it depends upon the availability of members of staff (to collect the drug at a government pharmacy). Delays of two days or more are not uncommon;
- the difficulties already highlighted by the CPT as regards communication difficulties during medical consultations remains;
- the facilities used for medical "quarantine" are totally inappropriate (see, for example, paragraph 56);
- there is no evidence that any prevention programme or health-care education is ensured at the detention centres, which should be the case with such large numbers of detainees, and as the poor living and hygiene conditions in certain of the blocks considerably increase the risk of transmission of diseases;
- no psychiatrist or psychiatric nurse visits the centres, although the prevalence of mental problems amongst the immigration detainees is rather high[36].

The CPT recommends that the Maltese authorities take immediate steps to address the above deficiencies.

[36] Some 30 detainees were sent to Mount Carmel Hospital for treatment during the first eight months of 2007.

68. A major source of concern for the CPT remains the difficulties observed as regards the identification and adequate handling of "vulnerable" immigration detainees (unaccompanied minors, persons with disabilities, the elderly, families with young children, pregnant woman and lactating mothers) by the Organisation for the Integration and Welfare of Asylum Seekers. Although these categories of detainees should benefit under the 2005 Policy Paper on Irregular Immigrants, Refugees and Integration from special attention and care, and should not be kept in detention, the presence, for several days, of a mother breastfeeding a 20-day-old baby was observed in the Hermes Block (ground floor). **The CPT recommends that steps be taken to increase the efficiency of the identification and handling procedure of "vulnerable" detainees.**

Furthermore, under the present policy paper, there is no guarantee that persons who have been victims of torture or trauma or are suffering from serious mental health or somatic conditions will be considered "vulnerable" persons. **The CPT would like to receive the comments of the Maltese authorities on this issue.**

5. Other issues

a. staff

69. Relations between staff and immigration detainees generally seemed to be relatively relaxed, despite the tense atmosphere observed in all three detention centres which was linked to the overall conditions. Most staff members whom the CPT's delegation met had a positive attitude towards immigration detainees in their custody, though some made remarks with racist or xenophobic connotations (see paragraph 48).

In this connection, **the CPT would like to be informed about the current position as regards the setting up of the Detention Service, in particular the number of officers recruited, their training, equipment and powers.**

70. The delegation was informed that, due to staff shortages, Detention Service personnel had to work rather long shifts and that it was difficult for them to take time off work. The CPT must underline that excessive overtime and long shifts may well pose a risk to the safety of both detainees and staff. **The CPT would like to receive the comments of the Maltese authorities on this issue**.

b. information to detainees

71. The delegation was informed that immigration detainees were normally given a leaflet entitled "Your entitlements, responsibilities and obligations while in detention" upon their arrival at the detention centres. The leaflet, which contains basic information about the Maltese asylum procedures and the rights and obligations of detainees, is available in three languages (Arabic, English and French). However, whereas a few detainees interviewed by the CPT's delegation were found to be in possession of such a leaflet, the vast majority affirmed that they had never received or even seen it. **The Committee recommends that the Maltese authorities ensure that the leaflet is distributed to <u>all</u> immigration detainees on arrival, <u>on a systematic basis</u>.**

c. contact with the outside world

72. Detainees in all three detention centres were entitled to maintain contact with the outside world without hindrance, "other than that necessary on grounds of security and safety"[37]. This contact took place through correspondence, telephone calls and visits.

There were no limitations on the number of letters a detainee could write or receive, and the Detention Service was required on request to provide detainees with writing materials. However, letters could be opened, read and stopped, if there was reasonable cause to believe that the contents of the letter posed a danger to security or were of a criminal nature. Letters were opened in the presence of the detainee concerned.

Letters addressed to national and some international bodies, including the European Court of Human Rights, were not subject to control and could be posted at the expense of the Detention Service. **The Committee invites the Maltese authorities to consider adding the CPT to the list of international bodies to which detainees may send/receive letters confidentially (and without bearing the cost of postage)**.

73. Public telephones were available in all the centres and telephone cards were provided, free of charge, to detainees on a regular basis. In this connection, **the Committee would like to know if it is possible for detainees to receive incoming calls via the public phones available in the detention centres**.

Immigration detainees were not allowed to keep their own mobile phones while in detention (they were systematically taken away by the authorities on arrival). The CPT wishes to recall that immigration detainees are usually neither convicted nor suspected of a criminal offence. Bearing this in mind, **the CPT invites the Maltese authorities to reconsider the policy of systematically taking away mobile phones.**

74. Detainees could receive visits from friends or family members, as well as from non-governmental organisations. However, such visits usually took place at the gate of the centres or at the entrance of the Block; no specific facilities were set up for visits, despite the fact that the vast majority of detainees would spend months in detention. **This deficiency should be remedied.**

[37] See the leaflet entitled "Your entitlements, responsibilities and obligations while in detention", paragraph 19.

d. discipline and use of restraint

75. Under the internal regulations, detainees could be subject to removal from association, temporary confinement and special control or restraint. Removal from association would usually take place for a period of up to 24 hours and could be prolonged beyond that time limit on decision of the Commander of the Detention Service. Notice should be given to the Medical Officer, who could veto a decision to remove a detainee from association. Temporary confinement could be applied to so-called "violent" detainees. Limited again initially to 24 hours, it could be prolonged to a maximum of three days. Such a measure was enforced in so-called "special accommodation" within the detention centre and required recording in the files and notification of the Medical Officer without delay (the immigration detainee concerned had to be visited on a regular basis by the doctor throughout the whole period of confinement). Special control or restraint could be used for a period not exceeding 24 hours, to prevent a detainee from injuring him/herself or others, damaging property or creating a disturbance. Once again, the Medical Officer should be notified of the application of the measure without delay, as he is required to visit the immigration detainee concerned at "reasonable intervals" and can also veto the measure. This special measure was also subject to strict recording. More generally, the use of force was clearly circumscribed by the detailed "Standing Instructions" issued for personnel of detention centres.

76. In order to have a complete and up-to-date picture of the situation in the three centres visited, **the Committee would like to receive a list of the disciplinary sanctions imposed in 2008**.

Furthermore, it is in the interest of both detainees and staff that clear disciplinary procedures be formally established and applied in practice; any grey areas increase the risk of an unofficial (and uncontrolled) system developing. **The CPT recommends that immigration detainees subject to disciplinary action have the right to be heard on the subject of the offences which they are alleged to have committed and to appeal to a higher authority against any sanctions imposed**.

More generally, **the CPT would like to be informed of the legislation providing the basis for the above-mentioned disciplinary regulations**.

e. Board of Visitors for Detained Persons

77. The newly set up Board of Visitors for Detained Persons is, *inter alia,* mandated to "satisfy itself as to the treatment of detainees, the state of the detention centres premises and the administration of the detention centres" [38]. It is made up of four members appointed for one year by the Minister for Justice and Home Affairs. However, the Board has no secretarial staff and no offices of its own. Furthermore, the Board's members are not assisted by interpreters during their visits to detention centres, a state of affairs which makes the treatment of any complaint made by immigration detainees more difficult.

[38] See: Board of Visitors for Detained Persons Regulations, Article 3(a).

78. The CPT welcomes the creation of the Board as an important step in the direction of independent oversight of the detention centres. However, the Committee is concerned that in practice, the efficiency of the Board is severely curtailed by the fact that it is not given the necessary resources to carry out its tasks in a meaningful manner[39]. **The CPT invites the Maltese authorities to remedy the above deficiencies. The Committee would also like to receive copies of the recommendations/reports submitted by the Board to the Minister for Justice and Home Affairs in 2008.**

f. detention orders and files

79. Despite recommendations made by the CPT after previous visits, the detention of irregular immigrants in detention centres was still not covered by a formal detention order. The existence of such an order and its availability in the establishment concerned[40] is a basic requirement, making it possible for the authority responsible for the holding centre, and also the authorities responsible for external supervision of holding centres, such as the Board of Visitors, to monitor current detentions. Any illegal or improper detention would thus be easily identified. **The CPT calls upon the Maltese authorities to introduce such detention orders.**

80. In addition to a formal detention order, every irregular immigrant being held should have an individual detention file, containing not only the above-mentioned detention order but also all other relevant information. This was still not the case; only very rudimentary - and from time to time incorrect - information was kept on an electronic database. **The CPT recommends that a proper individual detention file be kept for each immigration detainee.**

6. Final remarks

81. In its 2005 visit report, the CPT insisted "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 problems it faces today". The recently adopted European Pact on Migration and Asylum Seekers has apparently taken fully into account the crisis situation which Malta has been facing for several years, providing for a "burden-sharing mechanism" and establishing a system for the coordinated re-allocation of beneficiaries of international protection. This positive step forward should not, however, distract the Maltese authorities from tackling resolutely the numerous problems enumerated above. As the Minister for Justice and Home Affairs recently said, "it is a step ahead, a big one, but it will not solve all our problems. Other measures are needed to which we are also dedicating our energies."

The CPT fully concurs with this position.

82. It is not for the CPT to question a State's policy with regard to administrative detention of irregular immigrants; it is, however, the Committee's task to highlight that whatever the policy adopted, it must be implemented in full compliance with the obligations of States under national and international law, including those relating to the prevention of ill-treatment. Taking into account the CPT's findings, **the Committee calls upon the Maltese authorities to move away from crisis management and temporary solutions and instead focus on durable, long-term solutions to the problems identified by the CPT.**

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[39] Apparently, the President of the Board resigned very recently from his post.

[40] Obviously, the detainees themselves should also be given a copy.

C. Corradino Correctional Facility

1. Preliminary remarks

83. In 2008 the CPT carried out its fourth visit to Corradino Correctional Facility (CCF), the only prison in Malta. The prison's population has more than quadrupled over the last 18 years, to reach a level of 417 inmates at the time of the visit[41].

Nearly three-quarters of the inmates were sentenced (283 males and 16 females) and the remaining quarter were awaiting trial (113 males and 5 females); five inmates were minors (under 18). The proportion of foreign nationals remained stable (nearly a third of all inmates)[42].

Since the last periodic visit in 2001, the CCF has been the subject of an extended programme of reconstruction and renovation, which culminated in the opening of several new "divisions" (see paragraph 102) and an increase in capacity to 444 places in 2008[43].

84. The legislative framework governing imprisonment in Malta (Prison Act, Chapter 260, and the Prisons Regulations, Subsidiary Legislation 260.03) remains basically unchanged, save for some amendments made to the Prisons Regulations concerning the Prison Board. However, the Minister for Justice and Home Affairs recently announced his intention to make public a White Paper proposing a series of prison reforms, including the introduction of release on parole and of the concept of restorative justice. The CPT welcomes the introduction of a system of release on parole in Malta. **It would like to receive in due course a copy of the White Paper.**

85. The CPT has taken note with concern that, 18 years after its first visit to Malta, some recommendations made on fundamental issues - such as the presence of police staff in the prison system (including at the must senior level) - have still not been implemented in a satisfactory way. The Committee will return to that particular issue later in the report (see paragraph 132). Furthermore, the CPT noted that the problems relating to the stay of very young inmates at the CCF have not been resolved (see paragraph 118).

2. Independent audit of the CCF

86. At the very outset, the CPT would like to state that the findings made by the Committee's delegation during its three-day visit to the CCF in May 2008 were of such scope and seriousness that the Committee considers it essential for the Maltese authorities to commission an independent and comprehensive audit of the Maltese prison system and, in particular, of the CCF. In the CPT's opinion, this exceptional step - subsequently followed by appropriate measures - is the only appropriate response to a situation that could otherwise rapidly become unmanageable.

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41 94 inmates in 1990; 190 inmates in 1995; 248 inmates in 2001.

42 The majority of them being EU and Libyan citizens.

43 In fact, 406 places at the time of the visit, as Division IV (38 cells) was closed due to renovation work.

87. The most important findings of the CPT can be summarised as follows:

- the CCF is currently headed by an Acting Director who is a trained police inspector and who does not meet the criteria set out in Rule 84 (1) of the European Prison Rules. In particular, he does not have suitable professional training and experience;
- the post of Manager of the Correctional Services has been vacant for a very long time;
- the number of qualified and trained prison staff is too low for the number of inmates currently held in the establishment, which is prejudicial for the security of both staff and prisoners as well as for the latter's' treatment;
- informal power structures are given free rein to develop, placing numerous inmates in a submissive position vis-à-vis gang-type practices and allowing a considerable amount of drug trafficking to take place within the prison;
- the formal disciplinary system has collapsed;
- a genuine allocation and classification system for prisoners is absent;
- the very limited use of written and established procedures within the CCF has brought about an environment where insecurity and arbitrariness prevail.

88. In the CPT's opinion, these findings fully justify mandating a group of independent experts to carry out a comprehensive audit of the CCF (and of the prison system in general). The terms of reference this multidisciplinary group should cover all aspects of the running of the CCF, and take into account the relevant external factors pertaining to criminal and health policy. Some of the experts should have considerable experience in prison matters and preferably have served as Prison Director in an establishment of at least the size of the CCF[44]. Further, support should be obtained from experts with a good knowledge of the local and regional specificities.

89. **The CPT recommends that the above-mentioned independent and comprehensive audit be carried out. The Committee would like to receive the subsequent audit report, as well as information on the measures taken or envisaged (in the short, medium and long term) by the Maltese authorities in response to the audit report.**

3. Ill-treatment

90. As had been the case during the CPT's previous visits to the CCF, the vast majority of prisoners interviewed made no allegations of deliberate physical ill-treatment by prison officers (or police officers carrying out custodial duties) employed at the establishment; indeed, many prisoners described the officers' conduct as correct.

That said, the CPT subsequently received detailed information concerning the alleged ill-treatment, on Saturday 9 August 2008, of a Dutch prisoner on his return to the CCF after having escaped (see paragraphs 97 and 98).

