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**Interim reply by the Maltese Government
to the report on the visit to Malta
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 13 to 18 May 2001

The Maltese Government has recently published this interim report together with the CPT's report. The CPT's report is set out in document CPT/Inf (2002) 16.

Strasbourg, 27 August 2002

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PREFACE

This is the interim report by the Maltese Government to the recommendations, comments and requests for information contained in the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe in connection with its visit to Malta in May, 2001. The CPT report was adopted by the Committee at its 46th meeting held from 5th to 9th November 2001, and received by the Maltese Ministry of Foreign Affairs in December 2001. An interim reply is required from the Maltese Government within six months of the receipt of the CPT report and a final follow-up within twelve months.

The European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment visited Malta between the 13th to 18th May 2001, in pursuance of Article 7 of the European Convention to which Malta is also a party. This is the third visit to Malta by the CPT Committee. The second visit was made in July, 1995.

The CPT delegation visited a number of places of detention run by the Police, the Corradino Correctional Facility, the Substance Abuse Therapeutic Unit and Mount Carmel Hospital. The Committee also held discussions with the Deputy Prime Minister and Minister for Social Policy, Dr Lawrence Gonzi, the Minister for Home Affairs and the Environment, Dr Tonio Borg, and the Minister of Health, Dr Louis Deguara. The Maltese Ministers were accompanied and supported by a number of senior officials in their respective Ministries. The delegation held consultations also with various other high-ranking officials including Dr Anthony Borg Barthet, the Attorney General, Mr Joseph Sammut, the Ombudsman, Dr Ruth Farrugia, Chairperson Consultative Board on Youth and Children, Mr Emanuel Micallef, Permanent Secretary, Ministry of Health, and Dr J Cachia, Director – Institutional Health.

The Maltese Government is glad to note that the ‘degree of co-operation received by the CPT’s delegation during the visit from the Maltese authorities was excellent.’ Indeed, the Report itself acknowledges that the delegation received a very satisfactory reception from the liaison officers appointed by the Maltese authorities, Messrs Hector Bonavia and Charles Deguara, and from the management and staff of all establishments, including those which had not been notified in advance of the CPT’s intention to carry out a visit.

The Maltese Government is also pleased to note that the CPT has acknowledged that various important recommendations made following the 1995 visit have been effectively implemented by the local authorities. A new administrative complex, costing more than one million Malta Liri, that includes adequate rooms for interrogation and for identification parades, as well as a 54-cell lock-up at the Police General Headquarters in Floriana were inaugurated on the 17th July 2001. Moreover, a new refugee reception centre at Hal Far was inaugurated on the 15th February 2002. Costing more than Lm60,000, it has outdoor recreational facilities, a fully-equipped kitchen, and all other amenities including telephone and television facilities. Moreover, in various instances it is stated that the present situation has improved considerably when compared to that prevailing during the last visit. To quote just a few examples it is stated that:

- (i) 'contrary to the situation observed in certain parts of the prison during the last visit, the CPT's delegation was pleased to find that the state of the cleanliness throughout the establishment was satisfactory and that all of the cells visited were equipped with basic furnishings',
- (ii) "Two new principal detention centres...the first a 54-cell lock-up at the Police General Headquarters at Floriana and the second a purpose-built centre for immigration detainees at Hal-Far ...constitute a long-awaited and most welcome response to two urgent recommendations made following the 1995 visit";
- (iii) "Significant changes to the prison's infrastructure had taken place since the CPT's 1995 visit, the most noteworthy being the entry in service in 1999 of a newly-constructed young offenders` section and the construction of a separate 144-cell block for remand prisoners; and
- (iv) "the CPT is pleased that the proportion of prisoners with work had increased since the CPT's 1995 visit...Certain improvements were also observed as regards the education of prisoners. The main facilities for sports activities had been significantly upgraded.
- (v) "The CPT delegation was impressed by the regime in the young offenders section"
- (vi) 'as regards Mount Carmel Hospital as a whole the CPT was pleased to note various improvements made since the 1995 visit.'

All this illustrates the Maltese authorities ongoing efforts to improve the situation in this regard particularly through the adoption of recommendations put forward by the CPT. Another positive indicator in this regard is that year after year Government has continued to allocate substantial funds for Capital expenditure with respect to the prisons. As shown below, a record total allocation of Lm5.4 million has been made during the six-year period since 1996; as against the total amount of around Lm0.7 million allocated during the previous six-year period.

