

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 26 to 30 September 2011

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 (2013) 13.

Strasbourg, 4 July 2013

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Copy of the letter transmitting the CPT's report

Ministry of Foreign Affairs
Council of Europe Desk
Palazzo Parisio
Merchants Street
MT - Valletta

Strasbourg, 14 December 2011

Dear Sir/Madam,

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 Maltese Government 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 26 to 30 September 2011. The report was adopted by the CPT at its 76th meeting, held from 7 to 11 November 2011.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of the report. 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 **three months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Maltese authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report as well as replies to the requests for information made.

In respect of the recommendations in paragraphs 56 and 73 (second sub-paragraph) as well as the request for information in paragraph 5 of the report, the CPT requests the Maltese authorities to provide a response within **one month**.

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

Yours faithfully,

Lətif Hüseynov
President of the European Committee for
the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment

cc: Mr Joseph Licari, Ambassador, Permanent Representative of Malta to the Council of Europe
Mr Joseph Ellul, Assistant Director (International Relations), Policy Development
Directorate, Ministry for Justice and Home Affairs

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 26 to 30 September 2011. The visit was one which appeared to the CPT "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

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

- Mauro PALMA, Head of delegation
- Celso DAS NEVES MANATA
- Olivera VULIĆ.

They were supported by the following members of the CPT’s Secretariat:

- Michael NEURAUTER (Head of Division)
- Patrick MÜLLER

and assisted by:

- Alan MITCHELL, Former Head of the Scottish Prison Health-Care Service, United Kingdom (expert)
- Fiona NAVARRO (interpreter).

B. Context of the visit and establishments visited

3. The main objective of the visit was to examine the current situation in the prison system, having regard to the recommendations made by the Committee after its 2008 visit to Malta. For this purpose, the CPT’s delegation carried out a follow-up visit to Corradino Correctional Facility (CCF).

In addition, the delegation once again examined conditions in the detention centres for foreigners at Lyster and Safi Barracks. It also paid a brief visit to Mount Carmel Psychiatric Hospital, in order to interview patients in the forensic ward and the irregular migrants’ ward.

C. Consultations held by the delegation and co-operation

4. In the course of the visit, the CPT's delegation held fruitful consultations with Mario DEBATTISTA, Permanent Secretary of the Ministry for Justice and Home Affairs, John RIZZO, Police Commissioner, and Mario Guido FRIGGIERI, Commissioner for Refugees, as well as with other senior officials from the Ministry for Justice and Home Affairs.

The delegation also met Peter GRECH, Attorney General, the Chairpersons and members of the Board of Visitors of the Prisons and the Board of Visitors for Detained Persons, the Head of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Malta and representatives of non-governmental organisations active in areas of interest to the CPT.

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

5. The co-operation received by the delegation during the visit was on the whole very good. The delegation enjoyed rapid access to all the establishments visited (including those not notified in advance), was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty.

That said, at Safi Detention Centre, attempts were made by the management to provide misleading information and to hide from the delegation a significant number of complaints which had been lodged by foreign nationals. Clearly, such an attitude is not in compliance with the principle of co-operation set out in Article 3 of the Convention.

Further, it is a matter of particular concern that, despite requests repeatedly made during the visit, the delegation was not provided with a copy of the report on the audit¹ which had been carried out into the prison system, in response to a specific recommendation made by the Committee in the report² on the May 2008 visit. During the end-of-visit talks with the Maltese authorities, the delegation was assured by the Permanent Secretary that the above-mentioned report would be transmitted to the CPT shortly, but, to date, this has regrettably not been done.

Having regard to Articles 3 and 8, paragraph 2 (d), of the Convention, **the CPT requests that the Maltese authorities provide a copy of the above-mentioned audit report without any further delay.** The text will be treated by the Committee as strictly confidential.

¹ This audit was carried out in the form of a ministerial inquiry by a Board set up by the Ministry for Justice and Home Affairs in August 2008. The report on this audit was finalised in March 2009, and a list of recommendations contained in the report was subsequently published.

² See CPT/Inf (2011) 5, paragraph 89.

6. Moreover, the Committee wishes to stress once again that the principle of co-operation between States Parties and the CPT, as set out in the Convention, is not limited to facilitating the work of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. In this respect, the 2011 visit revealed that progress had been made as regards material conditions at the CCF (Block 4) and Lyster Detention Centre for Foreigners. However, little or no action has been taken by the Maltese authorities in many other key areas concerning the CCF, Safi Detention Centre for Foreigners (in particular, as regards the two warehouses) and Mount Carmel Hospital. Therefore, the CPT has been obliged to reiterate most of its previous recommendations.

The CPT calls upon the Maltese authorities to improve the situation in the light of the recommendations made by the Committee in this visit report. If no decisive action is taken in the near future, it will have no choice but to consider having recourse to the procedure provided for in Article 10, paragraph 2, of the Convention.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Follow-up visit to Corradino Correctional Facility

1. Preliminary remarks

7. Since the 2008 visit, the inmate population of Corradino Correctional Facility (CCF) has significantly increased from 417 to 593 prisoners, while the establishment's official capacity has remained unchanged (444 places). At the time of the visit, the CCF was accommodating 384 sentenced prisoners (including 23 women) and 209 remand prisoners (including 15 women). 34 male prisoners (aged 16 to 22) were being held in the juvenile unit (YOURS³). These figures indicate that overcrowding has become a problem at the CCF (see paragraphs 14 and 15).

8. The relevant legal framework has not changed since the 2008 visit (Prison Act and the related Prisons Regulations). The delegation was informed that, on the basis of the White Paper on Restorative Justice⁴ of February 2009, the criminal justice system was undergoing a major reform. A draft Restorative Justice Act had recently been submitted to Parliament, with a view to introducing, among other things, victim-offender mediation and a system of release on parole, which should eventually reduce the inmate population in the CCF (see also paragraph 27). **The CPT would like to receive up-to-date information on the aforementioned reforms.**

2. Management issues and staff

9. In the report on the 2008 visit, the CPT expressed grave concern about the absence of a proper management which resulted in a lack of effective control over prisoners and the prevalence of strong informal power structures among inmates.

10. In 2011, a Director of Prisons and three managers (deputy directors) responsible for security, care/re-integration and operations respectively, as well as an assistant director (in charge of human resources and administration) were formally appointed.

The delegation gained the distinct impression that the new management had brought about significant improvements. In particular, they appeared to exercise more effective control over prisoners, and tangible efforts were being made to develop proper management structures. It is also noteworthy that the huge backlog of pending disciplinary files had been processed⁵.