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[44] This should, however, exclude all previous Directors of the CCF, as they would otherwise be requested to assess their own practices and policies.

91. The delegation received an allegation of a very recent and serious case of inter-prisoner violence involving a former police officer held in Division XII at the time of the visit. The prisoner concerned alleged that, on 18 and 19 May 2008, he had been subjected by fellow prisoners to death threats, then to attempted strangulation with a tie and suffocation by placing a plastic bag over his head, as well as beatings with a broom handle. His allegation was supported by medical evidence recorded in the prisoner's medical file, as well as by an examination carried out by a medical member of the delegation[45].

The prisoner reported these incidents to the prison officers in charge the following day; however, the delegation noted that the alleged victim, although having changed cell, was still accommodated in the same Division, in direct contact with the alleged perpetrators. Furthermore, nothing had been registered in the "occurrence book" of Division XII (even if preliminary disciplinary reports were said to have been established). The delegation made an immediate observation under Article 8, paragraph 5, of the Convention, requesting the Maltese authorities "to immediately take measures to provide this prisoner with a safe environment within the CCF". Further, the delegation sought confirmation by 16 June 2008 at the latest that the above request had been complied with, adding that, in its opinion, this incident was worthy of a preliminary investigation.

92. On 16 June 2008, the Maltese authorities informed the CPT that "the person in Division XII has now been properly accommodated, though he had refused the opportunity to move out of this Division". The CPT takes note of the above statement and **would like to know whether a preliminary investigation has been initiated and, if so, whether any conclusions have been reached**. **Furthermore, it would like to know the outcome of the above-mentioned disciplinary proceedings.**

Finally, **it is axiomatic that any allegation of inter-prisoner violence made by a prisoner to staff should be duly recorded and immediately acted upon.**

93. In the CPT's opinion, timely and effective measures were not taken to protect the prisoner concerned from other inmates. In addition, the fact that the prisoner refused to move out of Division XII should not be interpreted as a confirmation that the incident has been settled in a satisfactory way[46].

The CPT recommends that the Maltese authorities draft and implement a comprehensive policy concerning inter-prisoner violence at the CCF (also valid for the MCH Forensic Ward) tackling, in particular, the issues of early detection of possible cases of inter-prisoner violence, secure custody and care, classification and distribution of prisoners, and staff training.

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45 The medical examination of the prisoner, carried out 48 hours after the alleged incidents, revealed the presence of bruises on the right part of the forehead, on the right elbow and on the right upper leg, with a loss of substance.

46 Inter-prisoner violence can involve not only physical ill-treatment but also a wider range of phenomena, from subtle forms of harassment to open intimidation.

94. The delegation came across two cases of lack of proper medical care which, in the CPT's view, could well be considered to amount to ill-treatment.

The first case involved a male prisoner who had very recently been transferred back from hospital, where he had undergone a surgical intervention aimed at unblocking the catheter placed in his abdomen to release urine. On his return to the CCF, he had not been assisted - or even seen - by medical or nursing staff. He was being held in cell No. 192 in Division V, with the catheter coming out of the abdomen through an open wound, under conditions which did not meet the most basic requirements of hygiene and consequently posed a serious risk to his health, in particular major risks of secondary infection and septicaemia. In addition, he had been asked to change his dressings himself (without the help of a nurse). When seen again by a medical member of the delegation two days later, it was found that the situation of the prisoner had not changed, despite requests made by the delegation. The delegation had to insist that a nurse go and visit the prisoner in his cell.

95. The second case concerned a female prisoner accommodated in Female Division B, who was in need of urgent surgery which - due to its complicated nature - could apparently not be performed in Malta. After the total ablation of her right humerus in 2002 due to a bone sarcoma, a prosthesis had been put in place. The prosthesis had become dislodged and a surgical intervention had been programmed in London to replace the defective prosthesis. Arrested shortly before the intervention, in Malta, she was seen by three consultant orthopaedic surgeons on 27 November 2007 at Mater Dei Hospital and was still waiting for a follow up on the further management of her case at the time of the CPT's visit in May 2008. At that time, the fractured prosthesis had almost pierced the skin and the lower part of it had already caused a large hygroma. Under these circumstances, every fall or contact with a hard object could cause very serious damage (such as the cutting of the radial nerve), since no protective means had been put in place. Moreover, no action had been taken for months despite a specific request from the competent court[47].

96. The delegation made an immediate observation under Article 8, paragraph 5, of the Convention, requesting the Maltese authorities to urgently provide the necessary medical treatment and care for both prisoners and asking to receive confirmation, by no later than 16 June 2008, that appropriate measures had been taken. On that date, the Maltese authorities informed the CPT that the male prisoner in cell No. 192 (Division V), as well as the female prisoner (Division B), had both been provided with the proper medical care. The CPT takes note of this statement. However**, it would like to receive detailed follow-up information on these two cases.**

97. As regards the recent case of alleged ill-treatment referred to in paragraph 90 above, the prisoner concerned apparently sustained several broken ribs and a broken arm after having been beaten, both when he was recaptured by members of an escort team and on his return to the CCF - near the offices of the Special Response Team - on his way to a solitary confinement cell in Division 6[48].

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47 On 30 January 2008, the magistrates requested the CCF "to make available …all medical facilities available locally as well as to explore the possibility …to have the medical treatment abroad".

48 The incident may have been captured by one or more of the prison's CCTV cameras.

It is alleged that the prisoner was only taken to Mater Dei Hospital three days later (on the following Monday), after having been seen by a doctor carrying out a routine visit to the CCF on the Sunday evening[49]. Apparently, the prisoner was visited at Mater Dei Hospital - where he was kept for observation until the following morning - by a representative of the Dutch Embassy as well as by the Chairman of the Prison Board of Visitors. It was then that the prisoner made his allegation of ill-treatment by staff, to the Chairman of the Prison Board. A magisterial inquiry was subsequently launched to investigate both the escape and the prisoner's allegations.

98. A few days later, four prison officers were remanded in custody on charges of having beaten the prisoner concerned; they were placed in detention for seven days at the Police Lock-Up (and subsequently released on bail). The CPT welcomes the magisterial inquiry carried out into the above-mentioned allegations of ill-treatment and **would like to be informed, in due course, of the outcome of the proceedings.**

99. In addition, following the incident referred to above, the Minister for Justice and Home Affairs mandated a Board of Inquiry[50] under the Inquiry Act "to investigate the reports on the alleged shortcomings at the prisons" and "to recommend what corrective measures or drastic changes were needed at the prisons". **The CPT would like to receive at the earliest opportunity a copy of the mandate that was given to the Board of Inquiry, as well as a copy of its final report.**

100. In the meantime, **the CPT recommends that staff at the Corradino Correctional Facility be given the clear message that the physical ill-treatment of inmates is entirely unacceptable and will be the subject of severe sanctions.**

4. Material conditions

101. The material conditions prevailing in many parts of the CCF have already been extensively described in previous CPT visit reports[51].

In May 2008, male adult prisoners were still being held one to a cell throughout the establishment and the principal accommodation for them remained Divisions I to IV (located in the main building constructed in the first half of the 19th century). Divisions V and VI were respectively accommodating medium and high security prisoners, and Division VIII vulnerable prisoners. Female adult prisoners were held in Female Units A and B, in cells or small dormitories. Male minors were still accommodated at YOURS (Young Offenders Unit Rehabilitation Services) and female minors in Female Unit B.

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49 A nurse apparently saw the prisoner immediately after the alleged beating and said that he did not require medical attention.

50 The Board of Inquiry is chaired by Emmanuel Cassar, a former CCF Director, and also includes Martin Scicluna, the security advisor to the Prime Minister, and psychologist Mary-Ann Agius.

51 See CPT/Inf (92) 5, paragraph 27; CPT/Inf (96) 25, paragraphs 48 to 51; and CPT/Inf (2002) 16, paragraphs 42 to 45.

102. The most significant changes since the last periodic visit in 2001 were, in chronological order, the entry into service of a separate 144-cell block (originally for remand prisoners) in 2002, the entry into service of Division VIII in February 2007 (vulnerable prisoners), and the entry into service of "Female Unit B" and the "New Location Unit" in December 2007. In addition, renovation work has been carried out on a permanent basis throughout the establishment and, at the time of the visit, Division IV was closed for renovation.[52]

To sum up, significant efforts continued to be made by the Maltese authorities to increase the quality of prisoner accommodation at the CCF. However, much remained to be done in several parts of the establishment.

103. The new 144-cell block (Divisions XI, XII and XIII) offered the best conditions in the whole establishment. The 8 m² cells were well equipped (bed and bedding, cupboard, bookshelves, table and chair, television, call system and integral sanitation (washbasin and partitioned toilet)). Ventilation in the cells was good (one part of the window could be opened), as was access to natural light and artificial lighting. Installations such as shower rooms, two gyms and eight communal rooms were at the disposal of the inmates. In addition, the new cell block had two large outdoor yards. However, **at the time of the visit, there were problems with the sewage pipes on the ground floor of Division XI.**

104. The renovation work carried out in the "old" part of the establishment (starting with Division I) including the installation of security nets between the floors, the renovation of the shower facilities, the setting up of a communal/activity room at the entrance of the Division, and the refurbishment of the cells (including the installation of an intercom). **The CPT recommends that the Maltese authorities carry out similar renovation work in Divisions II and III.**

105. The recently constructed Female Unit B offered globally satisfactory material conditions of detention. It was organised as an apartment, with a day room (20 m²), a sanitary annexe (showers and toilet), two small dormitories (each measuring approximately 25 m² and equipped with four and six beds), and a single room. However, this dormitory-type accommodation deprived the inmates of any privacy, something which was disliked by the prisoners concerned (in particular by those serving long sentences). **The CPT invites the Maltese authorities to consider ways of alleviating this shortcoming.**

Further, a roof terrace (+/- 100 m²) surrounded by high walls (which allowed only a view of the sky) was used as an outdoor exercise facility. **The CPT recommends that the facility used for outdoor exercise be at ground level.**

Female minors may on occasion be accommodated in Female Unit B and placed together with female adults (see paragraph 118).

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[52] The Division closed in December 207 and was scheduled to re-open in June/July 2008. It is intended for first-time offenders and prisoners convicted of petty crimes.

106. The material conditions at YOURS (36 cells) remained on the whole satisfactory (see CPT/Inf (2002) 16, paragraph 45). However, many showers in the unit were broken and some classrooms had been removed in order to set up Female Unit B. **The CPT recommends that alternative classroom space be sought and that the shower facilities be repaired.**

Male minors may on occasion be accommodated in YOURS and placed together with young adults (up to 25 years of age) (see also paragraph 118).

107. Material conditions in Female Unit A were far from satisfactory. The Unit was based around a big hall (used as a day room, dining room and activity room). The 19 cells (measuring some 8m²) were equipped with a bed (sometimes a bunk-bed) and bedding, a toilet and washbasin, and shelves. In addition to an exercise yard, the section had its own shower and washing facilities, visiting areas and classrooms. However, as in 2001, access to natural light (through small windows placed high up on the wall), artificial lighting and ventilation left a lot to be desired. Furthermore, the Unit was generally in a dilapidated state[53]. **The CPT recommends that steps be taken as a matter of priority to renovate Female Unit A.**

108. Conditions in Division V (including the so-called "New Infirmary" (ex-Division IX)) were of particular concern to the delegation, as this part of the prison was in a very dilapidated state and basic hygiene was difficult to maintain. Furthermore, the cells in Division V were rather small (6.5 m²) and access to natural light was very limited. **The CPT recommends that the Maltese authorities take urgent steps to restore an acceptable level of hygiene in Division V and to schedule extensive renovation work as a matter of urgency, in the light of the above remarks.**

109. Division VIII offered very unusual material conditions of detention. Prisoners were not accommodated in cells, but rather in 14 "*alcoves*" (each measuring some 4 m²) built as a cubicle-partitioning system. The inner walls of the alcoves did not reach the ceiling, and their "doors" consisted only of a curtain. Furthermore, a CCTV video system had been installed in the room, above the alcoves, to monitor all windows. A sanitary annexe (2 toilets and 2 showers) was located on the same floor, as were a small kitchen, a laundry and a little day-room (used both for activities and as a dining room). A very small courtyard adjoined the facility.

To sum up, living conditions in Division VIII were very cramped, prisoners had no privacy, and the design of the unit was not conducive to the prisoners' safety. **The CPT recommends an immediate reduction of the level of occupancy in Division VIII.** Moreover, **renovation work should be undertaken to remedy the deficiencies highlighted above.**

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[53] The kitchen had been closed due to sanitary reasons and was scheduled for renovation.