Year	Capital Vote Allocation (Lm)	Year	Capital Vote Allocation (Lm)
1990	12,000	1996	800,000
1991	27,000	1997	900,000
1992	30,000	1998	800,000
1993	60,000	1999	900,000
1994	250,000	2000	1,100,000
1995	350,000	2001	900,000
TOTAL	729,000	TOTAL	5,400,000

Obviously, despite these considerable improvements that are reflected in the overall positive report presented by the CPT, the Maltese Government is aware that there is no room for complacency. Indeed, the recommendations put forward by the CPT are being seriously considered by the competent Maltese authorities with a view to, as far as resources permit, further ameliorate the situation. The prevention of cases of ill-treatment as well as the provision of safe and humane places of detention, with all due respect to the human rights and dignity of all detainees irrespective of nationality, colour, race or creed, has always been a top priority for the Maltese Government and will remain so.

A. POLICE ESTABLISHMENTS

Ill-treatment

CPT's recommendations: senior police officers to regularly remind their subordinates that ill-treatment is not acceptable and will be the subject of severe sanctions (para 11);

Police officers to be reminded that no more force than is reasonably necessary should be used when effecting an arrest and that once arrested persons have been brought under control, there can be no justification for them being struck (para 11).

Government's reply: Although as stated in the report itself, 'the vast majority of persons deprived of their liberty interviewed during the CPT's third periodic visit to Malta made no allegations of ill-treatment in police custody' this recommendation is taken very seriously within the Malta Police Force. In fact, senior police officers continuously remind their subordinates that ill-treatment is given zero-tolerance and heavy sanctions apply in such eventuality.

CPT's recommendations: Whenever an apprehended person brought before a judge alleges ill-treatment by the police, the judge to immediately request a forensic medical examination of the person concerned and bring the matter to the attention of the relevant authorities, irrespective of whether the person concerned bears visible injuries. Even in the absence of an express allegation of ill-treatment, a judge should request a forensic medical examination and inform the relevant authorities whenever there are grounds to believe that an apprehended person brought before him could have been a victim of ill-treatment (Para 12);

Government's reply: Government has taken note of this recommendation, keeping in mind the concept of the independence of the Judiciary.

CPT's recommendations: Immediate steps to be taken to ensure that all police cells are adequately monitored. Preferably, they should be equipped with call systems, and the authorities might also explore the possibility of introducing closed circuit camera monitoring of custody areas (para 14).

Government's reply: The new Lock-Ups have now been finished and have been in operation since July 2001. In principle only one person is detained per cell. All cells are provided with a bed, toilet facilities including fresh air and lighting. All cells are equipped with a call system.

CPT's comments: the existence of effective mechanisms to tackle police misconduct is an important safeguard against the ill-treatment of persons deprived of their liberty. The imposition of appropriate disciplinary and/or criminal penalties in those cases where evidence of wrongdoing emerges can have a powerful dissuasive effect on police officers who might otherwise be minded to engage in ill-treatment (para 13).

Government's reply: There are already appropriate disciplinary and/or criminal penalties to tackle police misconduct against the ill-treatment of persons deprived of their liberty. Regarding the former, reference is made to the 'unlawful or unnecessary exercise of authority' (Reg. 8, First Schedule, Malta Police Ordinance) whilst regarding criminal penalties reference is made to the provisions referring to the 'malicious violations of official duties' (Art 138, Criminal Code) and to the 'torture and other cruel, inhuman or degrading treatment or punishment' (Art 139A, Criminal Code). The punishment applicable in Article 139A is a term of imprisonment from five to nine years.

CPT's request for information : the outcome of the inquiries regarding incidents on 4 June 2000 and 17/18 May 2001 at Sliema Police Station, and copies of any expert opinions (Paragraph 14).

Government's reply:

4th June 2000 incident at Sliema Police Station - a person sustains burns while being detained in one of the cells at Sliema Police Station.

Dr Yana Micallef Straface who was entrusted by Inquiring Magistrate Dr Joseph Cassar LL.D. to conduct the inquest, established that it was M. himself who set the cell on fire. Dr Micallef Straface also found that although the police tried their best to remove M. to safety, nevertheless he sustained grievous injuries. Dr Yana Micallef Straface LL.D. referred her findings and conclusions to the inquiring Magistrate.

18th May 2001 incident at Sliema Police Station – a person hangs himself by bed sheets while being detained in one of the cells at Sliema Police Station.

The inquiry was held by Magistrate Dr Antonio Mizzi LL.D. In his report the inquiring Magistrate did not indicate any negligence or improper behaviour by any member of the force. The conclusions of Dr Antonio Mizzi were on the 2nd January 2002 referred to the Attorney General.

Note has been taken of the CPT's recommendation and an alarm/camera system will be installed even though the Sliema Police Station is one of the six stations that will be extensively refurbished. Redistribution of office space/rooms is thus envisaged.