That said, the CPT wishes to stress that, if the new management is not provided with the necessary human resources, all the commendable efforts to set up a proper correctional service are destined to fail.

³ Young Offenders Unit Rehabilitation Services.

⁴ See Annexe 6 to the Maltese authorities' response to the report on the 2008 visit (CPT/Inf (2011) 11).

⁵ See paragraph 133 of the report on the 2008 visit.

In this regard, it is of particular concern that the actual number of prison officers has further decreased since the last visit (from 176 to 162), while, at the same time, the number of prisoners has increased by 50%⁶. According to the Director, some 50 posts of prison officers were vacant at the time of the visit. In addition, it remained the case that many officers had received very little specialised training or no training at all.

During consultations with the Maltese authorities, the delegation was informed that the setting up of a proper prison service was still in process and that there were concrete plans to recruit additional prison officers as soon as possible. **The CPT calls upon the Maltese authorities to take urgent steps to fill all available posts with appropriately qualified staff.** Further, **the Committee recommends that steps be taken to provide prison officers with professional training (initial and ongoing).**

3. Ill-treatment

11. As in 2008, the overwhelming majority of prisoners indicated that they were treated by prison officers in a correct manner.

That said, the delegation did receive some allegations of physical ill-treatment (such as slaps or punches) and verbal abuse (including of a racist nature) of prisoners by prison officers.

The CPT recommends that the management at the CCF be instructed to remind their staff that all forms of ill-treatment of prisoners (including verbal abuse) are not acceptable and will be punished accordingly.

12. As regards the case of a Dutch prisoner, who had allegedly been severely ill-treated by prison officers in August 2008⁷, the delegation was informed that criminal charges had been brought against four prison officers and that the proceedings were still ongoing. **The CPT wishes to receive information on the outcome of these proceedings and receive a copy of the final report of the Board of Inquiry (see paragraph 99 of the report on the 2008 visit).**

13. The delegation received some allegations of inter-prisoner violence which, according to several prisoners interviewed by the delegation, remained undetected by prison officers.

In the CPT's view, it will be difficult to effectively prevent instances of inter-prisoner violence with the extremely low number of prison officers currently present within the detention areas. In this regard, reference is made to the remarks and recommendation in paragraph 10.

⁶ The situation is further exacerbated by the fact that prison officers now also perform tasks which were in the past performed by police officers (e.g. transportation of prisoners, securing the forensic unit at Mount Carmel Hospital).

⁷ For further details, see paragraphs 90, 97 and 98 of the report on the 2008 visit.

4. Material conditions

14. The CPT welcomes the fact that renovation of the entire Division 4, which was ongoing at the time of the 2008 visit, has been completed. Material conditions in this division are now of a good standard. It is noteworthy that cell windows have been significantly enlarged so that prisoners benefit from good access to natural light in their cells. Another improvement is the installation of a call system in the cells of the high-security unit (Division 6), as recommended by the Committee after the 2008 visit, and the refurbishment of the shower facilities in Division 8.

However, the Committee is very concerned by the fact that none of the many other specific recommendations made after the 2008 visit regarding material conditions have been implemented. Moreover, in several parts of the CCF, material conditions have clearly deteriorated since the last visit (in particular in terms of state of repair), and the situation has been further exacerbated by the prevailing overcrowding⁸.

By way of example, many cells intended to be used for single occupancy were accommodating two prisoners and that without adequate partitioning of the toilet in the cell. The most precarious situation was observed in cells nos. 7 (Division 13) and 28 (Division 12). In each cell, which measured only about 6 m² and had no window, two prisoners were being held. The CPT must stress that these cells are not suitable for use as prisoner accommodation.

Further, a new temporary detention area (Division 15) had been created by converting a large activity room into a dormitory with 19 beds, which was regularly used as an accommodation area for foreign prisoners (17 at the time of the visit). **If Division 15 remains in operation in the future, it would in the CPT's view be desirable for it to be primarily used to accommodate persons serving very short terms.**

15. Material conditions were quite simply appalling in Division 6, where most of the cells, intended to be used for single occupancy only, were accommodating two inmates. There was hardly any access to natural light, and access to both artificial lighting and ventilation were poor. The cells were only equipped with one bed and another mattress⁹, placed on the floor (and a blanket for each inmate), and an unpartitioned floor toilet. In addition, the toilet flush did not work in some of the cells.

16. As regards Female Unit A, material conditions were found to be as poor as in 2008 (in terms of state of repair, access to natural light and artificial lighting and ventilation).

17. In Divisions 2 and 3, material conditions were also far below any acceptable standard. Cells were in a very poor state of repair and had only very limited access to natural light. Another major problem was the high level of humidity in many cells, caused by water leaking from the ceiling. In this regard, cell no. 51 in Division 2 (which also had no window) and cell no. 114 in Division 3 were particularly affected. The latter cell was extremely dilapidated and so humid (with water running down the walls) that the prisoner could not keep any personal belongings in his cell. Moreover, in many cells, the toilet flush was not functioning, and, in particular in Division 3, most of the shower facilities (including the sinks) were broken.

⁸ See paragraph 7.

⁹ Several inmates claimed that the second mattress in the cell had only been provided a few days before the visit.

18. Division 5 and the so-called “New Infirmary” were found in the same dilapidated conditions as in 2008¹⁰. In addition, many cells were very small and access to natural light very limited.

19. Material conditions were also poor in Division 1 which, contrary to the situation found in 2008¹¹, was quite dilapidated. Further, conditions had only slightly improved in Division 8 which accommodated vulnerable prisoners (see paragraph 14).

20. In the light of the above, **the CPT urges the Maltese authorities to draw up a comprehensive plan to renovate the entire CCF as soon as possible and to provide a timetable for the implementation of the different stages. Female Unit A, the so-called “New Infirmary”, and Divisions 2 and 3 should be renovated as a matter of priority.**

Further, **immediate steps should be taken to ensure that:**

- **cells nos. 7 (Division 13) and 28 (Division 12) are no longer used for accommodating prisoners;**
- **cells nos. 51 (Division 2) and no. 114 (Division 3) are temporarily withdrawn from service, pending their refurbishment;**
- **occupancy levels are reduced and access to natural light and artificial lighting improved in Division 6;**
- **sanitary and shower facilities in all divisions are kept in an acceptable state of repair;**
- **toilets in multi-occupancy cells throughout the CCF are adequately partitioned (i.e. to the ceiling).**

5. Classification and allocation of prisoners and regime

21. The CPT is very concerned by the fact that the Maltese authorities have still not established a proper classification and allocation system at the CCF, despite the specific recommendation made by the Committee after previous visits.