110. Division VI was used to accommodate prisoners undergoing disciplinary punishment as well as high-security inmates[54]. Each cell offered enough living space (some 8 m²), and was rudimentarily equipped (bed fixed to the ground, full bedding, toilet and washbasin). However, no call system was installed, the walls were bare, and the windows reinforced by three successive layers of bars or wire mesh, thereby restricting access to natural light. This said, ventilation and artificial lighting were sufficient. On one floor the cells had no doors but instead grilles, enabling staff to continuously monitor the prisoners. The courtyard (7 x 16 m) was devoid of any equipment. **The CPT recommends that the Maltese authorities improve access to natural light in the cells in Division VI, install a call system in the cells equipped with a full metal door, and install some sports' equipment (such as basket-ball nets) in the courtyard.**

111. At the time of the visit, two prisoners were being kept in segregation in the "New Location" Unit. This so-called "bio-hazard" unit, adjacent to the medical service, is a four-bed dormitory, well-equipped (including a full sanitary annexe) and in a very good state of repair and cleanliness. However, prisoners placed there were not allowed access to outdoor exercise. The delegation made an immediate observation under Article 8, paragraph 5, of the Convention, requesting the Maltese authorities to provide access to outdoor exercise for the two prisoners concerned as a matter of urgency; it asked to be informed, by no later than 16 June 2008, about the measures taken in response to its request. On that date, the Maltese authorities informed the CPT that "opportunities for regular daily outdoor exercises are now offered to the two prisoners…., even though these have refused to do such exercises between 12.30 and 14.00 pm". The CPT takes note of this statement and **trusts that suitable arrangements will be made in order to offer these prisoners at least one hour of outdoor exercise per day under satisfactory conditions.**

112. The level of hygiene in the kitchen of the CCF left a lot to be desired. Similarly, the latest inspection carried out by the Department of Public Health (in October 2005) gave rise to numerous remarks concerning the standard of cleaning and maintenance of the facility, as well as possible violations of basic hygiene rules. The inspector responsible assessed at that time the overall risk factor of the premises at 53 % (or Grade D). **The CPT recommends that the Maltese authorities (i.e. the Institutional Health Inspectorate Unit of the Department of Public Health) carry out a follow-up inspection in the CCF kitchen in order to assess the level of implementation of the recommendations made in October 2005.**

113. The delegation received numerous complaints concerning the fact that the food provided to inmates arrived cold. In this context, it noted that "heating trolleys" had been bought in order to keep the food warm on its way from the kitchen to the respective Divisions. However, at the time of the visit, it appeared that these trolleys were not preheated in the kitchen before being used to transport the food. Moreover, the absence of appropriate ramps and lifts rendered the use of the trolleys impossible between the kitchen and several Divisions (in particular, Divisions XI to XIII). **The CPT recommends that these deficiencies be remedied forthwith.**

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[54] It has been described in detail in previous visit reports; see CPT/Inf (2002) 16, paragraphs 70 to 72.

5. Prisoners' allocation and classification, and activities

114. A prerequisite to the setting up of a regime worthy of the name in a prison setting is the existence of a proper allocation and classification system for prisoners.

In 1995, no such system was in place in Malta[55]. The authorities were invited by the CPT to introduce a provisional allocation and classification system, pending completion of the new prison site (i.e. the new "remand" block)[56]. An Intake Assessment Unit was set up in 1999, aimed at assessing all incoming prisoners, which was later reinforced with a criminologist and a forensic psychologist and placed under the guidance of the establishment's psychiatrist. In 2001, at the time of the last CPT periodic visit to the country, the allocation and classification system was still not in place[57].

The CPT was therefore extremely concerned to note that, thirteen years after its first comment on the matter, the only real step forward had been to set up a "Unit for Vulnerable Offenders" (Division VIII) at the CCF. In the CPT's opinion, any prison system without a proper allocation and classification system for prisoners is destined to failure. **The CPT calls upon the Maltese authorities to set up a proper allocation and classification system for prisoners at the CCF, taking into account the criteria set out in the European Prison Rules**[58].

115. As regards activities, the CPT's delegation reviewed the progress made since 2001.

At the time of the visit, *working opportunities* were offered to a total of 213 inmates (baking and other kitchen duties, carpentry, masonry, electrical work/plumbing, bookbinding, mechanics, fitting, tailoring, cleaning)[59]; much of this work (for approximately 60 inmates) involved toy-assembling activities carried out in the Divisions. This constitutes a considerable reduction in the ratio of working-prisoners at the CCF[60]. It is regrettable that the large increase in the number of prisoners which took place with the entry into service of Divisions XI, XII and XIII was not accompanied by the development of appropriate workshops. **The CPT recommends that efforts be made to increase the working opportunities for prisoners at the CCF**. Furthermore, **due account should be taken of the ratio of working opportunities to prisoners when building new facilities.**

As was the case in 2001, the delegation was disappointed to note as regards *sports activities* that the spacious inner yards in each Division were hardly ever used for collective sports. **The CPT recommends that this shortcoming be remedied, and that a wider range of organised sports activities be offered to all prisoners.**

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55 Except for the separation between male/female inmates, and male minors and male adults.

56 See CPT/Inf (96) 25, paragraphs 62 and 63.

57 See CPT/Inf (2002) 6, paragraph 58.

58 See Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules (Rules 17 and 18).

59 It should be noted that some workshops are often closed, as custodial staff have to assist colleagues working in the Divisions.

60 51,44 % of the inmates in 2008, compared to 67,33 % in 2001.

116. In view of their particular needs, specific categories of prisoners merit particular attention.

Women prisoners are still offered a limited selection of work activities (compared to the male prisoners) - such as cooking, laundry and toy assembling - in which less than half of them were involved. They could also attend lessons in Italian, English, and Philosophy (Female Unit B) and computer skills, English and Italian (Female Unit A). **The CPT invites the Maltese authorities to renew their efforts to extend the range of activities (in particular work and vocational education) for women held in the CCF.**

117. At the time of the visit, juveniles at YOURS could attend lessons in literacy, mathematics, and pottery[61]. In addition, some vocational training was on offer, inside (food safety licence/certificate) or outside the prison (dockyard classes). A training course in tourism studies was also under preparation; however, this project (cooking lessons) required the installation of a new kitchen at YOURS. Sports activities were rather limited, either in a small gym (5 inmates at a time) or in the courtyard in the summer (football). **The CPT recommends that efforts be made to increase the variety and quantity of purposeful activities offered to the young offenders at YOURS.**

More generally, **Maltese legislation providing for the compulsory education of children and juveniles should be respected at the CCF.**

118. One of the most serious concerns of the CPT related to the presence in the CCF of very young inmates (children of less than 16 years of age) and, in particular, very young female inmates.

At the time of the visit, a 15 year old minor was detained in Female Unit B. She had been held there on remand for several months. A special programme had been set up for her; she was attending lessons for 2 to 4 hours a day. However, staff agreed that her presence in a unit primarily intended for adults was not satisfactory.

The CPT was informed that such cases were not exceptional[62]. The CPT is of the opinion that an in-depth study of the phenomenon should be initiated, aimed at definitively abandoning the practice of placing, even temporarily, persons less than 16 years of age in a prison for adults. **The CPT recommends that the Maltese authorities take steps in the light of the above remarks.**

Further, in the very exceptional case of a person under 18 being incarcerated, he/she should be accommodated separately from adults.

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61 All subjects are taught twice a week and subjects change from time to time.

62 From 1 January to 20 May 2008, four such cases were identified (involving a 12 - year - old male, a 13 - year - old and two 15 - year - old female minors). They were firstly accommodated at the CCF, and subsequently at the Mount Carmel Hospital (Forensic Ward or Female Ward No.1), in solitary confinement and full segregation.

119. Another issue of serious concern for the CPT is the situation of prisoners serving long sentences and, in particular, the situation of the eight prisoners serving a life sentence. These prisoners were accommodated throughout the CCF[63], and some of them had already been imprisoned for more than 25 years. They were not receiving any specific attention and, in particular, their needs in terms of activities and social interventions were not being met. Without any doubt, the psychological state of some of them was severely affected by the absence of any perspective of release in the foreseeable future and had resulted in certain cases in a transfer to the Forensic Ward. One of the main issues at stake was the possibility for them to be paroled (a possibility which is currently not available in Malta).

120. Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society. In the view of the CPT, the regimes which are offered to such prisoners should seek to compensate for these effects in a positive and proactive way. The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Further, the negative effects of institutionalisation upon prisoners serving long sentences will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world. **The CPT recommends that steps be taken as a matter of urgency to draw up and implement a specific programme aimed at supporting life-sentenced and other long-term prisoners throughout their stay in detention, in the light of the above remarks**.

121. More generally, the CPT has serious reservations about the very concept according to which certain prisoners, once they are sentenced, are considered once and for all to be a permanent threat to the community and are deprived of any hope of being released. In this regard, the Committee would like to refer to the Committee of Ministers' Recommendation Rec (2006) 2 on the European Prison Rules of 11 January 2006, in particular Rule 6, as well as to paragraph 4.a of Recommendation Rec (2003) 22 on conditional release (parole) of 24 September 2003, which clearly indicates that conditional release should be available to all sentenced prisoners, including life-sentenced prisoners. The explanatory memorandum to the latter recommendation emphasises that life-sentenced prisoners should not be deprived of the hope of being granted release. Firstly, no one can reasonably argue that all lifers will always remain dangerous to society. Secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behaviour, the delivery of personal development programmes, the organisation of sentence plans, and security. In the light of the above, **the CPT trusts that the envisaged system of release on parole (see paragraph 84) will extend to life-sentenced prisoners.**

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63 Respectively, two in Division I, one in Division II, one in Division III, one in Division V, one in Division IX (New Infirmary) and two at Mount Carmel Hospital (Forensic Ward).

6. Health care

122. Health-care staffing levels at the CCF left much to be desired. The presence of three general practitioners, all part time and covering a total of 5 hours a day, was not sufficient to meet the needs of the prison population. Indeed, many prisoners (in particular in Divisions V and VI) complained of the difficulty in gaining access to a doctor. In the CPT's opinion, in view of both the number and the different categories (males, females, minors, sentenced and on remand) of prisoners, the CCF should benefit, at the very least, from the equivalent of a full-time post of medical doctor (and preferably the equivalent of 1 ½ full-time posts). **The CPT recommends that immediate measures be taken to this effect.**

123. The medical team was seconded by a nursing pool (provided by an external private contractor), ensuring the presence of three nurses on the morning shift, two on the afternoon shift and two on the evening shift. Such a level of presence is also unsatisfactory. The very important growth in the prison population since 2001 should have entailed a corresponding increase in nursing staff resources. That said, the delegation was informed that a plan was under discussion to recruit several nurses to permanent posts[64].

In the CPT's opinion, an establishment holding more than 400 inmates should benefit from the equivalent of at least eight full-time nursing posts. **The CPT recommends that nursing staff resources at the CCF be substantially reinforced, in the light of the above remarks.**

124. At the CCF, a prison health-care service - as usually understood - does not exist. In the CPT's opinion, medical consultations provided by several external contractors - acting independently of each other - do not amount to a well-established and organised health-care service. The smooth operation of such a service presupposes that doctors and nursing staff are able to meet regularly and form a working team under the authority of a senior doctor in charge of the service. **The CPT recommends that the Maltese authorities re-organise the provision of healthcare at the CCF, in the light of the above remarks.** In particular, **a medical doctor should be formally entrusted with the task of heading and coordinating the health-care service.**

125. The team responsible for psychiatric care included a psychiatrist (present twice a week, for a total of 10 hours[65]). He was supported by the general practitioners (one of whom had previous experience in psychiatry and drug abuse issues), two forensic psychologists and an assistant clinical psychologist (although they were principally involved in the initial assessment of prisoners). The level of presence of the psychiatrist - who, in addition, worked as a consultant psychiatrist at Mount Carmel Hospital, where he was responsible for the Forensic Ward, and as an expert for the courts - was limited. **The CPT recommends that the time spent by a qualified psychiatrist at the CCF be considerably increased.**

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64 The turnover of nurses was high; this was detrimental to the development of a proper nurse/patient relationship as well as to the establishment of a real team spirit.

65 The psychiatrist saw between 10 to 20 inmates on each of his visits to the CCF.

126. Dental services were available to prisoners, either through dental consultations at the CCF[66] or through urgent consultations at outpatient clinics. However, **many complaints were received concerning long delays in obtaining access to dental care.**

Further, as regards the dental clinic at the CCF, **the equipment is very basic and somewhat outdated (in particular the KGS 10 steriliser).**

127. In the light of the facts found during the visit, the CPT wishes to stress the need to reinforce the confidentiality of medical information at the CCF. Not only were the medical files of the prisoners kept (unlocked) in a room which was accessible at all times to prison officers, but the prison officers were also entering data into the health-care service computer (a fact that was directly observed by medical members of the delegation and which the medical/nursing staff clearly disliked). Medical data in the decentralised infirmaries (Division VI, Female Units, YOURS) were also directly accessible to non-health-care staff. This state of affairs was considered unsatisfactory by the medical team.

The CPT wishes to stress that medical confidentiality should be observed in prisons in the same way as in the community at large and that the keeping of patients' files should be the doctor's responsibility. **The Committee calls upon the Maltese authorities to take measures to ensure that the rules of medical confidentiality are strictly respected at the CCF.**

128. Drug-related problems concerned some 60 to 70 % of the inmates at the CCF and this is clearly one of the most important issues to be tackled in the establishment. It follows that the drug policy in place is of particular importance. In this context, the delegation took note of a policy document entitled "Comprehensive Drug Policy 2008", drafted by the CCF Director and submitted to the Permanent Secretary. As far as the delegation is aware, this policy document has not been formally approved.

The above-mentioned policy is based on several pillars: the assessment of the prisoner's needs on admission; a detoxification programme; if necessary, the prescription of maintenance treatment (methadone); the setting up of drug-free units; and, if possible, the setting up of therapeutic communities within the CCF. This is coupled with security measures (searches, random urine tests, etc.).

In practice, the delegation observed that withdrawal symptoms on admission are treated with a combination of analgesics and anti-emetics. As regards methadone treatment, it is only carried out after an initial assessment, which takes place at the Forensic Ward[67] as the treatment has to be initiated in a hospital setting and with the consent of the prisoner concerned. That said, the delegation noted that the response to drug–related behaviour at the CCF is rather stereotyped and lacks an individual approach. Furthermore, the current absence of an effective disciplinary system has been interpreted by the prisoners as an "open door" to drug trafficking and drug consumption.

The CPT recommends that steps be taken to implement a fully-fledged drugs policy at the CCF. This issue should be addressed in the context of the independent and comprehensive audit referred to in paragraph 89 above.

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66 Approximately 20 consultations at the dental clinic in a given week.