Conditions of detention

CPT's recommendations: the Maltese authorities to take out of service those cells which have fallen into desuetude, and to remedy the shortcomings in the cells which are to remain in use (reference being had, inter alia, to the criteria set out in paragraph 15) (para 18);

Exercise in the open air to be allowed on a daily basis for immigration detainees held for extended periods (ie 24 hours or more) at Luqa International Airport;

The Maltese authorities to ensure that conditions of detention applying in establishments where persons may be held under the immigration Act of 1970 comply with the principles set out in the Committee's 7th General Report (cf paragraphs 25 to 29 of CPT/Inf (97) 10) (para 22).

Government's reply: All cells which have fallen into desuetude have been taken out of service. An upgrading and refurbishing programme of Police Stations have been taken in hand this year. Six Police Stations have already been identified for such purpose. Besides providing better facilities for the Officers and the public in general, cells will also be provided with a bed, toilet facilities and fresh air.

Detainees held at the Malta International Airport are very rarely, if ever, kept thereat beyond 24 hours. These detainees are usually kept thereat when in transit or waiting for an outbound flight. Whenever the need arises to keep these detainees in excess of 24 hours they are immediately transferred to the Hal Far Immigration Reception Centre.

Persons held under the Immigration Act are accommodated at the Hal Far Immigration Reception Centre. This centre, besides providing shelter, food and water, bed and bedding, toilet facilities and fresh air, also provides outdoor exercise. Radio/television, newspapers/magazines and telephone facilities and medical care are also available.

CPT's comment: regular independent inspections such as the one carried out in 1996 could usefully promote the maintenance of appropriate standards in police detention facilities (para 18).

Government's reply: The police authorities are always ready to extend their full co-operation and assistance to the competent independent institutions, such as the Ombudsman.

CPT's requests for information:

Confirmation that the cell block at the Valletta Lock-up is no longer used for prolonged detention (paragraph 19);

Confirmation that the new detention facility at Hal Far has become operational and that immigration detainees are no longer being held at the ta' Kandja Police Complex (Paragraph 20).

Government's reply:

(i) *Valletta Lock-Up.* - It is confirmed that the Valletta Lock-Up is no longer used for prolonged detention. The Detention Centre for illegal immigrants is the new Hal Far Illegal Immigrants Reception Centre that was inaugurated on the 15th February 2002. It is to be noted that the Hal Far Complex is made up of two units, one earmarked as a Detention Centre, the other a Reception Centre.

(ii) *Hal Far Illegal Immigrants Reception Centre* - The Hal Far Complex is now fully functional and all illegal immigrants previously held at Ta' Kandja Police Complex were transferred to Hal Far. In fact, the Ta' Kandja Detention Centre was closed down at the end of February 2002. However, in view of an emergency situation created by the landing in Malta of 208 illegal immigrants on the 4th March 2002 it was temporary utilised to house about 50 of these immigrants. By now the number has been reduced to a mere handful.

Safeguards against the ill-treatment of detained persons

CPT's recommendations:

the provisions in the White paper on amendments to the Criminal Code regarding notification of custody to be given promptly a firm and enforceable legal basis (para 24);

the Maltese authorities to take the remarks in paragraph 25 into account while further developing the relevant legislative proposals with a view to establishing, at the earliest opportunity, a firm and enforceable legal basis for a fully-fledged right of access to a lawyer for persons deprived of their liberty by the police (para 25);

the principles set out in paragraph 26 to be either reflected in the relevant provision of the amended Criminal Code or in the implementing regulations (para 27);

the Maltese authorities to take urgent steps to ensure that existing recording requirements are respected in all police establishments and that those proposed in the White Papers on amendments to the Police Ordinance and the Criminal Code are promptly made enforceable. Under no circumstances should the fact of a person's detention in a particular establishment be absent from the records of the premises in question (para 32);

appropriate measures to be taken to implement the proposals for the creation of a Police board, and to ensure that its functions are widely publicised (para 33).

Government's reply: All the recommendations have been noted. The changes to the Criminal Code were enacted by Parliament on the 9th April 2002. Whilst most of the provisions became law on 1st May 2002, the other provisions will come into force by the end of this year. The Police Act is presently being debated in Parliament. The Bill is expected to become law, and enforceable, within weeks. The right of access for persons deprived of their liberty by the police has been catered for in the amendments to the Criminal Code; as stated above, this particular amendment is expected to come into force by the end of the year.

CPT's comments: Preferably there should be a single and comprehensive custody register for each person detained by the police. This register should cover all aspects of his/her custody and all the action taken in connection with it (time of and reason(s) for the arrest; when informed of rights; signs of injury, mental disorder etc; contact with and/or visits by a relative, lawyer, doctor or consular officer; when offered food; when questioned; when brought before a Judge; when released/transferred etc.). For certain matters (for example, the removal of personal effects, 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. The detainee's lawyer should have access to such a custody record (para 32);

consideration might usefully be given to appointing Police Board members for periods of longer than one year at a time (para 33).