As was the case in 2008, only very rudimentary criteria were applied by separating women, young prisoners (under 21) and vulnerable prisoners from the general inmate population. Thus, it remained the case that sentenced prisoners were accommodated together with remand prisoners, and long-term prisoners (including those serving a life sentence) together with those serving short prison terms (in some cases only days or weeks, following the conversion into a stay in prison as a substitute for unpaid fines or court fees).

The CPT once again 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.

¹⁰ See CPT/Inf (2011) 5, paragraph 108.

¹¹ See CPT/Inf (2011) 5, paragraph 104.

22. The criteria for placement of prisoners in the so-called “high-security unit” (Division 6) appeared to be particularly unclear. The delegation was surprised to find out that a group of 23 immigration detainees who had been transferred to the CCF following disturbances at the Safi Detention Centre¹² (see paragraph 48) were immediately placed in Division 6 without any formal procedure. The management was not in a position to provide any plausible explanation for this measure. Also in other cases it was not uncommon for prisoners to be transferred to Division 6 by verbal order of the Director without an individual risk assessment. Moreover, the current legislation¹³ does not provide for a legal remedy against the segregation of prisoners from the mainstream prison population (“removal from association”).

In the CPT’s view, placement in special security conditions should be based on an individualised assessment of the actual risks, and the prisoner concerned should as far as possible be kept fully informed of the reasons for the measure in writing. In addition, the prisoners concerned should be entitled to appeal the decision on placement, or its renewal, to an independent authority.

The CPT recommends that the Maltese authorities amend the relevant regulations and take appropriate measures, in the light of the above remarks.

23. As regards the regime, no progress has been made since the 2008 visit. The majority of prisoners were not offered any organised activities. Work opportunities consisted mainly of assembling toys, and only a limited number of inmates participated in language classes (English or Russian), usually for one or two hours per week.

The CPT recommends that the Maltese authorities redouble their efforts to significantly expand the activities and training available to prisoners at the CCF. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day engaged in varied, purposeful activities. Special attention should also be given to setting up individualised treatment plans for prisoners.

Further, the Committee would like to receive detailed information on the workshop activities currently being offered to prisoners (number of prisoners and hours per week).

24. In Division 6 and the so-called “New Location” (located next to the infirmary), a number of prisoners claimed that they were not offered outdoor exercise every day. **The CPT would like to receive the Maltese authorities’ comments on this point.**

25. As was the case in 2008, access to sports activities was very limited. **The CPT reiterates its recommendation that a wider range of sports activities be offered to prisoners. For this purpose, outdoor exercise yards should be equipped with some sports equipment (e.g. basket ball nets).**

¹² The foreign nationals concerned had been charged with “voluntary damage to property”.

¹³ See Section 67, paragraphs 1 and 2, of the Prison Regulations.

26. The CPT is very concerned by the fact that no steps have been taken by the Maltese authorities to improve the situation of life-sentenced prisoners¹⁴ and other prisoners serving long sentences. There was no special programme, and most of the prisoners concerned were not provided with work, education or other purposeful activities (see also paragraph 31).

The Committee calls upon the Maltese authorities to take steps 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 the light of the remarks made in paragraph 120 of the report on the 2008 visit¹⁵.

27. In the report¹⁶ on the 2008 visit, the CPT already expressed its reservations about the concept according to which life-sentenced prisoners were considered once and for all to be a permanent threat to the community and were deprived of any hope of being released (except by Presidential pardon) and made more detailed remarks in this regard. It is highly regrettable that the current draft Restorative Justice Act, which is being discussed by Parliament, explicitly excludes the possibility of conditional release being granted to life-sentenced prisoners.

Given the potentially very harmful effects a prolonged detention without a prospect of ever being released may have on the person concerned and bearing also in mind that even persons who are convicted by the International Criminal Court (or special international tribunals) of the most serious crimes such as genocide, war crimes and crimes against humanity may in principle benefit at a certain stage from conditional release, **the CPT invites the Maltese authorities to re-consider their policy vis-à-vis life-sentenced prisoners.**

28. The CPT acknowledges the efforts made by the management to provide young prisoners (juveniles and young adults) at the YOURS Unit with purposeful activities (such as computer lessons, guitar lessons and pottery lessons, each for some two hours per week). In addition, juveniles were offered some basic work (laundry, cleaning, assembling plastic toys).

That said, the situation was still not satisfactory. In particular, no vocational training was offered and educational activities were provided for only four hours per week. In addition, sports activities remained rather limited. **The Committee reiterates its recommendation that the variety and quantity of purposeful activities offered to young prisoners at YOURS be further increased.**

29. The delegation was informed by the Maltese authorities that plans were afoot to set up a new facility for young offenders (male and female) outside the CCF and to transfer the entire YOURS Unit to that facility (within approximately two years). **The CPT would like to receive updated information on this point.**

¹⁴ At the time of the visit, eleven prisoners were serving a life-sentence (four of whom were being held in the Forensic Unit at Mount Carmel Hospital) and eleven prisoners were serving a prison term of more than 25 years.

¹⁵ See also Rule 103.8 of the European Prison Rules and the Council of Europe Recommendation on the “management by prison administrations of life-sentence and other long term prisoners”.

¹⁶ CPT/Inf (2011) 5, paragraph 121.

6. Health care

30. As regards the provision of general health care, the presence of *general practitioners* has not been reinforced, despite the specific recommendation made by the Committee in its report on the 2008 visit. This is of all the more of concern bearing in mind that, since 2008, the inmate population has further increased by almost 50%.

The situation had to some extent improved with regard to the presence of *nursing staff*. A pool of nurses, working on rotation, ensured the presence of three nurses, seven days a week from 7 a.m. until 9 p.m., while, at the time of the 2008 visit, only two nurses were present during the afternoon and evening. The current nursing staffing levels could be considered adequate on the basis of the number of prisoners in 2008. However, with an inmate population of some 600 prisoners, there is clearly a need for additional nursing cover.

Further, as was the case in 2008, no multidisciplinary meetings were held involving medical and nursing staff. The situation was further complicated by the fact that medical and nursing staff were provided by two different private companies.

Two prison officers had been assigned to work in the health-care unit. They were usually present during medical consultations and handled requests from prisoners to see a doctor. Both officers were very committed and made an important contribution to the co-ordination of the work of health-care staff. Nevertheless, the CPT considers that the aforementioned duties should only be performed by qualified health-care staff.