67 At the time of the visit, some 22 inmates were being treated with methadone.

129. Given the number of cases of hepatitis C at the CCF (65% of all inmates) and the percentage of prisoners with a history of drug-related problems, it is particularly important that all prisoners be provided with adequate health and drug-awareness information. This should include information about transmissible diseases, drug dependence and related harm-reduction strategies.

It is also important to provide staff (prison officers of all grades, as well as other staff, including teachers, health assistants, etc.) with relevant information and training concerning the mechanisms of disease transmission, methods of prevention, and drug dependence/misuse.

The CPT recommends that the necessary steps be taken to ensure that the foregoing requirements are met in practice.

7. Other issues

a. staffing and management issues

130. At the time of the visit, the CCF was affected by serious understaffing at all levels. In particular, the post of Manager of the Correctional Services[68] had been vacant for a very long time. Moreover, the CPT subsequently learned that after the incident in early August 2008 (see paragraphs 97 and 98), the Director resigned and an Acting Director was designated.

In this context, and without prejudice to the results of the independent audit mentioned above (see paragraph 89), the CPT would like to stress again - as it already did in 1990 - that only a full-time Director possessing experience in prison management will have the authority to set an appropriate tone and atmosphere within the CCF and have the incentive to develop policy and plan ahead. In the absence of such a Director, the establishment will continue to drift and undesirable practices will develop. **The CPT recommends that the highest possible priority be given to the appointment of a Director of the CCF who is "adequately qualified for that post by character, administrative ability, suitable professional training and experience"[69].**

131. Further, the large increase in the number of inmates had not been accompanied by a corresponding increase in posts of prison officers. In practice, the 176 prison officers on the payroll were assuming tasks that should, according to the CCF Director, have been taken care of by some 240 prison officers. This unfortunate state of affairs inevitably had repercussions on staff: prison officers present were overwhelmed with overtime and experienced difficulties in obtaining leave; this caused stress-related burnout syndromes and demotivation, including at senior level; it was virtually impossible to ensure any ongoing training activity; new recruits were put on operational posts without having received their full training; etc.

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[68] Equivalent to the post of Deputy Director; in his absence, the Director was assuming both functions.

[69] See the European Prison Rules 2006, Rule 84.1.

This situation also had repercussions on the prisoners' daily life: not all custodial posts were occupied in the Divisions, leaving scope for the development of undesirable - gang-type - practices, putting the weakest prisoners at risk; escorts inside (to the infirmary or other departments) and outside the establishment (e.g. to hospital or to court) were difficult to provide; interaction between staff and prisoners was reduced to the minimum, which is clearly detrimental to dynamic security; etc. More generally, the delegation was concerned to observe many shortcomings in terms of security in certain parts of the establishment.

The CPT recommends that the Maltese authorities review staffing levels in respect of prison officers at the CCF and take all necessary steps to fill without delay all available posts with appropriately qualified staff.

132. Another important aspect was the presence within the CCF of some 23 members of the Malta Police Force[70]. The great majority of prison staff at Corradino are now "correctional officers" rather than police officers or temporary staff. Nonetheless, the remaining police officers retain a certain number of security functions which should be part of the job of a prison officer[71].

It should be repeated that the custody of prisoners is a specialist job best performed by professionally trained prison staff (see Rules 76 to 78 of the 2006 European Prison Rules). The present amalgam of prison and police officers cannot be considered as satisfactory from the point of view of the treatment of detainees. Further, the management of a body of staff belonging to two distinct corps is a rather complicated task. **The recruitment of additional prison officers (see paragraph 131 above) will provide a good opportunity for the police officers currently working in the prison system to be replaced by properly trained prison officers.[72]**

More generally, **the time is now ripe to set up in Malta a fully-fledged, professional Prison Service, inspired by the principles defined in Part V of the 2006 European Prison Rules.**

b. discipline

133. Since its first visit in 1990, the CPT has been quite critical of the disciplinary procedure and sanctions applied at the CCF. In 2008, the situation found by its delegation can only be described as chaotic and left much room for arbitrariness. There seemed to be several reasons for this situation, including serious staff negligence. Some 300 disciplinary files were pending at the time of the visit, some of which dating back months. The delegation even found cases where the prisoners concerned had left the CCF before their disciplinary proceedings had been concluded.

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70 One police inspector, two police sergeants and 20 police constables. As long ago as 1990, the declared objective of the Maltese authorities was for the prison to be entirely run by qualified prison officers.

71 As far as the CPT is aware, the current Acting Director was the police inspector responsible for security.

72 Or for the police officers concerned to be (re)trained and appointed as prison officers (i.e. leaving the Police Force).

134. The consequences of this state of affairs were not long in coming: certain inmates who were well aware of the situation were trying to gain power; some prison officers were reluctant to file a disciplinary report, knowing that it would serve no purpose in the immediate or medium future; and "unofficial" systems were starting to develop, replacing the formal disciplinary system (such as transfers to Division VI (or Division V) without proper written formal procedures, reasons being given, length of stay being decided upon, or *a fortiori* a possibility for the prisoner concerned to contest the measure). More generally, this situation was undermining the security of the whole establishment.

The CPT has underlined on several occasions that it is in the interests of both prisoners and prison staff that clear disciplinary procedures be both formally established and applied in practice. **It recommends that urgent steps be taken to re-establish a disciplinary system worthy of the name at the CCF.**

c. "suicide watch" cell

135. A "suicide watch" cell has been installed at the entrance of the YOURS building. The cell, with very high bare walls and a transparent ceiling, is equipped only with a mattress. Inmates can be placed there after having attempted to commit suicide or after displaying (auto)-aggressive behaviour; they are subject to reinforced staff monitoring (in emergency circumstances, in "one to one" constant direct supervision). A recording clock is also installed, to check staff presence. Placement in the cell is under the sole responsibility of the CCF psychiatrist, who informed the delegation that inmates were usually placed there for an observation period of two weeks, but that they could be discharged earlier on his decision. A special register was kept, recording the stay in the cell. The delegation was informed that on occasion prisoners had been kept in their underwear or, exceptionally, left naked in the cell (with a Luna blanket).

136. The delegation was of the opinion that the practice of keeping a prisoner naked in a cell can be considered to amount to degrading treatment and, in pursuance of Article 8, paragraph 5, of the Convention, requested the Maltese authorities to discontinue this practice immediately, indicating that prisoners at risk of suicide should instead benefit from clothing appropriate to their specific needs. The delegation asked to receive, by 30 June 2008 at the latest, confirmation that appropriate measures had been taken. On 16 June 2008, the Maltese authorities informed the CPT that "prisoners at risk of suicide at the Corradino Correctional Facility are issued with clothing items appropriate to their specific needs". The CPT takes note of this statement and **would like to receive more information on the precise measures taken in this regard.**

More generally, **the CPT is of the opinion that a prisoner showing severe signs of suicidal or (auto)-aggressive behaviour should be immediately transferred to an acute mental health unit.**

d. complaints and inspection procedures

137. Effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority. The CPT therefore attaches particular importance to regular visits to each prison establishment by an independent body (e.g. a Board of Visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment's premises. Such bodies can inter alia play an important role in bridging differences that arise between prison management and a given prisoner or prisoners in general.

At the time of the visit, the members of the Prison Board of Visitors had recently resigned *en bloc* after having fulfilled their mandate for many years. The former members of the Prison Board had been active within the CCF and the inmates spoken to clearly trusted the Board to protect their fundamental rights. **The CPT would like to know if a new Prison Board has now been established and to receive in due course a copy of its first annual report.**

D. Fejda Programme and Jeanne Antide establishments

1. Preliminary remarks

138. The CPT's delegation visited for the first time in Malta two institutions for female[73] juveniles and children, namely the "Fejda Programme" and "Jeanne Antide" establishments. Although these two establishments are formally separate entities, they are accommodated in the same building complex, Conservatorio Vincenzo Bugeja, in Fleur-de-Lys, St Venera, on the outskirts of Valletta. The Conservatorio is a 19th century palatial residence which has been converted in a somewhat makeshift manner to fit its present purpose.

The two establishments had a maximum capacity of about twenty places each. At the time of the visit, no residents were present at "Jeanne Antide" as they were participating in an outing; however, the majority of the residents were present at "Fejda Programme". The age of the residents ranged from 11 to 18.

Although the "Fejda Programme" and "Jeanne Antide" institutions were not initially included in the list of establishments where persons may be deprived of their liberty by a public authority, the delegation's visit showed that they were indeed establishments where children and juveniles could be placed and held against their will; this position was not contested by the Maltese authorities.

139. Maltese legislation provides for the possibility to place a minor under the age of 16 under a so called "care order"[74], either by court or administrative decision. The placement comes to an end, at the latest, when the minor concerned turns 18. During the placement period, parental authority is exercised by the Minister responsible for social welfare. The placement of a minor under a care order expressly provides the possibility to deprive the minor concerned of his/her liberty[75].

140. The procedure for placing a person under the age of sixteen under a care order is as follows: upon written representation by the Director of the Department responsible for social welfare - and after having heard the parent(s) or guardian of the minor or any other person - the Minister for Social Policy may decide to impose a care order (in order to assist the minor concerned). The person exercising parental authority may object to the care order, in which case it is referred to the Juvenile Court. Furthermore, the Minister may, upon oral or written representation by any person, issue an interim care order, which is valid for a maximum of twenty-one days.

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73 At the time of the visit, a young boy (9 years old) was also being accommodated in the establishment. The reason for this arrangement was the need for his urgent transfer from a minor's establishment in Gozo. As his older sister was resident at the Fejda Programme, the arrangement seemed to the Committee to be a satisfactory – temporary - solution.

74 A child or young person is deemed to be in need of care, protection or control, if he/she is beyond the control of his/her parent(s) or guardian, or he/she is not receiving proper care, protection and guidance, and as a result is either falling into bad company or is seriously exposed to moral danger, or the lack of care, protection or guidance is likely to cause the child or young person to suffer or seriously affect his/her health and development (Article 7 of the Care Orders Act).

75 The minister exercises parental authority over the child or young person under his care, including by restricting the liberty of such a person as he may consider appropriate (cf. Article 8 of the Children and Young Persons (Care Orders) Act). If any child or young person committed or taken into the care of the minister absconds from the premises of the facility, where he/she is being held, he/she may be apprehended by the police and brought back to the facility, (Article 12 of the said Act).

Discharge of a child or young person taken into care by order of the Minister for Social Policy may be ordered by him/her at any time and is subject to such conditions as he/she may determine (cf. article 10, paragraph 4, of the Care Orders Act).

141. Criminal courts[76] may, instead of sentencing a child or young person to imprisonment, issue an order committing the latter to the care of the Minister for a period of not less than one year and not more than five years. Such a care order ceases to have effect when the minor concerned turns 18.

The Minister may similarly order the removal of a child or young person serving a prison sentence from the prison and take him/her into his care until the person in question would have been released from prison (cf. Article 6 of the Children and Young Persons (Care Orders) Act).

142. The delegation noted that a number of residents were being accommodated (and held) in the establishments on the basis of a so-called "voluntary placement" measure, decided either by their parents or the holders of parental authority. According to the information provided to the delegation, such residents did not enjoy the same legal safeguards as their "care order" counterparts.

The CPT is of the opinion that all minors held in such establishments - irrespective of the basis for that placement - should benefit from the same level of legal protection. **The CPT would like to receive the comments of the Maltese authorities on this issue.**

143. It should be noted, at the outset, that the CPT's delegation did not receive any allegations of deliberate ill-treatment of the minors by staff in the establishments visited. On the contrary, the delegation formed the opinion that staff took great care of and interest in the well-being of the residents.

2. Living conditions

144. The minors were accommodated two to a room, the residents in a given room being usually about the same age. The rooms were spacious and had large windows offering ample natural light. Each resident had her own bed, cupboard and wardrobe, where she could keep clothes and personal items. Further, the residents could decorate their rooms with posters on the wall. However, a generally austere atmosphere prevailed throughout the establishments, mainly due to the over-sized rooms, the cubicle-style partitioning installed within them, and the presence of heavy padlocks on each window[77]. In addition, no space was available in the complex for a playground or sports' field, as the grounds of the building complex were in the main laid out as a formal garden. This is all the more regrettable bearing in mind the relatively long periods (up to five years), which children and juveniles could spend in these establishments.

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[76] In Malta, the age of criminal responsibility is nine.

[77] The delegation was told that padlocks had been installed on the windows by orders of the Board of Trustees, to avoid residents going outside to the grounds of the complex. The staff were for their part strongly opposed to this measure.

145. The delegation was informed that any alterations to the interior design of the building, including the colour scheme, cubicle-style partitioning system and the furniture, required the prior agreement of the Board of Trustees of the Conservatorio Vincenzo Bugeja, even if the full funding of the two establishments was provided by the Maltese authorities. In the opinion of the CPT, such a state of affairs may well result in the best interests of the children and juveniles being overridden by the considerations of the Board of Trustees. **The Committee would like to receive the comments of the Maltese authorities on this matter.**

146. As regards the regime, on weekdays, residents attended different schools outside the establishments for most of the day. In the evening, in addition to preparing their school work (maximum two hours a day), they were required to carry out certain chores, including preparation of the dinner, as well as cleaning not only their own rooms, but also the very long corridors, toilets and common areas. Because of the dimensions of the building, in practice, more time was spent every day on cleaning chores than on other, meaningful, activities, in particular studies. Residents also regularly attended a number of individual meetings with social workers/psychologists, either within the establishments or outside. The delegation was informed that staff organised various activities during weekends and free time, including outings.