Government's reply: Registers in which information in respect of persons detained at the new Lock-Ups, Malta International Airport and Hal Far Immigration Reception Centre are available. The Information registered includes:

- i) Particulars of the person detained;
- ii) Date and time of reception;
- iii) Rights and contacts;
- iv) Any signs of injury or other sickness;
- v) Date and time of medical visits;
- vi) Time and duration of interviews;
- vii) When arraigned in Court;
- viii) Date and time of release;
- ix) Personal effects; and
- x) Visits.

It is envisaged that the suggestion to appoint Police Board members for periods of longer than one year at a time will be included in the new Police Law.

CPT's request for information: Confirmation that a form setting out the rights of persons in police custody has been prepared and translated in the appropriate languages, and that it is being issued systematically to persons at the outset of their custody; also, a copy of the form (Paragraph 28).

Government's Reply:

The indicated Form has been prepared (see Appendix 1).

B. CORRADINO CORRECTIONAL FACILITIES

Ill-treatment

CPT recommendation: staff at the Corradino Correctional Facility to be given the clear message that the physical ill-treatment and verbal abuse of inmates are entirely unacceptable and will be the subject of severe sanctions (para 39)

Government's reply: All staff at Corradino Correctional are fully aware that the physical ill-treatment and verbal abuse of inmates was unacceptable and disciplinary and/or criminal action is instituted against those who commit such offences. The report itself states that 'the CPT delegation gained the impression that, on the whole, relations between inmates and staff tended to be relaxed'.

As regards the incident mentioned in paragraph 37, even though preliminary investigations indicated that the bruises were compatible with injuries arising out of resistance of arrest, and even though no official complaint or report of any kind was made to the authorities the police will be carrying out further investigations. It should also be emphasised that during the criminal proceedings no exceptions were raised by the accused or defence lawyers regarding any ill-treatment by the Police during the arrest.

CPT comment: training in interpersonal communication skills should be widely available to prison officers on an ongoing basis. Building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation (para 40);

Government's reply: During 1999, twenty-five officers attended a short course in Communication Skills and it is envisaged to hold further courses in the future.

CPT requests for information:

for the period 1998 – 2000:

the number of complaints lodged of ill treatment by prison or police staff employed at the Corradino Correctional Facility and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints:

an account of disciplinary/criminal sanctions imposed on the grounds of ill-treatment by prison or police staff employed at the Corradino Correctional Facility (para 41).

Government's reply:

No reports of ill-treatment have been lodged with the prison authorities. However, any complaints received are investigated and if proven, disciplinary and/or criminal action is taken accordingly. In fact disciplinary action was instituted against two officers for having used abusive language towards a prisoner, apart from the case referred to at (Para 36). The first case was reported on the 15th November 1999 whilst the second case was reported on the 25th December 1999. Both officers were found guilty and had to forfeit four hours' pay.

Material conditions of detention

CPT's comments: Contrary to the situation observed in certain parts of Corradino during the previous visit (cf. Paragraph 48 of the CPT/Inf (96) 25), the CPT's delegation was pleased to find that the state of cleanliness throughout the establishment was satisfactory and that all of the cells visited were equipped with chairs and tables. However, it noted that the walls in some of the cells on the ground floor of Divisions III and IV (e.g. cell No 163) were seriously affected by humidity and mildew.

Government's reply: There is very little one can do to eliminate the humidity and mildew at the ground floor cells of Division III and IV. However, this situation will be remedied once the Remand Block is inaugurated, hopefully towards the end of this year (Para 42), when all awaiting trial prisoners would be transferred to that new block. These cells would be left unoccupied. (Para 43).

CPT's recommendations: The women's section had been relocated to the premises which had previously served as a substance abuse treatment unit. The conditions of accommodation were, on the whole, adequate in each of the 23 single-occupancy cells, which measured approximately 8m squared and were equipped with a bed, lavatory, washbasin and shelves. However, access to natural light, artificial lighting and ventilation in the cells left something to be desired; the CPT recommends that these matters be reviewed (para 44).

Government's reply: In 1997, the female section was relocated to the ex-Paola Police Station Lock-up. These premises had previously served as a substance treatment unit. The cells in this unit are similar to the cells in the main prison with the exception that the windows are six inches smaller. Note has been taken of the fact that these windows would offer better access to natural light were the iron grids fixed on the outside to be removed.

CPT's requests for information: up-to-date information on the current status of the renovation projects at the Corradino Correctional Facility; in particular, whether the new remand block has become operational (para 42).

Government's reply: Work on the renovation projects is at an advanced stage. The Remand Block is now scheduled to be inaugurated by the end of the current year.

Regime

Comments by CPT: Concentrated efforts to be made to extend the range of activities (in particular, work and education) for women held at the Corradino Correctional Facility (Paragraph 49).