The CPT reiterates its recommendations that:

- **the presence of general practitioners be increased to the equivalent of at least 1½ and preferably two full-time posts;**
- **the nursing staff resources be reinforced;**
- **a doctor be appointed as the head of health care, with responsibility for managing the health-care service and ensuring there is a regular consultation process among the health-care staff.**

31. As regards psychiatric care, the hours of attendance by *psychiatrists* had been slightly increased after the 2008 visit, with two psychiatrists being present at the CCF twice a week for three hours each (i.e. a total of twelve hours compared to ten hours at the time of the 2008 visit). However, with an inmate population of some 600 prisoners, the current arrangement is not sufficient.

As in 2008, there was a team of three forensic *psychologists* who were mainly involved in the assessment of newly-arrived prisoners. During the visit, the delegation received many complaints from prisoners about a lack of psychological support. Moreover, no special attention was paid to life-sentenced prisoners and other prisoners serving long prison terms (see paragraph 26). This alarming situation was confirmed by one of the psychologists who stated that even when psychological issues were identified during the assessment upon admission there was usually no prospect of following them up.

The CPT recommends that urgent steps be taken to reinforce the psychiatric and psychological services at the CCF.

32. The CPT is very concerned about the situation of a 21-year old mentally-ill prisoner who was being held, at the time of the visit, in the so-called “suicide watch” cell (see also paragraphs 41 and 42). The prisoner concerned had repeatedly been hospitalised at Mount Carmel Hospital, most recently from mid-August to mid-September 2011, on account of threats of self-harm and a history of suicide attempts. In the discharge letter from Mount Carmel Hospital, the delegation found the following recommendation by the psychiatrist: “*Suicide watch every 10 minutes, underwear only, no personal possessions in the room. Unable to contain in Forensic Unit*”.

In the CPT’s view, it is indefensible that a prison setting (“suicide watch” cell) is considered by a psychiatric hospital a more suitable place for accommodating a mentally-ill prisoner to contain his behaviour than a hospital setting¹⁷. Psychiatric patients should be treated in hospital, not just controlled in solitary confinement in the CCF.

33. Health-care facilities were generally of a good standard. In particular, the dental surgery has been refurbished. However, the X-ray machine had not been certified and could therefore not be used. **The CPT recommends that this shortcoming be remedied.**

34. As regards medical screening, newly-arrived prisoners were usually seen by a doctor within 24 hours and were offered a comprehensive medical examination (including tests for various transmissible diseases).

In this regard, the delegation was surprised to find out that in many cases where a doctor had ordered a blood test or other laboratory tests in respect of a newly-arrived prisoner (or any other prisoner), these tests were only carried after a delay of several months or not at all. **The CPT would like to receive the Maltese authorities’ comments on this matter.**

35. Moreover, the delegation observed that in cases where newly-arrived prisoners displayed visible injuries, the medical files did not contain a detailed description of the injuries and also lacked information as to how these injuries may have been sustained. In addition, injuries which were indicative of ill-treatment were usually not reported to any outside authority.

36. The CPT recommends that the Maltese authorities take steps to ensure that any signs of violence observed when a prisoner is medically screened upon admission are fully recorded, together with any statements by the prisoner and the doctor’s conclusions (including as to the consistency between any allegations made and the injuries observed); this information should be made available to the prisoner and to his/her lawyer. The same approach should be followed whenever a prisoner is medically examined following a violent episode in the CCF.

Further, whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned.

¹⁷ See also paragraph 136 of the report on the 2008 visit.

37. On 25 January 2011, a prisoner was found dead in his cell. The prisoner concerned apparently had a history of drug abuse and had previously been hospitalised at Mount Carmel Hospital. Upon his discharge from the Forensic Ward, he was prescribed a very high dosage of sedating medication. **The CPT would like to be informed of the outcome of the inquiries which have been initiated into the death of the above-mentioned prisoner (and of the results of the autopsy and any toxicological tests).**

7. Other issues

38. Unlike the situation observed in 2008, disciplinary procedures were now being effectively implemented, although, due to the considerable backlog, many prisoners received their disciplinary punishment several years after having committed an offence (see also paragraph 10).

An examination of a number of disciplinary files revealed that the prisoners concerned were always informed in writing of the charges against them and were always heard in person by the Disciplinary Board before a decision on the matter was taken by the Director.

However, the information on the charges provided to prisoners was often very scant (sometimes limited to a quotation of the relevant provision of the Prisons Regulations), and prisoners usually did not receive a copy of the disciplinary decision. Further, it is a matter of concern that, according to the current legislation¹⁸, prisoners are only entitled to appeal against disciplinary sanctions which involve solitary confinement of more than six days or forfeiture of more than 28 days of remission.

The CPT recommends that the necessary steps be taken to ensure that prisoners facing disciplinary charges are:

- **informed in writing of the charges against them (including the relevant facts);**
- **granted the right to defend themselves (including to call witnesses on their own behalf and to cross-examine evidence given against them);**
- **formally entitled to appeal to an independent authority against any sanctions imposed (irrespective of their duration and/or severity);**
- **provided with a copy of any disciplinary decision concerning them, which should inform them of both the reasons for the decision and the modalities for lodging an appeal. The prisoners concerned should confirm in writing that they have received a copy of the decision.**

¹⁸ See Section 79, paragraph 1, of the Prisons Regulations.

39. The delegation also observed that an informal disciplinary system was being applied to prisoners in the high-security unit (Division 6). According to the internal instruction “Procedures for Division 6”, prisoners were initially only allowed to make one telephone call to inform relatives about their transfer to Division 6. Subsequently, they were only granted visits and telephone calls if they “behaved”, and decisions in this regard were taken by staff without any formal procedure. A number of prisoners met by the delegation in Division 6 claimed that they had not been allowed to receive any visits for several weeks.

In this connection, **the CPT wishes to stress that disciplinary measures should only be applied following a formal disciplinary procedure and that any restrictions on family contact as a punishment should be imposed only when the offence relates to such contact¹⁹.**

40. It is also a matter of concern that, according to relevant registers and files examined by the delegation, prisoners’ contacts with their lawyer had on occasion been temporarily suspended at the request of the police, in the context of investigations into criminal offences committed inside the CCF. On 22 February 2011, the following general instruction was issued by the Director: “When an inmate is caught with drugs he cannot talk to the lawyer before the Police talks to him”.

In this connection, reference is made to the remarks and recommendation in paragraph 75.

41. As regards the use of the so-called “suicide watch” cell²⁰, the CPT welcomes the fact that prisoners were no longer kept naked in that cell, as had been the case at the time of the 2008 visit.

That said, the Committee has misgivings about the fact that prisoners were on occasion held in a “suicide watch” cell for prolonged periods wearing only their underwear. Further, it is a matter of concern that both the “mattress” (which was, in fact, just a large piece of sponge) and the luna blanket were extremely dirty.