147. The living conditions offered to residents in the two establishments visited were globally acceptable for relatively short stays. However, it is indisputable that the limitations inherent in the presence of the establishments in the Conservatorio Vincenzo Bugeja complex (by way of example, the total absence of recreation or sports' grounds/activity rooms, the severe restrictions imposed on any renovation/restructuring works) rendered the present situation much less acceptable in the medium or long term. **The CPT invites the Maltese authorities to explore the possible relocation of the two establishments to a more appropriate facility, offering a stimulating environment as well as enough space to organise purposeful activities (including physical education).**

3. Health care

148. The CPT pays special attention to the specific medical needs of juveniles deprived of their liberty. It is particularly important that the health-care service offered to juveniles constitutes an integrated part of a multidisciplinary (medico-psycho-social) programme of care. This implies inter alia that there should be close coordination between the work of an establishment's health care team (doctors, nurses, psychologists, etc.) and that of other professionals (including social workers and teachers) who have regular contact with inmates. The goal should be to ensure that the health care delivered to juveniles deprived of their liberty forms part of a seamless web of support and therapy. It is also desirable that the content of a programme of care be set out in writing and made available to all members of staff who may be called upon to participate in it.

149. Although it had a total of some 40 residents, the establishments visited did not benefit from an in-house health service, as there was no nurse, not even on a part-time post, attached to the institutions. Health care - including dental care, psychiatric care and psychological care - was mainly provided through external consultations. Residents usually attended a general practitioner's surgery in Floriana. On certain occasions, the doctor's consultation took place on the spot. At "Fejda Programme", such consultations took place in a small bathroom which had been converted into a surgery in a very makeshift fashion.

150. The CPT wishes to underline two important issues as regards health care for children and juveniles placed under a care order in the two institutions visited. Firstly, all such minors should be interviewed and physically examined by a doctor as soon as possible after their admission; other than in exceptional circumstances, the medical interview/examination should take place on the day of admission. If it is properly carried out, such medical screening on admission should make it possible to identify those young people with potential health problems (such as drug - including alcohol - dependency or suicidal tendencies). Identification of these problems at a sufficiently early stage will facilitate the taking of effective preventive action within the establishment's medico-psycho-social programme of care.

Secondly, the task of the health-care service in such establishments should not be limited to treating sick patients; it should also be entrusted with responsibility for social and preventive medicine. In this connection, the CPT wishes to highlight two aspects of particular concern as regards juveniles, namely, their nutrition and the provision of health education. Health-care staff should in particular play an active role in monitoring the quality of the food provided. This is particularly important for juveniles, who have not reached their full growth potential. The consequences of inadequate nutrition may become evident more rapidly - and be more serious - than for those who have reached full physical maturity. It is also widely recognised that juveniles have a tendency to engage in risk-taking behaviour, especially with respect to drugs (including alcohol) and sex. In consequence, the provision of health education relevant to young persons is an important element of a preventive health-care programme. Such a programme should, in particular, include the provision of information about the risks of drug abuse and about transmittable diseases.

151. **The Committee recommends that the Maltese authorities take steps to ensure:**

- **that all children/juveniles benefit from an appropriate interview and a physical examination by a doctor (or a nurse reporting to a doctor) as soon as possible after their admission;**

- **the presence of a nurse for at least two half days per week in the establishments. The nurse in question should play an important role as regards the organisation of the medical screening on admission, access to a doctor, the management of the residents' medical records and the register of prescriptions, as well as the distribution of medicines and social and preventive medicine;**

- **that appropriate premises are made available to the above-mentioned nurse.**

4. Other issues related to the CPT's mandate

a. staff

152. At the two establishments visited, the staff consisted essentially of care workers from NGOs, working in shifts. In principle, each establishment was supposed to have two care workers on duty during the morning hours, three in the afternoon and two on the night shift. However, the delegation was informed that on most occasions, only one care worker was present in the establishment in the morning and sometimes only two in the afternoon[78]. As there were no cleaning staff, such duties fell to the residents.

Taking into account the importance for the residents of receiving proper and targeted care at all times, as well as the very demanding nature of the tasks involved, the CPT takes the view that the two establishments, whether directly or indirectly managed by the Maltese authorities, should be allocated the necessary financial resources to attract and keep qualified staff in sufficient numbers to ensure that proper, individual care is provided to residents at all times. Further, cleaning staff should be employed to maintain the communal facilities. **The CPT recommends that measures be taken without delay to ensure the presence of qualified care staff, in sufficient numbers, at both establishments, as well as cleaning staff.**

b. discipline and use of force

153. At "Fejda Programme" and "Jeanne Antide", disciplinary sanctions included limitations on time spent outside the establishments, the imposition of additional household chores or assistance with school homework to other residents, or the reduction of pocket money. As far as the CPT's delegation could ascertain, disciplinary sanctions were imposed sparingly. However, in order to gain a complete picture of the situation in the two establishments visited, **the Committee would like to receive copies of the internal rules of both establishments, a full description of the disciplinary procedures applicable, and a list of the disciplinary sanctions imposed in 2007 and 2008**.

154. The delegation was informed that the Board of Trustees would often interfere in the disciplinary process. This would be completely unacceptable. **The CPT recommends that the Maltese authorities take steps to ensure that the Board of Trustees is never involved in the disciplinary process at the establishments, either directly or indirectly.**

155. As regards the use of force, staff were only allowed to physically hold a resident and, if necessary, take away from her any items that could be used as weapons. Mechanical restraints, such as belts and handcuffs, were never used. The establishments registered all incidents (including the use of force) in log books, and reported them to the field social worker responsible for the resident concerned.

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[78] This was indeed the case at the time of the visit.

The delegation was further informed that at "Fejda Programme", staff would soon receive training in non-violent interventions in order to limit the use of physically restraining residents. The CPT strongly supports this approach and **recommends that similar training be made available to staff in all establishments where children/juveniles may be deprived of their liberty.**

c. complaints and inspection procedures

156. Effective complaints and inspection procedures are basic safeguards against ill-treatment in establishments accommodating children and juveniles. The residents should have avenues of complaint open to them, both within and outside the establishments' administrative system, and be entitled to confidential access to an appropriate authority. Further, the CPT attaches particular importance to regular visits to all juvenile establishments by an independent body with authority to receive - and, if necessary, take action on - juveniles' complaints and to inspect the accommodation and facilities.

157. In Malta, the above tasks are mainly in the hands of the Commissioner for Children (and the Advisory Council for Children). The Commissioner can receive complaints, collect information, and investigate any alleged breaches of the rights of children, if she considers it necessary. Her wide-ranging investigative powers include access to documents, as well as the possibility to summon witnesses under oath.

The CPT welcomes the establishment of the Office of the Commissioner for Children. However, the Committee notes that, in practice, the Commissioner's inspections in the two establishments visited were infrequent. **The Committee recommends that the Commissioner for Children be invited to carry out regular inspections in all establishments in Malta where children/juveniles can be deprived of their liberty. The results of these inspections should be reflected in the Commissioner's Annual Report.**

d. contacts with the outside world

158. Residents maintained regular contacts with the outside world, as they were taken to school on week-days. In addition, they kept in regular contact with relatives and friends, where it was deemed appropriate for their psychological development. Furthermore, residents could make and receive phone calls and send and receive letters, as well as receive visitors.

E. Mount Carmel Hospital

1. Preliminary remarks

159. Mount Carmel Hospital, first visited by the CPT in 1990[79], remains the main mental health institution in Malta. Situated some 10 kilometres to the west of Valletta, it is housed in an imposing building constructed during the first half of the 19th century. In recent years, extensive refurbishment/renovation work has been carried out on the hospital compound, to upgrade the wards and the supporting infrastructure to modern hospital standards.

At the time of the visit, Mount Carmel Hospital had a total of 509 beds[80] and the average daily number of occupied beds was 480. Patients were distributed amongst different wards, having regard to their mental and physical state of health. It is noteworthy that the hospital management had recently established a "mixed" admission ward.

The delegation focused its visit on the Forensic Ward (21 beds), the Maximum Security Unit (2 beds), the Irregular Immigrants' Ward (10 beds), Female Ward 1 (31 beds) and the Female Section of the Mixed Admission Ward (22 beds).

160. The delegation concentrated its activities upon the patients who had been formally admitted on a "compulsory" basis (and could therefore be said to be legally deprived of their liberty); however, interviews were also carried out with some so-called "voluntary" patients met on the wards visited, in order for the delegation to satisfy itself that their stay was based upon their own wish.

Most of the "compulsory" patients had been admitted under the terms of Part III of the Mental Health Act 1976: on "treatment orders" of up to a year[81]; on "observation orders" of up to 28 days[82] and under 72-hour "emergency observation orders"[83]. The remaining compulsory patients were admitted as "Criminal Court of Judicial Police" (or CCJP) patients, "Court Order" patients, or "Care Order" patients.

161. During the visit, the delegation examined in detail the various procedures and safeguards in force relating to the "compulsory" admission and treatment of patients under the Mental Health Act 1976. The delegation also took note of the most recent draft of the (revised) Mental Health Act, which was still under discussion at the time of the visit. In the "legal safeguards" section of this report, the CPT will make a number of comments on that draft.

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79 Other visits were carried out in 1995, 2001, and 2004.

80 Some "extra" beds are not included in this figure, such as the 21 beds at the Forensic Ward or the 10 beds at the Irregular Immigrants' Ward (the first being jointly run with the CCF and the second with the Maltese Police Force).

81 See section 21 (2) of the Mental Health Act 1976, as amended.

82 See section 21 (1) of the Mental Health Act 1976, as amended.

83 See section 15 of the Mental Health Care Act 1976, as amended.

162. During its visit to Mount Carmel Hospital, the delegation heard no allegations of torture or other forms of deliberate ill-treatment of patients; nor was any other evidence of such treatment found. However, on the eve of the visit, articles published in the Maltese press[84] made reference to possible abuses of patients at the Young's People Unit, abuses which were alleged to have taken place some years earlier. The delegation raised this issue with the management of the hospital, who confirmed that both judicial and administrative investigations were being carried out. **The CPT would like to receive, in due course, detailed information on the results of the two above-mentioned investigations, as well as on any measures subsequently taken by the authorities.**

2. Living conditions and treatment

163. The 18 patients accommodated in the **Female Ward 1 (FW 1)**[85] at the time of the visit enjoyed very good living conditions. The ward had four spacious dormitories (each with six beds), which benefited from adequate natural light, artificial lighting and ventilation. The dormitories were well equipped (with bed and bedding, locked cupboards, curtains, pictures on the wall, etc.) and patients had ready access to adjacent sanitary facilities (toilets, showers and washbasin). Patients also had access to a pleasant courtyard/garden for several hours a day, as well as to a suitably-equipped recreation room (TV set, games, etc.).

The same very good living conditions prevailed at the **Female Section/Mixed Admission Ward (FS/MAW)**. The 12 patients were accommodated in three spacious dormitories (each with six beds) and benefited from all necessary equipment. To sum up, at FW 1 and FS/MAW, the living conditions were conducive to the patient's treatment and welfare. In psychiatric terms, they benefited from a positive therapeutic environment.

164. In addition to their very good living conditions, the female patients benefited in both wards from adequate treatment and care, both psychiatric and somatic. Some 6 to 8 patients at FW 1 were attending occupational therapy activities and all had an individual treatment plan, which was periodically reviewed. At the FS/MAW, access to activities was rare. However, regular reviews of the patients' state of health were carried out, enabling *inter alia* informed decisions to be taken as regards transfer to a less restrictive environment or de-hospitalisation.

165. Two issues should, however, be raised as regards the female wards visited. Firstly, it appears that some chronic patients are staying longer than necessary at FW 1 (in some cases, for months or years), because of an absence of adequate alternative living place (either in the community or in a rehabilitation institution). Further, at the time of the visit, FW1 was accommodating a mentally retarded young woman who was kept in a seclusion room for most of her stay, due to her tendency to harm herself or other patients. In the CPT's view, chronic patients and mentally retarded patients should ideally not be kept together with other patients in the acute state of their illness. **The CPT would like to receive the comments of the Maltese authorities on these two issues.**

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84 See the 15th and 17th May 2008 editions of The Times of Malta.

85 In order to meet any contingencies (such as the possible presence of a female prisoner), the ward also had a so-called "Multipurpose Unit", where no more than two patients could be accommodated at a time, in individual cells. This unit offered the same quality of accommodation as the rest of the ward. At the time of the visit, one patient was being held there.

166. Unfortunately, the same positive assessment cannot be made of the Forensic Ward or the adjacent Maximum Security Unit. The latter unit accommodates the most aggressive and so-called "unmanageable" male civil patients of the hospital. This unit, set up at the same time as the Forensic Ward, has been placed there so as to allow the nurses working at the MSU to have immediate support from the security staff at the Forensic Ward, in case of emergency.

167. Although the **Forensic Ward** facilities had been built fairly recently, the living conditions were generally bleak and custodial. The 19 patients present at the time of the visit were either being accommodated in Wing A (four rooms with 3 beds, one room with 5 beds; all fitted with semi-partitioned toilets) or Wing B (two single rooms). Rooms in Wing A were equipped in a spartan manner (by way of example, no cupboards were available, obliging the patients to keep their belongings in plastic bags or boxes on the floor) and the walls were completely bare. Furthermore, the sanitary facilities were limited in number (two showers, one washbasin and one sink). Patients accommodated in Wing B benefited from somewhat better living conditions. Their rooms (cells) were, amongst other things, equipped with a locked cupboard and a television set.

No organised activities whatsoever were offered to the patients in the Forensic Ward and the daily regime can only be described as impoverished. In particular, patients in Wing A spent the six hours a day during which they were allowed out of their rooms in idleness, in a relatively small communal room watching television or playing games, or going to the yard (for one hour a day). Patients in Wing B benefited from a somewhat better regime, as they had some work and greater access to the exercise yard. To sum up, efforts should be made to create a positive therapeutic environment in the Forensic Ward.