Government's reply: Education in prison is voluntary to both male and female prisoners. This facility is available to all inmates who wish to enhance their education further. However, unfortunately it was noticed that, in general, female inmates prefer to dedicate their time trimming rubber rings for a private firm, earning some extra cash, rather than studying. The response from female prisoners to a course offered by the ETC – Empowerment Skills for Women was very poor. It is pertinent to note that, notwithstanding the fact that all female prisoners were eligible to attend, only two female prisoners obliged. The authorities have taken note that one needs to help prisoners change their perception to education before any academic instruction. There are two teachers attached to these classes teaching Art, Maltese and English.

CPT's recommendations: The shortcoming mentioned in paragraph 51 to be remedied, and a wider range of organised sport activities to be offered to all adult prisoners at the Corradino Correctional Facility (Paragraph 51).

Government's reply: The prison authorities have provided a well-equipped gym. Football leagues were organised between all divisions (with the exception of Division V) together with a weekly football match held on Sundays between prison teams and outsiders. No football is allowed during the day in the yards of the divisions. Each division is equipped with indoor games and table tennis. Prisoners are also allowed to attend chess lessons at the education unit.

CPT's requests for information:

Further particulars on the possibility of a legislative change regarding requirements for certain professional licences (Para 50);

whether the post of Assistant Manager in the young offenders section at the Corradino Correctional Facility has been filled (Para 52);

whether it is foreseen to begin providing specific professional training to custodial staff in the young offenders section (Paragraph 52).

Government's reply:

No legislative changes have so far been made regarding requirements for certain professional licences.

The post of Assistant Correctional Manager in the Young Offenders Section at Corradino Correctional Facility has been filled on the 20th September 2001

Most of the custodial staff in the Young offenders Section have, during 1999, attended a course in Communications skills. Assistance is being provided by Probation Officers and other qualified personnel. Further training is envisaged.

Medical services

CPT's recommendations: The Maltese authorities to ensure that the nursing presence at the Corradino Correctional Facility is equivalent to at least three full-time nursing posts (Para 53).

Government's reply: The prison authorities are of the opinion that the present compliment is sufficient. In fact no complaints have been received from the medical staff that they cannot cope with the present workload. It is the policy of the prison authorities to request the services of an additional nurse whenever the need arises. One must not forget that the Paola Health Centre is within walking distance of the Corradino Correctional Facility.

CPT's recommendations: The Maltese authorities to take measure to ensure that the rules of medical confidentiality are strictly respected throughout the Corradino Correctional Facility (Paragraph 55).

Government's reply: Medical confidentiality is respected by the prison authorities at all times. The register referred to at paragraph 55 incorporates details of medicine administered to female prisoners.

CPT's recommendations: The necessary steps to be taken to ensure that the requirements set out in paragraph 56 are met in practice (Para 56).

Government's reply: The prison authorities are in the process of providing adequate health and drug awareness information to all prisoners. A booklet in Arabic about basic health information has been prepared.

CPT's comments: The Maltese authorities are invited to reinforce the team responsible for psychiatric/psychological care at the Corradino Correctional Facility with a clinical psychologist (Para 53).

Government's reply: The prison authorities have engaged the following personnel on a part-time basis namely, a Clinical Psychologist, a Counselling Psychologist together with a Social Worker. (Para 53).

CPT's comments: Plans to establish a new medical centre at the Corradino Correctional Facility should be implemented (Para 54).

Government's reply: When the Remand Block is eventually inaugurated later on this year, the existing medical centre will be enlarged.

Other Issues related to the CPT's Mandate

CPT's recommendations: The possibility of allowing foreign prisoners at the Corradino Correctional Facility access to drug rehabilitation programmes on an equal footing with the rest of the prison population to be re-examined (Para 61).

Government's reply: Foreign prisoners, in principle, do share the same opportunities as the Maltese in attending drug rehabilitation programmes. However, such requests by foreign inmates are treated cautiously since in reality the risk of escape is higher so as to avoid deportation at the termination of their sentence. However, foreign inmates married to Maltese citizens, or those not to be deported upon termination of their sentence, were given the opportunity to attend these programmes.

CPT's recommendations: Greater efforts to be made to arrange the transfer of foreign prisoners to their home countries (Para 61).

Government's reply: Foreign prisoners, particularly nationals of countries with whom Malta has a bilateral agreement for the exchange of sentenced prisoners, are whenever possible transferred to their country of origin. The last transfer of foreign prisoners was in fact made during October 2001.

CPT's recommendations: Efforts to be made to provide some prison officers with at least a basic knowledge of Arabic (Para 61).

Comments by the Government: Every effort is being made to identify means of implementation.

CPT's recommendations: The information booklet for prisoners to be translated into other appropriate languages, including Arabic (Para 61).