The CPT recommends that steps be taken to ensure that the “suicide watch” cell is equipped with a clean suicide-proof mattress and a clean blanket, and that prisoners placed in that cell are provided, if necessary, with suicide-proof clothing.

42. Finally, the delegation observed that the register on the use of the “suicide watch” cell was not always properly kept. In a number of cases, important data were not recorded (e.g. the name of the doctor who had ordered the placement, and the precise date and time of the beginning and/or the end of the placement, etc.). **The CPT recommends that this shortcoming be remedied.**

¹⁹ See also Rule 60.4 of the European Prison Rules and the Commentary to this rule.

²⁰ See also paragraph 32.

B. Lyster and Safi Barracks Detention Centres for Foreigners

1. Preliminary remarks

43. The delegation carried out follow-up visits to the only two detention centres for foreigners which were operational at the time of the visit, namely Lyster and Safi Barracks. The third detention centre at Ta' Kandja (with a capacity of more than 300 places) had been completely refurbished after the 2008 visit, but, in autumn 2010, the Maltese authorities decided to temporarily close down the centre (see also paragraph 55).

44. At the time of the visit, *Lyster Detention Centre* was accommodating 248 foreign nationals (including 89 women), in five different detention units²¹ ("Zones") in the multi-storey Hermes Block. *Safi Detention Centre* was accommodating a total of 506 male adult detainees (236 in Warehouse No. 1, 113 in Warehouse No. 2 and 124 in Block B)²². Block C, which was renovated after the 2008 visit, has recently been demolished, in order to construct a new road.

The majority of foreign nationals had arrived in spring 2011, but there were also a number of detainees who had already been detained for more than one year.

45. In keeping with the Government's Detention Policy, no unaccompanied minors were held in either of the two detention centres visited. Upon issuance of a care order by the Minister of Social Policy, unaccompanied minors were always transferred to a juvenile institution. Single women were always accommodated separately from male detainees.

2. Ill-treatment

46. The CPT wishes to stress that its delegation received hardly any allegations of deliberate physical ill-treatment of foreign nationals by detention officers in either of the two detention centres visited.

However, one female foreign national met by the delegation at Mount Carmel Hospital claimed that she had been the subject of sexual abuse by a detention officer at Lyster Detention Centre. The woman concerned had lodged a formal complaint in this regard.

During the end-of-visit talks with the Maltese authorities, the delegation was informed that the case was being investigated and that the officer in question had been temporarily transferred to Safi Detention Centre to prevent further contacts with female detainees.

The CPT would like to be informed of the outcome of the above-mentioned investigation.

²¹ Single men in Zones A and D, single women in Zone C and couples in Zones B and E.

²² Eight were being held at Mount Carmel Hospital (see paragraphs 67, 69, 71 and 73), two at Mater Dei Hospital and 23 at the CCF (see paragraphs 15, 20, 22 and 24).

47. More generally, the CPT has serious misgivings about the fact that female detainees at Lyster Detention Centre were frequently supervised exclusively by male detention officers, since only one female officer was employed by the Detention Service at the time of the visit.

The CPT recommends that the Maltese authorities take steps as a matter of priority to ensure the presence of at least one female officer around the clock at Lyster Detention Centre.

48. As was the case in 2008, a number of detainees complained about disrespectful behaviour and racist remarks by detention officers (in particular in the Warehouses at Safi Detention Centre). **The CPT reiterates its recommendation that the Maltese authorities remind all members of staff working in detention centres for foreigners that such behaviour is not acceptable and will be punished accordingly.**

49. In this connection, it is a matter of concern that, despite a specific recommendation made by the Committee after previous visits, staff continued to call detainees by their immigration file/tag numbers²³. Not surprisingly, this practice was perceived by many foreign nationals to be humiliating and degrading and it is certainly not conducive to the establishment of positive staff/inmate relations.

The CPT must stress that the argument repeatedly advanced by the Maltese authorities that “it is impossible to identify an immigrant by his given name as these names are culturally different from European type names, very repetitive in nature and extremely difficult to pronounce”²⁴ is not at all convincing. Visits to detention facilities in various other States Parties where large numbers of immigration detainees were held have shown that it is indeed physically possible to identify and address detainees by their name. The Committee feels confident that detention officers at Lyster and Safi Detention Centres will be able to do the same if they are positively encouraged to do so by the management of the centres.

The CPT once again calls upon the Maltese authorities to put an end to the above-mentioned practice.

50. The CPT is very concerned about the frequency and seriousness of allegations received from foreign nationals about the excessive use of force by soldiers and police officers in the context of disturbances which had occurred on 16 August 2011 at Safi Detention Centre. Following the intervention by the police and the Armed Forces, which involved the use of tear gas and rubber pellets, 23 foreign nationals had been transferred to the CCF (see also paragraph 22).

The delegation interviewed all 23 detainees, many of whom claimed that they had been punched, kicked and struck with truncheons, mainly by soldiers, *after* having been handcuffed. Several allegations were also received from detainees that they had been fired upon with rubber pellets from a distance which exposed them to increased hazards.

²³ Detainees were also referred to in the same manner in all official documents (including medical files).

²⁴ Cf. CPT/Inf (2011) 6, page 9.

51. The Commander of the Detention Service affirmed to the delegation that, to his knowledge, only one foreign national had been slightly injured in the context of the above-mentioned incident and that no rubber pellets had been fired directly at any immigration detainee. However, the medical notes drawn up by a doctor at the CCF suggest that at least twelve of the detainees arrived at the prison with visible injuries. Regrettably, these injuries were not recorded in detail and the medical files were also lacking a narrative as to exactly how the injuries might have been sustained (see also paragraph 35).

That said, several detainees displayed visible injuries at the time of the visit, which, in the CPT's view, were consistent with the allegations of ill-treatment made. In this regard, the following two cases merit particular attention:

(a) One foreign national interviewed by the delegation claimed that he had been beaten with truncheons by soldiers, whilst handcuffed, at Safi Barracks before his transfer to the CCF. He also claimed that he had been shot by rubber pellets at an earlier stage of the intervention by the Armed Forces. Upon examination by a medical member of the delegation, there was a pale, scarred area measuring 8mm x 9mm above the right eye. On the lower back, there were two sets of tramline scars measuring 15mm in length, the tramlines being 10mm apart. On the upper back, there were three healing linear lesions measuring 25mm, 15mm and 20mm respectively. Moreover, on the left flank/chest, there was a scarred circular area (14mm in diameter) which had a paler central indentation.