168. The treatment and care provided to the patients in the Forensic Ward was limited to pharmacotherapy. No other forms of therapeutic intervention (such as occupational therapy or psychotherapy) were on offer in the ward. In addition, forensic patients were not allowed to leave their ward; consequently, they had no access to activities organised elsewhere in the hospital.

Patients were regularly seen by the visiting psychiatrist, on Thursday mornings. However, such consultations were rather brief[86], as were the contacts with the nurses. Obviously, greater emphasis was placed in the unit on security considerations than on therapeutic interaction with patients, and the role of the prison officers appeared to be predominant.

169. At the Maximum Security Unit (MSU), the living conditions were even more austere. The equipment provided for in the three rooms (respectively for one, two or three patients[87]) was very limited (metal bed(s) fixed to the floor, mattress, no cupboard or any other piece of furniture) and the unit was under constant CCTV surveillance. No regime whatsoever was in force within the Unit, apart from one hour a day of outdoor exercise.

Treatment and care[88] provided to patients at the MSU mirrored that observed by the delegation in the Forensic Ward.

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86 The weekly ward round, as registered in the unit's register, usually took between 1 hour 30 minutes and 2 hours 30 minutes, with an average of 10 patients being seen by the psychiatrist.

87 The "single" room was used to accommodate a very disturbed - and at times very aggressive - patient who refused to talk to the delegation.

88 Although the delegation did not have the possibility to meet the doctor in charge, it had a lengthy discussion with the nurses working on the MSU and consulted the patients' medical files.

During its visit to the MSU, the delegation met one patient who was not a "civil" patient but rather a prisoner being treated for "mild anxiety". The reasons for his presence in the MSU were unclear to the delegation; however, they appeared to be in contradiction with the unit's admission criteria and constitute a case of improper use of the MSU. **The CPT would like to receive the comments of the Maltese authorities on this particular case.**

170. The worst living conditions were observed in the **Irregular Immigrants' Ward (IIW)**. Since the CPT's last visit, the IIW had been transferred to the former secure facilities of Male Ward 10 (see CPT/Inf (96) 25, paragraph 93). The 10 single cells were - still - of an antediluvian design. Each measured just under 8m² and contained only a bed (with bedding), bolted to the middle of the floor[89], and an Asian toilet. The ventilation in the cells was adequate; however, the cells received natural light only through a barred aperture facing onto a long observation corridor. Moreover, the artificial lighting was rather poor. The one patient being accommodated there at the time of the visit was held under these conditions for 23 hours a day (only being allowed to leave his cell for one hour a day for a walk in the corridor).

There were no organised activities for patients at the IIW. This state of affairs was exacerbated by the fact that, according to the rules in force, patients could only leave their cell one by one and were therefore held in *de facto* isolation. To sum up, the living conditions at the IIW can only be described as basic. Furthermore, **the Committee has strong reservations about whether it is appropriate to seclude patients on the basis that they fall into a particular category, rather than on the merits of each individual case.**

As regards treatment and care, it was exclusively based on pharmacotherapy.

171. In the light of the above, **the CPT recommends, as regards living conditions for patients, that measures be taken to:**

- **provide more congenial and personalised surroundings in the Forensic Ward, the Maximum Security Unit and the Irregular Immigrants' Ward. As regards the last-mentioned ward, the internal rules should be modified so as to allow some form of social contact between patients;**

- **ensure that all patients (including patients kept in isolation/"time out" rooms or MSU patients) have access for at least one hour a day to outdoor exercise, their state of health permitting. Preferably, the most stabilised patients should be offered some form of organised physical exercise in a suitable and secure environment;**

- **increase the number of showers and washbasins in Wing A (Forensic Ward);**

- **provide lockable space (e.g. lockers to which staff may have master keys) to patients in the above wards/units, for their personal belongings.**

[89] One of the cells, called the "search room/security cell", was only equipped with a mattress placed directly on the floor.

172. Further, **the CPT recommends, as regards treatment and care for patients, that measures be taken to:**

- **increase the proportion of female patients in FW1 who have access to therapeutic activities and to develop such activities for patients in the FS/MAW;**

- **provide some form of therapeutic activities to patients on the Forensic Ward (and the MSU) and to reinforce the psychological services offered to them.**

173. A detailed policy governed the use of electroconvulsive therapy (ECT) at Mount Carmel Hospital. Such treatment was mainly prescribed in cases of severe depression and was administered under a modified form (i.e. with anaesthetics and muscle relaxants) in a specially equipped room. Statistics revealed that some 25 patients received ECT treatment in a given year. Consultation of the ECT central register (kept in the ECT room) and the ECT authorisation (individual) forms showed that all necessary medical and legal precautions were being taken. More precisely, a detailed check list relating to the patient's state of health had to be filled in and all legal aspects of the treatment were screened (informed consent and voluntary treatment or compulsory treatment with MHA treatment order, the consent of the nearest relative or a second consultant's opinion being obtained).

To sum up, the procedure and safeguards in force as regards the use of ECT at Mount Carmel Hospital, as well as their implementation in practice, were satisfactory.

174. As regards the use of medication, an examination of a sample of patients' treatment cards and medical records led the CPT's delegation to conclude that medication was being prescribed in appropriate doses.

175. A personal medical file was opened for each patient in the wards/units visited and medical notes and information were generally well kept. In the female and the mixed admission wards, the confidentiality of the medical information was fully guaranteed. The same level of confidentiality seemed, however, not to be fully guaranteed in the Forensic Ward and the MSU, as the security staff could have access to some medical information. **The CPT recommends that further efforts be made in this regard**.

3. Staff resources

176. At the outset, the CPT would like to highlight the dedication and competence of the medical and nursing staff met in the different wards/units visited. However, as was the case in many of the establishments visited by the Committee in Malta, staff resources (in particular as regards nurses) were stretched.

177. At the time of the visit, the Clinical and Paraclinical Services at Mount Carmel Hospital consisted of nine consultant-led multidisciplinary clinical firms, supported by four paraclinical departments, a pharmacy and a laboratory. In addition to general adult psychiatry, each of the consultant-led multidisciplinary firms offered a sub-specialty service, such as child and adolescent psychiatry, substance abuse psychiatry, learning disability psychiatry, forensic psychiatry, etc.

The four paraclinical departments offered occupational therapy (a team of 12 occupational therapists working mainly at the Colony Building, situated just outside the hospital), psychology services (8 psychologists), social work services (14 social workers) and physiotherapy services (3 ½ full time posts). In addition, dental services were provided by a visiting dentist.

178. As already indicated, the nursing staff situation was somewhat difficult; in fact, shortages of nurses affected the whole Maltese health-care system. A little more than 300 nurses were working on the wards at the Hospital[90], the nurses working at the Forensic Unit being provided by an external agency. In most, if not all, of the wards/units visited, nursing staff were working overtime in order to ensure an adequate staff presence on each shift. However, overtime did not always suffice to ensure the appropriate level of care and surveillance (by way of example, when a psychiatrist prescribed a "level 1" supervision for a particular patient)[91].

The CPT recommends that the number of nursing staff posts at Mount Carmel Hospital be gradually increased.

179. As in previous years, great emphasis continued to be placed at the Hospital on the nurses' on-going training, either the "Continued Professional Development Programmes" or the degree (BSc) in psychiatric nursing[92]. The Committee welcomes these developments and **encourages the Maltese authorities to continue to give a high priority to increasing the number of professionally-qualified psychiatric nurses at Mount Carmel Hospital.**

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90 Of which 18 nursing officers, 11 deputy nursing officers, 97,5 staff nurses, 105 enrolled nurses and 82 auxiliary nurses.

91 « Level 1 » supervision requires that a nurse be present, one-to-one, with the patient concerned, at arm's reach.

92 The first group of eleven nurses were awarded a BsC in Nursing in Mental Health in 2006.

4. Means of physical restraint and seclusion/"time out" rooms

180. The CPT welcomes the fact that, at Mount Carmel Hospital, no belts, straps or other means of mechanical restraint were in use on the wards/units visited. Patients considered to represent a danger to themselves or others were dealt with, in the first instance, by verbal persuasion, then manual restraint; if necessary, staff would administer a sedative injection before moving the patient concerned to a seclusion/"time out" room.

181. In the female wards visited, patients at risk (in a state of agitation, suicidal, etc.) were, when necessary, placed in seclusion or "time out" rooms. All the rooms in question were found to be adequate. By way of example, in the FW1, three seclusion rooms were equipped with a bed fixed to the floor (with a fireproof mattress and two Luna blankets), an Asian toilet, adequate natural and artificial light and ventilation; in two others, the mattress was placed directly on the floor. Three patients were held in the seclusion rooms in the FW1 at the time of the visit, and were being cared for and supervised in an appropriate manner. The two "time out" rooms in the FS/MAW offered even better material conditions, as the building had recently been renovated.

In both wards, the use of the "seclusion/time out" rooms was prescribed by a psychiatrist or a medical officer and recorded in the patients' medical file. Furthermore, this decision was regularly reviewed. **The CPT recommends that a written, clearly-defined policy be established as regards the use of seclusion/"time out" rooms in the FW1 and FS/MAW[93].**

182. The Forensic Ward had three single "security" cells (Nos 3, 4 and 5) equipped with CCTV monitoring, which were situated in a separate corridor in Wing A. These "security" cells were routinely used, as a short stay (3 to 5 days) in such a cell formed part of the initial admission procedure of prisoners/patients sent to the FW under a "detoxification programme". The delegation was informed that these cells could be very hot in the summer[94] and very cold in the winter; **the CPT recommends that appropriate steps be taken to remedy this deficiency.**

183. As was the case for female patients, placement in a security cell at the Forensic Ward was decided by a psychiatrist or medical officer and regularly reviewed. However, the monitoring of the persons placed in such cells was undertaken by security staff and not nurses[95]. Further, the recording of the use of those cells left a lot to be desired, as there was no specific register**.**

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93 See also CPT/Inf (2002) 1, pages 58-59.

94 Apparently, the temperature could go above 40°C.

95 The CCTV monitoring screens were installed in the security officers' room and the nurses were not allowed to have access to the cells without the presence of a member of the security staff.

The CPT is of the opinion that every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion), or of chemical restraint, should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff. This measure will in addition greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence. **The CPT recommends that steps be taken to establish such a register, taking into account the considerations above.**

Furthermore, **it should be recalled that the above-mentioned "security" cells are used for medical reasons and that monitoring of prisoners/patients placed in them should, as a matter of principle, be under the control and responsibility of medical/nursing - not security - staff.**

184. Finally, the delegation received allegations from two different sources that, on occasion, prisoners/patients at the FW had been placed in the security cells naked. The delegation clarified the issue subsequently with the Maltese authorities.

As regards Mount Carmel Hospital, the authorities indicated that they had investigated the matter thoroughly and that it transpired that "when patients are considered to be at a high risk level, the consultant prescribes that, as a precautionary measure, such patients are stripped down only to their underwear and be given a luna blanket to cover themselves up. At no time are patients stripped down completely naked. However, despite this, the situation will be monitored even more closely than before in order to ensure that no patient is ever stripped down completely". The CPT takes note of the statement made by the authorities; **it trusts that alternative measures (such as special pyjamas) will be used when appropriate**.

5. Legal safeguards

185. At the time of the visit, the detention of psychiatric patients and treatment against their will was still governed by the Mental Health Act, Chapter 262, 1976. However, a new Mental Health Act was under preparation.

186. Under the present Act (Articles 14 and 15), patients can be involuntarily admitted (civil compulsory admission) for the purposes of observation or treatment to a psychiatric hospital. An application for compulsory admission is made on the grounds that the patient is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital, and that it is necessary to detain the patient in the interest of his/her own health or safety or with a view to protecting other persons. Such an application is founded on written recommendations containing detailed reasoning by two medical practitioners. In emergency cases, the written recommendation of one medical practitioner with prior knowledge of the patient will suffice for the admission to take place. Such an emergency application for observation is limited to a maximum of 72 hours, unless within that period the second medical recommendation is received. Any involuntary patient must be conveyed to a hospital within 14 days of the application being filed. In the case of an emergency application, the deadline is restricted to two days.

187. An involuntary patient may be detained for observation for a maximum of 28 days and for treatment for a maximum period of one year, renewable. Patients who are the subject of involuntary admission may lodge an application with the Mental Health Review Tribunal.

188. The provisions regarding forensic psychiatry are regulated in Part IV of the Mental Health Act. To summarise, a person accused of a crime may by court order be detained for observation in a psychiatric hospital for a period set by the court (Article 42). Moreover, a criminal court (or a court martial) may direct that a person accused of a crime, who is considered to have been insane at the time of the offence, shall be detained in custody in a psychiatric hospital. Special restrictions apply to this type of patient, who can only be discharged by the Minister of Justice (Article 43).

In addition, the Minister has the power to transfer a prisoner serving a sentence in a prison to a psychiatric hospital, if the person is suffering from a mental disorder warranting detention in a hospital for medical treatment (Article 44).

189. During the visit, the delegation examined in detail several files pertaining to both civil and forensic patients. The delegation was satisfied that the above legal requirements were on the whole being adhered to. However, **the reasoning supporting the civil admission procedure (either under normal circumstances or in emergency situations) was generally stereotyped and lacked detail.**

190. The CPT examined the draft of the new Mental Health Act drawn up by a working group from within the Mental Health Commission and coordinated by the Director of Policy Development in the Ministry for Social Policy.

The draft Act starts by enumerating the rights of "mental healthcare users". Several very important principles are listed amongst the fundamental patients' rights, such as: the protection from cruel, inhuman or degrading treatment; full respect for the patient's dignity; the equivalence of care; the multidisciplinary care plan approach (and the patient's active participation in its formulation); treatment in the least restrictive environment; the priority given to community care, aftercare and rehabilitation; adequate information on the [mental] disorder and the services available; the notion of free and informed consent before any treatment or care is provided, to be recorded in the patient's clinical record; the confidentiality of medical information and access to one's own medical file; etc.