Government's reply: The information booklet available to prisoners is published in the Maltese and English languages. This booklet has been forwarded for translation. (Para 61).

CPT's recommendations: Definitive measures to be taken without further delay to consolidate a single team of custodial staff at the Corradino Correctional Facility, composed exclusively of prison officers (Para 63).

Government's reply: Considerable thought has been given to this proposition. However, one must stress that in Malta there is only one prison. Therefore, it is not possible to have the flexibility that exists in other countries, namely a system of rotating prison staff. Anyway, all police officers 'seconded' as prison officers, thereby widening the cadre of personnel who can perform guard duties, are, during this period, under the sole and direct supervision of the Director, Correctional Facilities, and not the Commissioner of Police. Those police officers on 'secondment duty' even wear the same uniform as the prison wardens and fall under the same regime.

CPT's recommendations : The Maltese authorities to review regulation 77 (2) of the 1995 Prison Regulations (paragraph 66); and Prisoners facing disciplinary charges to be formally guaranteed the following rights:

- To be informed in writing of the charges against them and to be given sufficient time to prepare their defence;
- to call witnesses on their behalf and to cross-examine evidence given against them;
- to be heard in mitigation of punishment, if found guilty by the Prison Director;
- to appeal to a higher authority against any sanctions imposed (Paragraph 68).

Government's reply: These recommendations have been noted and it has been decided that prisoners will be informed in writing of the charges against them and will also be given sufficient time to prepare their defence. At the discretion of the Appeals Tribunal, they may also call witnesses on their behalf. They will also be given the possibility to appeal to a higher authority against any sanctions imposed. The Prison Regulations will be amended accordingly.

CPT's recommendations: the Maltese authorities to ensure that the precepts concerning the use of pepper spray set out in paragraph 74 are strictly observed at the CCF (para 74)

Government's reply: Instructions have been given to the Officer in charge of the Special Response Team to the effect that pepper spray is to be used solely in exceptional cases and only as a last resort in order to control a prisoner. He was also informed that the Director is to be immediately informed whenever pepper spray is used so that proper investigations are carried out in order to establish whether the use of pepper spray was justified.

CPT's comments:

The CPT trusts that the Maltese authorities will introduce a fully-fledged allocation system in tandem with the entry into service of the new 144-cell block for remand prisoners (para 58);

The doors of the cells used for cellular confinement on disciplinary grounds are grille-fronted, a situation which does not afford any privacy (para 69);

The Maltese authorities are invited to take appropriate action concerning the rules on visits, in light of the remarks set out in paragraph 75 (para 75);

The Maltese authorities are invited to examine whether the control of prisoners' correspondence is causing excessive delays and, if appropriate, to take remedial action. Consideration might usefully be given to ending the practice of systematically reading all prisoner correspondence (para 77);

The CPT trusts that the Ombudsman will continue to carry out investigations at the Corradino Correctional Facility (and in other places of deprivation of liberty) on his own initiative (para 79).

Government's reply: When the new remand block becomes operational, all Prisoners awaiting trial will be detained in this block and an improved classification of prisoners will be achieved.

The upper floor of Division VI is rarely used for cellular confinement. In fact it has not been used for this purpose for at least two years. The cell doors at this level are solid and only those on the ground level are grille-fronted. The prison authorities are actively considering the replacement of the ground floor cell doors with solid ones.

Approximately twelve months ago a new policy regarding visits to foreign prisoners has been introduced. In fact, foreign prisoners were granted the facility of having a two hour contact visit with their relatives who come from abroad if these were visiting Malta for one day. Those who stay for a longer period were and are being given the opportunity to visit the prisoner on more than one occasion. Moreover, the respective embassies and consular staff request, and as a rule are granted, access rights.

Letters addressed to, or written by, foreign prisoners are not being controlled any longer unless there are reasonable grounds that the prisoner may be planning something illicit. Letters addressed to the Ombudsman are forwarded unopened to the Ombudsman by the Prison Authorities whenever a prisoner wishes to lodge a complaint to the Ombudsman. The authorities of the Corradino Correctional Facility (and indeed of all other places of deprivation of liberty) provide all the information and assistance requested by the Ombudsman without any delay. The Ombudsman renders public his findings.

CPT's request for information: Any action taken to include someone "culturally conversant" with foreign prisoners within the Prison Board of Visitors (Para 60).

Government's reply: An individual, who practices the Muslim religion, has been appointed as a member of the Prison Board of Visitors as from 1st January 2002.

CPT's request for information: Developments regarding the provision of social work services at the Corradino Correctional Facility (Para 64).

Government's reply: A Social Worker is engaged on a part-time basis at the Correctional Facility.

CPT's request for information: The comments of the Maltese authorities on the particular case referred to in paragraph 65 (Para 65).