(b) Another foreign national interviewed by the delegation claimed that, at Safi Barracks, he had been handcuffed behind his back by soldiers and that thereafter a soldier had thrust one knee into his back and dislocated his right shoulder. In addition, he alleged that soldiers had scraped the sole of their boots across both of his shoulders. Upon examination by a medical member of the delegation, the foreign national was found to display ten vertical linear scars on the left shoulder, which were broader at the base and narrower at the tip, the base of one measuring 3mm and the tip 1mm across, and the longest of which was 45mm in length. In addition, there were three horizontal linear scars, the largest of which measured 45mm across. On the outer side of the right arm, there were five horizontal linear scars, measuring 4mm at the base and 1mm at the tip, the longest being 38mm.

52. The CPT recommends that a comprehensive inquiry be carried out by an independent body into the manner in which foreign nationals were treated by police officers and soldiers in the context of the above-mentioned incident of 16 August 2011 at Safi Detention Centre. The Committee would like to receive in due course a report on the results of that inquiry and information on the steps subsequently taken.

53. Another incident occurred on 16 April 2011 when a group of seven foreign nationals escaped from Safi Detention Centre. On the same day, they were captured by the police and brought back to the detention centre, where one of them died shortly afterwards.

The delegation was informed that an inquiry had been commissioned by the Minister of Justice and Home Affairs under the Inquiries Act (Chapter 273) in order to look into the circumstances of the above-mentioned escape and the subsequent death. In parallel, a police investigation and a magisterial inquiry had been initiated. All three inquiries were said to be pending at the time of the visit.

The CPT would like to be informed of the outcome of the above-mentioned inquiries and any action subsequently taken by the relevant authorities. The Committee would also like to receive a copy of the autopsy report concerning the detainee who died and a list of all the investigative steps taken in the context of the above-mentioned inquiries.

54. The information gathered during the visit suggested that there was a problem of violence among detainees in both detention centres visited²⁵ (in particular, in the Warehouses at Safi Barracks). In the CPT's view, it will be difficult if not impossible to effectively resolve this problem as long as more than 240 foreign nationals are being held under cramped conditions and in total idleness in one single warehouse and that for prolonged periods. In this regard, reference is made to the remarks and recommendation in paragraph 55.

3. Conditions of detention

55. At both *Lyster and Safi Detention Centres*, material conditions have improved since the 2008 visit. In particular, at Lyster Barracks, these improvements are significant: the Hermes Block, which had been in a very poor state of repair at the time of the 2008 visit, had been completely refurbished²⁶ and the Tent Compound, which had also been criticised by the Committee in the report on the 2008 visit, had been dismantled. At Safi Barracks, additional renovation work had been carried out in Block B. It is noteworthy that all foreign nationals received personal hygiene products on a regular basis and were also supplied with clothes and footwear.

However, material conditions of detention were still appalling in the two Warehouses at Safi Barracks. In particular, at Warehouse No. 1, foreign nationals were being held in extremely crowded conditions and the sanitary facilities consisting of seven mobile toilets (without a flush) and seven mobile shower booths, located in the outdoor exercise yard, were in a deplorable state. In fact, the Warehouses are not suitable for accommodating persons for prolonged periods, but should only be used in the event of an emergency.

Against this background, it is of all the more concern that the recently-renovated detention facilities at Ta' Kandja were not being used²⁷. **The CPT recommends that the Maltese authorities take the necessary measures to ensure that all immigration detainees currently being held in the two Warehouses at Safi Barracks are transferred as soon as possible to Ta' Kandja Detention Centre and that both Warehouses are in future only used for short-term detention in emergency situations.**

56. At *Lyster Detention Centre*, the situation had clearly improved as regards activities. Each zone comprised a communal room, and groups of detainees could attend English-language courses which were organised by an NGO (usually, three times a week for two hours per group). Further, single women and couples were provided with food so that they could prepare meals themselves in a kitchenette. Every day, detainees could go outside and play football or volleyball in a rather small yard for a total of two hours.

²⁵ For instance, at Lyster Detention Centre, four Somali women were segregated in the centre's "isolation unit" after violent conflicts with other female detainees (see also paragraph 56).

²⁶ With a major financial contribution from the European Union.

²⁷ See also paragraph 43.

However, four Somali women had been accommodated for about four months in the so-called “isolation unit” on the ground floor of the Hermes Block²⁸. During their stay in that unit, these women had not been allowed to take any outdoor exercise. Such a state of affairs is totally unacceptable. **The CPT recommends that immediate steps be taken to ensure that all immigration detainees at Lyster Detention Centre are offered at least one hour of outdoor exercise per day.**

57. At *Safi Detention Centre*, conditions of detention in the two warehouses were further exacerbated by the total lack of any organised activities. The situation was slightly better, but far from satisfactory in Block B, where detainees could play football in the exercise yard (surrounded by high walls), which was accessible from 8.30 a.m. to 7 p.m.

The CPT calls upon the Maltese authorities to introduce a regime providing purposeful activities to foreign nationals held at Safi and Ta’ Kandja Detention Centres.

4. Health care

58. Medical and nursing services in detention centres for foreigners were provided by two separate privately-run companies. There was a pool of doctors ensuring the presence of one doctor from Mondays to Fridays (including public holidays), for five hours per day at Safi and four hours per day at Lyster Barracks. Further, a nurse was present in each detention centre from Mondays to Fridays from 8 a.m. to 3 p.m. In addition, at Safi Barracks, a nurse from the local health-care service came to the establishment to administer medication requiring supervision in the evenings and at weekends.

The CPT must stress that, given the size of the inmate populations, the current arrangements for the provision of health care were clearly insufficient to ensure that detainees’ health problems were dealt with in a timely and effective manner. The delegation was overwhelmed by complaints from detainees about delays in seeing a doctor (up to several days) and, subsequently, in receiving prescribed medicines (up to one week). In practice, only a limited number of requests (usually five) per detention block were forwarded by detention officers to the nurse on duty on a first-come first-served basis. This was described by many detainees as source of constant tension among themselves.

At Lyster Barracks, a detention officer had recently been designated as being responsible for the co-ordination of health-care services. This officer was always present within the medical room, and handled requests from detainees to see the doctor and the maintenance of the medical records. Without contesting the commitment of the officer concerned, the CPT wishes to stress that the aforementioned duties should be performed by qualified health-care staff.

In the two Warehouses at Safi Barracks, the delegation observed that a significant number of detainees were lying in bed all day in total apathy. Given that nurses never entered the detention areas, the likelihood was great that detainees in need of urgent psychological support remained undetected for a long time. Regrettably, both centres were still not being visited by a psychologist and a psychiatrist.

²⁸ See footnote 23.