191. New procedures are detailed as regards involuntary admission of mental patients, which overall match many of the principles advocated by the Committee in its standards (cf. CPT/Inf (2002) 1, Rev 2006, pages 59 to 61).

Prior to an involuntary admission for observation (Article 9), an initial medical assessment shall be made by two medical practitioners (one of whom must be a specialist) within a maximum of 6 hours from each other and who are to make a recommendation in a specific application form for involuntary admission. In cases of emergency, when there is a risk of physical harm to the patient or to third parties, an initial single medical assessment will suffice and a second medical assessment by a specialist in mental health shall be carried out within 6 hours of admission to the facility. Furthermore, no treatment shall be given before the second assessment has been carried out unless it is emergency treatment intended solely to prevent physical harm to the patient and others.

192. According to the draft Act, the initial detention period will be 72 hours, after which time the patient shall be discharged, remain as a voluntary patient, or be the subject of an application for an Involuntary Community Treatment Order made to the Commissioner for the Promotion of Rights of Persons with Mental Disorders (a new post to be created under the draft Act). Under Article 12 (1) of the draft Act, if within the initial period of observation it becomes evident to the multidisciplinary team that the patient requires involuntary admission beyond the 72 hours for therapeutic reasons, an application for an Involuntary Admission for Treatment Order shall be made to the Commissioner by the responsible carer, on a specific form, supported by a multidisciplinary care plan outlining the patient's needs, how and by whom these needs will be addressed, and specifying expected outcomes and timeframes. Within 72 hours of receipt of the application, the Commissioner will appoint an independent specialist to verify that the criteria for involuntary admission are met, interview the person with the multidisciplinary team and the responsible person (i.e. the person appointed in writing by the patient to act on his behalf or the next of kin) and approve or not the application. An involuntary admission for treatment order shall not exceed 10 weeks after the lapse of the 72 hours observation period (and can be extended once for a further maximum 5-week period).

193. If a person still suffers from a mental disorder that requires treatment and needs to be detained for his own safety or that of others, the Commissioner may grant a Continuing Detention Order for a maximum period of 6 months which may be renewed for further periods of up to six months (after a new application is submitted to the Commissioner). Prior to the Commissioner's decision to grant (or renew) a CDO, there must be an independent review of the patient's care by two specialists.

194. The Commissioner for the Promotion of Rights of Persons with Mental Disorders will replace the Mental Health Tribunal. Under the draft Act, in the exercise of his/her functions, the Commissioner shall act <u>independently</u> and shall not be subject to the direction or control of any other person or authority. Amongst his/her numerous tasks, the Commissioner shall promote and safeguard the rights of persons suffering from a mental disorder and their carers and review any policies and make such recommendations to any competent authority to safeguard or to enhance the rights of such persons and to facilitate their social inclusion and wellbeing.

195. Further, the Commissioner will review, grant and extend any Order issued in terms of the Act. In this context, it is interesting to note that the person subject to such an Order and the responsible carer shall appear before the Commissioner, that the patient may be represented by legal counsel, and that the Commissioner may call any witness. He will also review admissions to a facility every three months to ensure that patients are not held in the facility for longer than is necessary and monitor the care and treatment of patients, as well as review every three months all patient incident reports and death records received from licensed mental health facilities and registered healthcare professionals.

196. The Commissioner will also investigate any complaint alleging breach of patient's rights (and take any subsequent action or make recommendations which may be required to protect the welfare of that person) and investigate any complaint about any aspect of care and treatment provided by a facility or a healthcare professional (and take any decisions or make any recommendations that are required).

197. He/she will also conduct regular inspections, at least annually, of all facilities to ascertain that the rights of patients are upheld and that all the provisions of the Act are respected. During such visits he shall have unrestricted access to all parts of the facility and patients medical records as well as the right to interview any patient in the facility in private. The Commissioner will also present an annual report of his activity which shall be placed on the table of the House of Representatives by the competent Minister within two months of receipt.

198. To sum up, many of the tasks to be assigned to the Commissioner meet the requirements set by the CPT for the protection of patients' rights, in particular as regards the procedure for involuntary placement in a psychiatric institution, the treatment of complaints, and the carrying out of inspections.

199. The Committee would nevertheless like to make the following comments on the draft Act:

- section 3 (i) of the draft Act, which provides the right for any patient to give his/her free and informed consent to treatment and for this consent to be recorded by the medical practitioner in the patient's clinical file, should include the right for the patient concerned to sign such consent;

- the notion of "interest of public safety" mentioned in section 3 (j) (ii) of the draft Act, given as a ground for revealing confidential information about the patient to third parties, should be more closely defined;

- the notion of "torture" should be added to section 3 (n) of the draft Act;

- in section 35 (4), it should be stipulated that the administration of ECT should occur in its "modified form";

- as regards seclusion and restraints (section 36 (5)), the draft Act provides that any prolonged use of such a measure beyond the necessary purpose (or use as punishment) will be an offence and subject to a fine. In the CPT's opinion, the type of offence described should be sanctioned more severely, in the event of use as a punishment;

- the power of the police under section 42 (1) of the draft Act, to detain and take a person to an establishment, should include a time element (e.g. "without delay" or "immediately").

The CPT trusts that the Maltese authorities will take due account of the above comments during the further examination of the draft Mental Health Act.

That said, after six years of intensive work, the time is now surely ripe for the draft to be adopted by Parliament and the new Mental Health Act to enter into force as soon as possible. This would be in the interests not only of patients, but also of the medical profession and the general public.

APPENDIX I

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Cooperation between the CPT and the Maltese authorities

recommendations

- measures be taken:

  - to provide the Committee with an updated list of all places of deprivation of liberty;

  - to ensure that the authorities in charge of all the establishments included in the above-mentioned list are informed of the mandate and powers of the CPT;

  - to make available to the CPT a copy of the internal regulations governing the "Fejda Programme" establishment

  (paragraph 7).

Law enforcement establishments

Preliminary remarks

recommendations

- the Maltese authorities to take due account of comments in paragraph 15 when drafting their policy and regulations governing the use of electro-shock weapons by police officers (paragraph 15).

requests for information

- detailed information on the policy and regulations governing the use of electro-shock weapons by police officers, the selection and training of police officers involved, and the monitoring and monitoring procedures that will be put in place (paragraph 15).

Ill-treatment

recommendations

- a specific directive on how to deal with vulnerable suspects in police custody, including enhanced monitoring procedures, to be drawn up (paragraph 22);

- particular care to be taken when drafting the mandate of Boards of Inquiries, which should primarily aim at examining issues relating to systemic and/or structural deficiencies (paragraph 23).

requests for information

- the views of the Maltese authorities on the different approaches referred to in paragraph 24 as regards investigations into the actions of the police and on their possible applicability in Malta (paragraph 24).

Safeguards against the ill-treatment of persons deprived of their liberty

recommendations

- Article 355AT of the Criminal Code to be brought into force without any further delay; this measure should be implemented in full consultation with the Bar Association (paragraph 29);

- the Maltese authorities to consider amending Article 355AT of the Criminal Code, in the light of the remarks made in paragraph 31 (paragraph 31);

- a form setting out the rights listed in paragraph 25 to be systematically given to all persons deprived of their liberty by the police, at the outset of their custody, and this form to be made available in different languages and the persons concerned to certify that they have been informed of their rights (paragraph 32);

- steps to be taken to ensure that custody records in all police establishments in Malta are kept in accordance with the CPT's standards (paragraph 33).

comments

- further efforts are required with regard to respecting the confidentiality of medical examinations in police facilities (paragraph 27).

requests for information

- more information on the criteria applied by magistrates when they delay the exercise of the right to inform a third person (relative or friend) of one's arrest (paragraph 26).

Conditions of detention

recommendations

- the two cells at Valletta Police Station to be taken out of use until they have been renovated. The renovation should preferably include providing access to natural light (paragraph 36).

comments

- the absence of any secure outdoor exercise facility at Floriana Police Headquarters Lock Up renders prolonged stays in the police Lock-Up undesirable; alternative solutions should be found (paragraph 35);
- a call system should be installed in the cell at St Julian Police Station. Further, it would be preferable for the cell to be provided with access to natural light (paragraph 37).

Complaints and monitoring procedures

recommendations

- the task of monitoring places where persons may be deprived of their liberty by the police to be entrusted to the Police Board or a specific body to be set up for this purpose (paragraph 39).

requests for information

- information on the intentions of the Maltese authorities as regards the setting up of the "national prevention mechanism(s)" provided for under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (paragraph 40).

Establishments for foreign nationals detained under aliens legislation

Ill-treatment

recommendations

- a criminal investigation into the events at Safi Barracks on 24 March 2008 to be launched without delay (paragraph 47);
- all members of staff working in detention centres for immigration detainees to be reminded that making racist remarks against detainees is totally unacceptable (paragraph 48);
- an end to be put to the practices of calling detainees by their immigration file/tag numbers - and of referring to them similarly in all official documents, including medical files - or of addressing detainees by their presumed nationality (paragraph 49).

comments

- a criminal investigation should be launched *ex officio* every time credible allegations of ill-treatment by public officials are made by persons deprived of their liberty (paragraph 47).

requests for information

- information on the steps taken by the Maltese authorities as regards the criminal investigation into the events at Safi Barracks on 24 March 2008 (paragraph 47).

Conditions of detention

recommendations

- the Maltese authorities to refrain from accommodating detainees in the Hermes Block until the announced refurbishment has been carried out. In the context of the envisaged renovation works, fundamental structural changes should be made to the building, providing for common recreational areas and a proper outdoor exercise yard (paragraph 57);
- the tent compound at Lyster Barracks to be replaced as a matter of urgency by a new permanent structure, with a view to accommodating immigration detainees under satisfactory conditions (and the tent compound to decommissioned as soon as possible), taking fully into account the principles set out in paragraph 51 (paragraph 59);
- steps to be taken with a view to remedying the deficiencies observed in C Block at Safi Barracks Detention Centre (fewer detainees per room; better access to natural light and better ventilation; better access to hot and cold water, at all times) (paragraph 60);

- the construction of the new detention centre at Ta' Kandja Police Complex to be finalised, thereby allowing the definitive decommissioning of the present facility (paragraph 61);

- a regime of activities for detainees to be introduced in the three centres visited, in the light of the remarks made in paragraph 63 (paragraph 63).

comments

- the use of converted warehouses to accommodate detainees should only be seen as a temporary - and short term - solution (paragraph 60);

- the Maltese authorities are invited to increase the hours of access to the outdoor yard for detainees held in B and C Blocks at Safi Barracks Detention Centre (paragraph 60);

- the Maltese authorities are invited to reconsider the limitation in force as regards food, thereby enabling immigration detainees to receive food parcels from families and friends, and, if possible, to prepare their own food (paragraph 62).

request for information

- information on a regular basis about the progress made in refurbishing the Hermes Block (paragraph 57);

- information on a regular basis about the progress made as regards the replacement of the tent compound at Lyster Barracks by a new permanent structure (paragraph 59).

Health care

recommendations

- immediate steps to be taken to increase the presence, in all the detention centres, of medical and nursing staff. As regards more particularly Lyster and Safi Barracks Detention Centres, they should each have the equivalent of at least one full-time doctor as well as an adequate team of nurses; the level of nursing staff resources should take into account the number of immigration detainees at any given moment. The health-care team as a whole should be in a position to deal in a timely and effective manner with all health problems affecting the detainees (paragraph 66);

- immediate steps to be taken to address the deficiencies mentioned in paragraph 67 (paragraph 67);

- steps to be taken to increase the efficiency of the identification and handling procedure of "vulnerable" detainees (paragraph 68).

requests for information

- comments of the Maltese authorities on the fact that, under the present policy paper, there is no guarantee that persons who have been victims of torture or trauma or are suffering from serious mental health or somatic conditions will be considered "vulnerable" persons (paragraph 68).

Other issues

recommendations

- the leaflet entitled "Your entitlements, responsibilities and obligations while in detention" to be distributed to all immigration detainees on arrival, on a systematic basis (paragraph 71);

- immigration detainees subject to disciplinary action to be provided with a right to be heard on the subject of the offences which they are alleged to have committed and to appeal to a higher authority against any sanctions imposed (paragraph 76);

- a formal detention order to be introduced and the order to be available at the centre where the immigration detainee concerned is held (paragraph 79);

- a proper individual detention file to be kept for each immigration detainee (paragraph 80);

- the Maltese authorities to move away from crisis management and temporary solutions and instead focus on durable, long-term solutions to the problems identified by the CPT (paragraph 82).

comments

- the Maltese authorities are invited to consider adding the CPT to the list of international bodies to which detainees may send/receive letters confidentially (and without bearing the cost of postage) (paragraph 72);

- the Maltese authorities are invited to reconsider the policy of systematically taking away mobile phones from immigration detainees (paragraph 73);

- specific facilities should be set up for visits (paragraph 74);

- the Maltese authorities are invited to provide the Board of Visitors with the necessary resources to carry out its tasks (paragraph 78).

requests for information

- the current position as regards the setting up of the Detention Service, in particular the number of officers recruited, their training, equipment and powers (paragraph 69);
- the comments of the Maltese authorities on the issue of staff shortages in the Detention Service (paragraph 70);
- whether if it is possible for detainees to receive incoming calls via the public phones available in the detention centres (paragraph 73);
- a list of the disciplinary sanctions imposed on immigration detainees in 2008 in the three centres visited (paragraph 76);
- the legislation providing the basis for the disciplinary regulations in force in the centres visited (paragraph 76);
- copies of the recommendations/reports submitted by the Board of Visitors for Detained Persons to the Minister for Justice and Home Affairs in 2008 (paragraph 78).