Government's reply: The case referred to at paragraph 65 concerns a prisoner who was found guilty of two separate offences. He was awarded a punishment of three days cell confinement and had his privileges (TV in his cell) suspended for the same period. Furthermore, he was transferred to Division V. This person was transferred to Division V because he was aggressive towards the officers and had used abusive language.

CPT's request for information: the comments of the Maltese authorities regarding the extension of the right to assistance to the initial disciplinary hearing (para 68);

Government's reply: Decision on these policy issues is expected to be taken shortly; this will be referred to in the final report to the CPT.

CPT's request for information: whether prisoners are entitled to retain a legal representative of their choice to assist them during disciplinary hearings (para 68);

Government's reply: Decision on these policy issues is expected to be taken shortly; this will be referred to in the final report to the CPT.

CPT's request for information: The comments of the Maltese authorities on the particular case referred to in paragraph 72 (paragraph 72).

Government's reply: It should be emphasised that the Ombudsman's report (Report No 1472 of the Office of the Ombudsman of Malta (22nd September 1997) clearly stated that even though there may have been some strict measures applied by the authorities no violation of any law or Prison regulations had occurred and that therefore the decisions made were unequivocally within the parameters of the law; so much so that no remedy of any sort was recommended or suggested by him.

Notwithstanding the conclusions of the Ombudsman Report, the individual concerned filed a human rights constitutional application in 1998 before the courts of law claiming violation of his protection from inhuman or degrading treatment. The respondent prison and police authorities are contesting this claim. In fact the individual concerned was not in solitary confinement in the usual sense of the word but assigned to Division 6 which is the Maximum Security Division within the prison. This Division allows communications between prisoners within the same division though extra precautions are taken in communications with prisoners outside this division. He had full access to newspapers and subsequently to television and radio in the communal part of the building; he enjoyed the right to communicate with visitors though under supervision and benefited from prison leave during his stay in Division 6. The case is still *sub judice*.

CPT's requests for information: further particulars regarding legislative changes currently under consideration which could extend the availability of home leave (para 76);

Government's reply: Decision on these policy issues is expected to be taken shortly; this will be referred to in the final report to the CPT.

Substance Abuse Treatment Unit (SATU), Mtahleb

CPT's recommendation: serious consideration to be given to extending the availability of drug rehabilitation programmes (para 85).

Government's reply: Every effort is being undertaken to extend as far as possible, obviously within the existing budgetary allocations, the availability of drug rehabilitation programmes. Suffice to say that the allocation for the *Drug Rehabilitation Programme for Addicted Inmates* was increased from Lm55,000 in 2000 to Lm80,000 during the present financial year.

CPT's request for information: the comparative study of the Caritas, SATU and SEDQA drug-rehabilitation units commissioned by the Ministry of Social Policy (para 85).

Government's reply: The comparative study has not yet been published by the Ministry for Social Policy but will hopefully be included in the final report.

C. FORENSIC WARDS AT MOUNT CARMEL HOSPITAL

General situation

CPT's recommendations: the Maltese authorities to accord the highest priority to the plans concerning the forensic ward referred to in paragraph 86. In the interim, every effort to be made to use all the available association areas, and to ensure that all patients placed in the ward are offered at least one hour of outdoor exercise on a daily basis (if necessary, by making minor alterations to the existing yard). Further, it would be desirable to provide some basic furniture and a television in the ward (para 89).

Government's reply: Whilst agreeing that this is a priority area, the Maltese authorities are reluctant to 'patch up' an environment that leaves much to be desired. The reason for lack of outdoor exercise on a daily basis is basically due to insufficient security at structural and human resources level. A coordinated effort by the Ministry of Health and the Ministry for Home Affairs and the Environment is required to tackle this issue.

CPT's comments:

the positive impact of the introduction of guidelines for the use of seclusion would be enhanced if the seclusion register were audited on a regular basis (para 90);
in the context of the planned revision of the Mental Health Act, the CPT trusts that due regard will be given to the principles set out in the Committee's 8th General Report on involuntary placement in psychiatric establishments (cf. Paragraphs 25 to 58 of CPT/Inf (98) 12) (para 92).

Government's reply:

It is re-assuring to note that the general improvement made in recent years is also highlighted in the CPT report. This will be enhanced with the appointment of a Chief Executive Officer and a stronger management team that will effectively be empowered to manage Mount Carmel Hospital more autonomously with overall direction and co-ordination from the Ministry of Health. The seclusion register is being audited on a more regular basis by nursing management and measures will be taken so that the findings of such audit will appear in the regular reports submitted by the Clinical Department.