Another major shortcoming was the lack of systematic medical screening of detainees upon admission to a detention centre. The delegation was informed by health-care staff that, on arrival at the port, all foreign nationals had undergone a chest X-ray, but no further screening was performed at the detention centres. In this regard, the CPT wishes to recall that systematic medical screening is not only an essential means of protecting detainees and staff alike (in particular, with regard to transmissible diseases) but also an important safeguard against ill-treatment.

Moreover, detention officers were often present during medical consultations in the detention centres and at outside hospitals. In the case of a detainee who had been transferred to Mater Dei Hospital for a medical examination, escorting officers had been informed by hospital staff and had also been given a paper indicating that the person concerned had been diagnosed as HIV positive.

59. In the light of the above, **the CPT calls upon the Maltese authorities to carry out a thorough review of the current arrangements for the provision of health care in the detention centres for foreigners. More specifically, steps should be taken to ensure that:**

- **the working hours of doctors are increased and that for each detention centre one doctor is designated to co-ordinate the health-care services within the centre;**
- **the nursing cover is significantly increased in all centres. This should make it possible for a nurse to be present every day (including at weekends) and for the provision and distribution of prescribed medicines to be handled by nursing staff;**
- **someone competent to provide first aid is always present on the premises of all detention centres (including at night);**
- **all newly-arrived detainees benefit from comprehensive medical screening by a doctor or a fully-qualified nurse reporting to a doctor;**
- **whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a foreign national (or which, even in the absence of allegations, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned;**
- **all detention centres are regularly attended by a psychiatrist and a psychologist;**
- **all medicines prescribed are promptly dispensed thereafter;**
- **the confidentiality of medical examinations and data is fully respected.**

5. Other issues

60. As regards contact with the outside world, the CPT welcomes the fact that, in both detention centres visited, foreign nationals could receive telephone calls from the outside. They were also provided with telephone cards free of charge on a regular basis, although these were limited to a total of 5€ every two months.

61. That said, at Lyster Detention Centre, a number of detainees who had family members or friends in Malta complained about the fact that they were not allowed to receive any visits, but that “visitors” could only come to the centre on Sundays to deliver parcels to staff at the gate for the attention of a detainee. This state of affairs was subsequently confirmed by staff.

The CPT calls upon the Maltese authorities to take steps to ensure that foreign nationals are allowed to receive visits on a regular basis and that specific facilities are set up for that purpose. Relevant information on the visiting arrangements should also be included in the information brochure “Your Entitlements, Responsibilities and Obligations while in Detention” which is given to detainees.

62. In the report on the 2008 visit, the CPT invited the Maltese authorities to consider adding the Committee to the list of international bodies to/from which detainees could send/receive letters confidentially (and without bearing the cost of postage). Regrettably, the authorities had not taken any steps to this end, despite their commitment given in their response to the above-mentioned report. During consultations with the delegation, the Commander of the Detention Service affirmed to the delegation that appropriate steps would be taken without delay. **The Committee would like to receive updated information on this point.**

63. As regards disciplinary and security measures, in accordance with the relevant provisions of the Detention Centre Rules and Standing Instructions (dated September 2006), foreign nationals may be subjected to the disciplinary measure of “removal from association”²⁹ (for a period not exceeding six days) or to the security measure of “temporary confinement”³⁰ (for a period not exceeding three days). In addition, foreign nationals may be subjected to “special control or restraint”³¹, in order to prevent them from injuring themselves or others, damaging property or creating a disturbance.

²⁹ See Rule 43.

³⁰ See Rule 45.

³¹ See Rule 46.

64. The CPT is concerned by the fact that the current system does not provide for any legal safeguards in the context of disciplinary proceedings. The delegation was informed that foreign nationals who were sanctioned to “removal from association” and were thus held in solitary confinement had no right to present any evidence to defend themselves, nor had they any possibility to appeal against the decision.

The CPT reiterates its recommendation that the Maltese authorities take steps to ensure that immigration detainees subject to the disciplinary sanction of “removal from association” have the right to be heard on the subject of the offences which they are suspected of having committed, to present evidence to defend themselves and to appeal to a higher authority against any sanctions imposed.

65. As regards the imposition of security measures, the delegation was informed that, in practice, foreign nationals were never subjected to mechanical restraint, but agitated and/or suicidal detainees were usually transferred to Mount Carmel Hospital.

Notwithstanding this, the CPT wishes to stress that in the event of means of mechanical restraint being used in a detention centre for foreigners, the requirements set out in paragraph 70 below should be met. The relevant regulations should be amended accordingly.

66. Lyster and Safi Detention Centres each had a small mobile metal detention facility³² (“isolation container”), located outside the Hermes Block, which had good access to natural light and was well-equipped. That said, **the existing ventilation system (i.e. a small ventilator) would clearly be insufficient for use during hot weather and should be significantly improved.**

³² According to staff, the above-mentioned container had never been used.

C. Mount Carmel Hospital

1. Preliminary remarks

67. The objective of the targeted visit to Mount Carmel Hospital was to review the conditions under which mentally-ill prisoners and immigration detainees were held in the hospital³³.

At the time of the visit, the Forensic Ward³⁴ was accommodating 42 male patients and the Irregular Migrants' Ward³⁵ eleven patients (eight male and two female foreign nationals and one female prisoner)³⁶.

68. In a number of cases, the criteria for transferring prisoners from the CCF to Mount Carmel Hospital or from Mount Carmel to the CCF (and the placement of prisoners in the so-called "New Location") remained somewhat unclear. By way of example, the delegation observed that a prisoner from the CCF had been held in the Forensic Ward for about one year³⁷, although, according to his medical file, he had not been diagnosed with any mental illness and was therefore not undergoing any psychiatric treatment. **The CPT would like to receive the Maltese authorities' comments on this point.**

2. Ill-treatment

69. The CPT wishes to stress that its delegation received no allegations of deliberate physical ill-treatment of patients by health-care staff, nor any allegations of violence between patients. The delegation gained the impression that nursing staff was committed to providing the best possible care to patients.

However, the CPT has serious misgivings about the manner in which agitated and/or suicidal patients were on occasion managed. In the Committee's view, some of the measures applied in the following two cases could easily be considered as amounting to ill-treatment.

³³ The delegation did not assess the psychiatric treatment offered to patients, nor the legal safeguards related to the involuntary placement of patients in the hospital.

³⁴ Administratively, the Forensic Ward forms part of the Prison Service and is guarded by correctional officers (from the so-called Special Response Team – SRT).

³⁵ The Irregular Immigrants' Ward is affiliated to the Detention Service, and internal security is ensured by detention officers. In the event of one or more female foreign nationals being held there, a female police officer is also deployed to the ward.