Corradino Correctional Facility (CCF)

Preliminary remarks

requests for information

- a copy, in due course, of the White paper on prison reform (paragraph 84).

Independent audit of the CCF

recommendations

- an independent and comprehensive audit of the CCF (and of the prison system in general) to be carried out (paragraph 89).

requests for information

- copy of the subsequent audit report, as well as information on the measures taken or envisaged (in the short, medium and long term) by the Maltese authorities in response to the audit report (paragraph 89).

Ill-treatment

recommendations

- a comprehensive policy concerning inter-prisoner violence at the CCF (also valid for the MCH Forensic Ward) to be drafted and implemented, tackling in particular the issues of early detection of possible cases of inter-prisoner violence, secure custody and care, classification and distribution of prisoners, and staff training (paragraph 93);

- staff at the CCF to be given the clear message that the physical ill-treatment of inmates is entirely unacceptable and will be the subject of severe sanctions (paragraph 100).

comments

- any allegation of inter-prisoner violence made by a prisoner to staff should be duly recorded and immediately acted upon (paragraph 92).

requests for information

- whether a preliminary investigation has been initiated into the allegation of inter-prisoner violence in Division XII on 18 and 19 May 2008 and, if so, whether any conclusions have been reached (paragraph 92);

- the outcome of the disciplinary proceedings initiated concerning the case referred to in paragraph 91 (paragraph 92);

- detailed follow-up information on the two cases of lack of proper medical care described in paragraphs 94 and 95 (paragraph 96);

- the outcome of the proceedings concerning the allegations of ill-treatment of a Dutch prisoner (paragraph 98);

- at the earliest opportunity, a copy of the mandate that was given to the Board of Inquiry set-up by the Minister for Justice and Home Affairs, as well as a copy of its final report (paragraph 99).

Material conditions

recommendations

- renovation work similar to that recently carried out in Division I to be carried out in Divisions II and III (paragraph 104);

- the facility used for outdoor exercise in Female Unit B to be at ground level (paragraph 105);

- alternative classroom space to be sought and the shower facilities to be repaired at YOURS (paragraph 106);

- steps to be taken as a matter of priority to renovate Female Unit A (paragraph 107);

- urgent steps to be taken to restore an acceptable level of hygiene in Division V and to schedule renovation work as a matter of urgency, in the light of the remarks made in paragraph 108 (paragraph 108);

- the level of occupancy in Division VIII to be immediately reduced, and renovation work to be undertaken to remedy the deficiencies highlighted in paragraph 109 (paragraph 109);

- access to natural light to be improved in the cells in Division VI, a call system to be installed in the cells equipped with a full metal door, and some sports' equipment (such as basket-ball nets) to be installed in the courtyard (paragraph 110);

- a follow-up inspection in the CCF kitchen to carried out by the Maltese authorities (i.e. the Institutional Health Inspectorate Unit of the Department of Public Health) in order to assess the level of implementation of the recommendations made in October 2005 (paragraph 112);

- the deficiencies regarding the transport of food to be remedied forthwith (paragraph 113).

comments

- at the time of the visit, there were problems with the sewage pipes on the ground floor of Division XI (paragraph 103);

- the Maltese authorities are invited to consider ways of alleviating the shortcoming (lack of privacy) observed at Female Unit B (paragraph 105);

- the CPT trusts that suitable arrangements will be made in order to offer to the two prisoners kept in segregation in the "New Location" Unit at least one hour outdoor exercise per day under satisfactory conditions (paragraph 111).

Prisoners' allocation and classification, and activities

recommendations

- a proper allocation and classification system for prisoners to be set up at the CCF, taking into account the criteria set out in the European Prison Rules (paragraph 114);

- efforts to be made to increase the working opportunities for prisoners at the CCF. Due account should be taken of the ratio of working opportunities to prisoners when building new facilities (paragraph 115);

- the yards in each Division to be used for collective sports and a wider range of organised sport activities to be offered to all prisoners (paragraph 115);

- efforts to be made to increase the variety and quantity of purposeful activities offered to the young offenders at YOURS (paragraph 117);

- steps to be taken aimed at abandoning the practice of placing, even temporarily, persons under 16 in a prison for adults (paragraph 118);

- steps to be taken as a matter of urgency to draw up and implement a specific programme aimed at supporting life-sentenced and other long term prisoners throughout their stay in detention, in the light of the remarks in paragraph 120 (paragraph 120).

comments

- the Maltese authorities are invited to renew their efforts to extend the range of activities (in particular work and vocational education) for women held in the CCF (paragraph 116);

- the Maltese legislation providing for the compulsory education of children and juveniles should be respected at the CCF (paragraph 117);

- in the very exceptional case of a person under 18 being incarcerated, he/she should be accommodated separately from adults (paragraph 118);

- the CPT trusts that the envisaged system of release on parole will extend to life-sentenced prisoners (paragraph 121).

Health care

recommendations

- immediate measures to be taken to ensure that the CCF benefits, at the very least, from the equivalent of a full-time post of medical doctor (and preferably the equivalent of 1 ½ full time posts) (paragraph 122);

- the nursing staff resources at the CCF to be substantially reinforced, in the light of the remarks in paragraph 123 (paragraph 123);

- the provision of health care at the CCF to be re-organised, in the light of the remarks in paragraph 124. In particular, a medical doctor should be formally entrusted with the task of heading and coordinating the health-care service (paragraph 124);

- the time spent by a qualified psychiatrist at the CCF to be considerably increased (paragraph 125);

- measures to be taken to ensure that the rules of medical confidentiality are strictly respected at the CCF (paragraph 127);

- steps be taken to implement a fully-fledged drugs policy at the CCF. This issue should be addressed in the context of the independent and comprehensive audit referred to in paragraph 89 (paragraph 128);

- the necessary steps to be taken to ensure that the requirements mentioned in paragraph 129 as regards health and drug-awareness information are met in practice (paragraph 129).

comments

- many complaints were received concerning long delays in obtaining access to dental care (paragraph 126);

- the equipment in the dental clinic at the CCF is very basic and somewhat outdated (in particular the KGS 10 sterilizer) (paragraph 126).

Other issues

recommendations

- the highest possible priority to be given to the appointment of a Director of the CCF who is "adequately qualified for that post by character, administrative ability, suitable professional training and experience" (paragraph 131);

- the staffing levels in respect of prison officers at the CCF to be reviewed and all necessary steps to be taken to fill without delay all available posts with appropriately qualified staff (paragraph 131);

- urgent steps to be taken to re-establish a disciplinary system worthy of the name at the CCF (paragraph 134).

comments

- the recruitment of additional prison officers will provide a good opportunity for the police officers currently working in the prison system to be replaced by properly trained prison officers (paragraph 132);

- the time is now ripe to set up in Malta a fully-fledged, professional Prison Service, inspired by the principles defined in Part V of the 2006 European Prison Rules (paragraph 132);

- the CPT is of the opinion that a prisoner showing severe signs of suicidal or (auto)-aggressive behaviour should be immediately transferred to an acute mental health unit (paragraph 136).

requests for information

- more information on the precise measures taken as regards the clothing items issued to prisoners at risk of suicide at the CCF (paragraph 136);

- whether a new Prison Board of Visitors has now been established and, in due course, a copy of its first annual report (paragraph 137).

Fejda Programme and Jeanne Antide establishments

Preliminary remarks

requests for information

- the comments of the Maltese authorities on the level of legal protection for minors held on the basis of a "voluntary placement" measure (paragraph 142).

Living conditions

comments

- the Maltese authorities are invited to explore the possible relocation of the two establishments to a more appropriate facility, offering a stimulating environment as well as enough space to organise purposeful activities (including physical education) (paragraph 147).

requests for information

- the comments of the Maltese authorities on the issue raised in paragraph 145 (paragraph 145).

Health care

recommendations

- steps to be taken to ensure:

  - that all children/juveniles benefit from an appropriate interview and a physical examination by a doctor (or a nurse reporting to a doctor) as soon as possible after their admission;
  - the presence of a nurse for at least two half days per week in the establishments. The nurse in question should play an important role as regards the organisation of the medical screening on admission, access to a doctor, the management of the residents' medical records and the register of prescriptions, as well as the distribution of medicines and social and preventive medicine;
  - that appropriate premises are made available to the above-mentioned nurse

(paragraph 151).

Other issues related to the CPT's mandate

recommendations

- measures to be taken without delay to ensure the presence of qualified care staff, in sufficient numbers, at both establishments, as well as cleaning staff (paragraph 152);

- steps to be taken to ensure that the Board of Trustees is never involved in the disciplinary process at the establishments, either directly or indirectly (paragraph 154);

- training in non-violent interventions to be made available to staff in all establishments where children/juveniles may be deprived of their liberty (paragraph 155);

- the Commissioner for Children to be invited to carry out regular inspections in all establishments in Malta where children/juveniles can be deprived of their liberty. The results of these inspections should be reflected in the Commissioner's Annual Report (paragraph 157).

requests for information

- copies of the internal rules of both establishments, a full description of the disciplinary procedures applicable, and a list of the disciplinary sanctions imposed in 2007 and 2008 (paragraph 153).

Mount Carmel Hospital

Preliminary remarks

requests for information

- detailed information, in due course, on the results of the investigations referred to in paragraph 162, as well as on any measures subsequently taken by the authorities (paragraph 162).

Living conditions and treatment

recommendations

- as regards living conditions for patients, measures to be taken to:

  • provide more congenial and personalised surroundings in the Forensic Ward, the Maximum Security Unit and the Irregular Immigrants' Ward. As regards the last-mentioned ward, the internal rules should be modified so as to allow some form of social contact between patients;

- ensure that all patients (including patients in isolation/"time out" rooms or MSU patients) have access for at least one hour a day to outdoor exercise, their state of health permitting. Preferably, the most stabilised patients should be offered some form of organised physical exercise in a suitable and secure environment;

- increase the number of showers and washbasins in the sanitary facilities in Wing A (Forensic Ward);

- provide lockable space (e.g. lockers to which staff may have master keys) to patients in the above wards/units, for their personal belongings

(paragraph 171);

- as regards treatment and care for patients, measures to be taken to:

  - increase the proportion of female patients in Female Ward 1 who have access to therapeutic activities and to develop such activities for patients in the Female Section/Mixed Admission Ward;

  - provide some form of therapeutic activities to patients on the Forensic Ward (and the Maximum Security Unit) and to reinforce the psychological services offered to them

  (paragraph 172);

- further efforts to be made to guarantee the confidentiality of patient's medical files in the Forensic Ward and the Maximum Security Unit (paragraph 175).

comments

- the Committee has strong reservations about whether it is appropriate to seclude patients on the basis that they fall into a particular category, rather than on the merits of each individual case (paragraph 170).

requests for information

- the comments of the Maltese authorities on the two issues mentioned in paragraph 165 (paragraph 165);

- the comments of the Maltese authorities on the presence in the Maximum Security Unit (MSU) of a prisoner treated for "mild anxiety" (paragraph 169).

Staff resources

recommendations

- the number of nursing staff posts at Mount Carmel Hospital to be gradually increased (paragraph 178).

comments

- the Maltese authorities are encouraged to continue to give a high priority to increasing the number of professionally-qualified psychiatric nurses at Mount Carmel Hospital (paragraph 179).

Means of physical restraint and seclusion/"time out" rooms

recommendations

- a written, clearly-defined policy to be established as regards the use of seclusion/"time out" rooms in the Female Ward 1 and Female Section/Mixed Admission Ward (paragraph 181);

- appropriate steps to be taken to remedy the deficiency concerning the temperature in the three single "security" cells (Nos 3, 4 and 5) in Wing A at the Forensic Ward (paragraph 182);

- steps to be taken to establish a specific register to record the use of the security cells at the Forensic Ward, taking into account the considerations in paragraph 183 (paragraph 183).

comments

- the "security" cells in the Forensic Ward are used for medical reasons and monitoring of prisoners/patients placed in them should, as a matter of principle, be under the control and responsibility of medical/nursing - not security - staff (paragraph 183);

- the CPT trusts that alternative measures (such as special pyjamas) will be used for prisoners/patients in security cells, when appropriate (paragraph 184).

Legal safeguards

comments

- the reasoning supporting the civil admission procedure (either under normal circumstances or in emergency situations) was generally stereotyped and lacked detail (paragraph 189);

- the CPT trusts that the Maltese authorities will take due account of the comments made in paragraph 199 during the further examination of the draft Mental Health Act (paragraph 199).

APPENDIX II

LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS

A. National authorities

Ministry for Justice and Home Affairs

Carmelo MIFSUD BONNICI	Minister
Supt. N. XUEREB	Deputy Police Commissioner
Sandro GATT	Director of the Corradino Correctional Facility
Mariella CAMILLERI	Corradino Correctional Facility
Dr Zammit MONTEBELLO	Corradino Correctional Facility
B. GATT	Commander, Detention Services
A. TORTELL	Detention Services
Joseph ELLUL	International Relations Department, CPT liaison officer

Ministry for Social Policy

Frank MIFSUD	Permanent Secretary (Health, the Elderly and Community Care)
Dr John M. CACHIA	Director General (Health Care Services)
Dr Chairmaine GAUCI	Director (Health Promotion and Disease Prevention)
Dr Denis VELLA BALDACCHINO	Director (Primary Health Care)

Judicial authorities

Silvio CAMILLERI	Attorney General
Anthony J. VELLA	Magistrate, Juvenile Court

Other authorities

Joseph SAID PULLICINO	Ombudsman
Carmen ZAMMIT	Commissioner for Children

B. Organisations consulted

UNHCR
Jesuit Refugee Service
Mid-Dlam ghad-Dawl