The new Mental Health Reform Act is in its final stage of drafting. It will be forwarded by the National Commission for Mental Health to the Social Affairs Committee of the House of Representatives and hence to Cabinet and to Parliament. The draft takes into account the Council of Europe's White Paper on the protection of human rights and dignity of people suffering from mental disorder and also the relevant paragraphs of the CPT 8th General report on involuntary placement in psychiatric establishments.

CPT's request for information: The exact particulars (timetable, funding, etc.) relating to the implementation of the plans referred to in paragraph 86 .

Government's reply: The Health Ministry remains extremely concerned about the environment and staffing situation in the current interim male forensic ward (ex Male Ward 10). The plans for the new forensic unit have received Planning Authority approval on 11 February 2002 after 11 months of deliberations. There is no likelihood that this new unit will replace the existing interim ward by Summer 2002 due to planning issues. The proposed new date would be Summer 2003, subject to availability of funds in next year's budget. (Paragraph 86).

CPT's request for information: the current status of the ongoing refurbishment of the hospital wards and, in particular, the planned date of completion of the new admission ward (para 90).

Government's reply:

The new admission ward has been opened on 6 March 2002. Along with this a radical review of the acute admission policies in the psychiatric service has been completed and is being implemented.

CPT's request for information: the comments of the Maltese authorities on the possibility to compel patients who had entered Mount Carmel Hospital on a voluntary basis to remain hospitalised, without according them the procedural safeguards offered in the context of a formal involuntary placement procedure (para 91).

Government's reply: This is not correct. The ways in which patients who are admitted on a voluntary basis, may subsequently be detained compulsorily, are regulated by the mental Health Act 1976 as follows:-

“Applications in respect of patients already in hospital

Section 18 (1): Where a patient is already in hospital, but is not liable to be detained therein under the foregoing provisions of this part of the Act, an application may, this notwithstanding be made for his admission thereto for treatment.

Section 18 (4): Without prejudice to the provision of subsection (1) of this section, where a patient is already an in-patient in a hospital, but is not liable to be detained therein under this Part of this Act, if it appears to the medical practitioner in charge of the treatment of the patient that an application ought to be made under this Part of this Act for the admission of the patient to hospital for observation or for treatment, he may furnish to the manager a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of three days beginning with the day on which the report is so furnished.”

NOTICE TO DETAINED PERSONS

The Section in Capital Letters is to be read to the detained person by the Custody Officer before giving the notice to the detained person.

YOU HAVE THE RIGHT TO:

- BE INFORMED OF THE IDENTITY OF THE POLICE OFFICER EFFECTING THE ARREST.
- BE INFORMED OF THE REASON FOR THE ARREST. (IF NOT DETECTED IN THE VERY ACT OF COMMITTING THE OFFENCE) (S.352 – Cap.9)
- HAVE YOUR DETENTION REVIEWED BY A POLICE OFFICER NOT BELOW THE RANK OF INSPECTOR, PROVIDED THAT THE ARREST WAS EFFECTED BY AN OFFICER BELOW THAT RANK. (S.353 – CAP.9)
- BE GIVEN A COPY OF THE WARRANT OF ORDER FOR YOUR ARREST (IF NOT DETECTED IN THE VERY ACT OF COMMITTING THE OFFENCE) (S.354 – CAP.9)
- BE GIVEN A RECEIPT FOR PROPERTY SEIZED IN CONSEQUENCE OF A SEARCH AND IN THE POSSESSION OF THE POLICE . (S.354 – CAP.9)
- CONSULT THE CODE OF PRACTICE FOR THE INTERROGATION OF ARRESTED PERSON.

YOU MAY DO ANY OF THESE NOT, BUT IF YOU DO NOT WANT, YOU MAY STILL DO SO AT ANY OTHER TIME WHILST DETAINED BY THE POLICE.

IF YOU ARE ASKED QUESTIONS ABOUT A SUSPECT OFFENCE YOU DO NOT HAVE TO SAY ANYTHING. ANYTHING YOU SAY MAY BE GIVEN IN EVIDENCE.

Draft proposal for suspects' rights – 15 Feb 2002

The last box of this form will be amended to include the following once the respective provisions come into force:

- *HAVE A RELATIVE OR A FRIEND INFORMED THAT YOU HAVE BEEN ARRESTED*
- *BE ALLOWED TO CONSULT A MEDICAL ADVISER OF YOUR CHOICE, PROVIDED THAT SUCH MEDICAL ADVISER IS READILY AVAILABLE*
- *BE ALLOWED AS SOON AS PRACTICABLE TO CONSULT PRIVATELY WITH A LAWYER OR LEGAL PROCURATOR, IN PERSON OR BY TELEPHONE FOR A PERIOD NOT EXCEEDING ONE HOUR*

If you are asked questions about a suspect offence, you do not have to say anything. *(But it may harm your defence if you do not mention when questioned something which you later rely in court. Anything you do say may be given in evidence.*