³⁶ The adjacent Maximum Security Unit, which was in principle used for all categories of psychiatric patients (including forensic patients), was accommodating two civil patients at the time of the visit.

³⁷ Since 13 September 2010.

70. The first case³⁸ concerns a patient met by the delegation in the Forensic Ward. At 8 p.m. on 1 August 2011, the patient refused his treatment and was then asked again to take his medicine approximately one hour later. When the door was opened to give him his treatment he head-butted an officer, ran into the communal room shouting and physically assaulted another officer. SRT officers immediately informed a psychiatrist who indicated that “pepper spray” could be used against the patient. SRT officers manually restrained the patient, handcuffed him in front, and sedatives were administered by intramuscular injection. Subsequently, “pepper spray” (in actual fact, CS gas) was sprayed into the eyes of the patient, according to staff so as to disable him and to allow officers to cuff him behind his back. The patient was apparently held in a seclusion room (under CCTV supervision), whilst handcuffed, for the whole night until 11.40 a.m. the following day. During his placement in the seclusion room, the patient was allowed to wear his underwear, but was not provided with a mattress.

In the CPT’s view, it is unacceptable for CS gas to be applied to a patient, particularly if the patient is already physically restrained and to restrain a patient overnight with police-style handcuffs.

The CPT recommends that immediate steps be taken to ensure that CS gas canisters and similar devices are no longer used against patients at Mount Carmel Hospital.

Further, the Committee recommends that steps be taken at Mount Carmel Psychiatric Hospital to ensure that whenever a patient is subjected to mechanical restraint:

- **only equipment is used which is properly designed to limit harmful effects, discomfort and pain during restraint (e.g. soft cloth straps);**
- **the duration of the application of means of mechanical restraint is for the shortest possible time (usually minutes or a few hours). The exceptional prolongation of restraint should warrant a further review by a doctor;**
- **the patient concerned is continuously and directly monitored by a member of the health-care staff; supervision solely by means of CCTV is not sufficient;**
- **the patient concerned is always provided with a mattress.**

Further, the Committee recommends that staff be trained in restraint techniques and the use of the restraint equipment. Such training should not only focus on instructing staff on how to apply means of restraint but, equally importantly, should ensure that they apply professional techniques which minimise any risk of harm to the person concerned and that they know how to care for a restrained patient.

³⁸ The description of the case is based on written documentation seen by the delegation and additional information provided by staff.

71. The second case concerns a foreign national in the Irregular Migrants' Ward who was found by the delegation naked in a bare room (the so-called "search room"), which was cold and devoid of any equipment (not even a mattress). He only had a luna blanket with which he could cover his lower half.

According to staff, the patient concerned had arrived two days earlier from Safi Detention Centre and, on the morning of the day of the delegation's visit, he had temporarily been placed in the above-mentioned room, since he was considered to be at high risk of suicide (after a blade had been found in his hands) and had also displayed aggressive behaviour towards staff. In addition, he had reportedly torn the mattress in that room. Staff affirmed to the delegation that the patient would receive clothes from the Safi Detention Centre shortly and that he would be given a mattress on which to sleep at night.

The CPT acknowledges that special preventive measures may have been required in the above-mentioned case. However, to place a patient in a bare room, naked and with only a luna blanket for cover is unacceptable and not in keeping with contemporary mental-health care.

The CPT recommends that steps be taken at Mount Carmel Hospital to ensure that all patients who are considered to be at risk of suicide/self-harm are provided with a suicide-proof mattress and suicide-proof clothing during their stay in a seclusion room.

3. Living conditions

72. As regards patients' living conditions, the delegation observed some improvements in the Forensic Ward; patients could now spend at least two hours (and often much more time) per day in the open air³⁹, and outdoor exercise yards had been equipped with weightlifting devices.

However, compared to the situation found during the 2008 visit, the number of forensic patients had more than doubled (from 19 to 42 patients), while the ward had initially been intended to accommodate a total of 21 patients only. As a result of this overcrowding, additional mattresses (without a bed) had to be added in the rooms⁴⁰, and many patients were compelled to store their belongings in plastic bags placed on the floor or attached to cords along the wall. Further, toilets were not adequately screened (i.e. there was only a makeshift partition) or not partitioned at all, and the level of hygiene in the entire ward left much to be desired.

The CPT recommends that steps be taken in the Forensic Ward to ensure that:

- **all patients are provided with a bed as well as with lockable space to store their personal belongings;**
- **toilets in double- and multi-occupancy rooms are adequately partitioned;**
- **the general level of hygiene is improved.**

Further, the Committee would like to be informed of the activities which are organised for forensic patients on a regular basis.

³⁹ At the time of the 2008 visit, outdoor exercise was usually limited to one hour per day.

⁴⁰ The delegation was informed that, on occasion, up to three patients were accommodated in rooms designed for single occupancy.

73. In the Irregular Migrants' Ward, living conditions were far below any acceptable standard and can only be considered as anti-therapeutic. The design of the ten cells, which was described as antediluvian in the report⁴¹ on the 2008 visit, had not changed at all. Each cell, measuring some 8 m², was equipped only with a bed bolted to the middle of the floor and a floor toilet in a corner. There was neither a chair nor a table, nor could patients store any personal belongings in the cell. The cells received natural light only through a barred aperture facing onto a long observation corridor, and access to artificial lighting was rather poor. It is of particular concern that patients were not offered any outdoor exercise, and that for months on end. The only out-of-cell "activity" offered to them was to walk up and down a narrow corridor for a couple of hours during the day or to sit there on a bench and watch television.

The CPT calls upon the Maltese authorities to take immediate steps to ensure that all patients held in the Irregular Migrants' Ward whose state of health so permits are offered at least one hour of outdoor exercise per day. Steps should also be taken to improve the artificial lighting in the cells.

Further, the Committee reiterates its recommendation that steps be taken to ensure that all foreign nationals are provided with more congenial and personalised surroundings (including a table and a chair) and are offered recreational activities.

⁴¹ See CPT/Inf (2011) 5, paragraph 170.

D. Safeguards in the context of police custody

74. During the consultations held with representatives of the Ministry for Justice and Home Affairs, the delegation also discussed the legal framework and the implementation in practice of the right of access to a lawyer for persons who are deprived of their liberty by the police.

Section 355 AT of the Criminal Code, which had already been adopted in April 2002, entered into force in February 2010. Thus, detained persons are now entitled “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” and they have to be informed by the police of this right “as early as is practical before being questioned”. The delegation was told that arrangements had been made, in co-operation with the Bar Association, to ensure that lawyers from a duty roster were always available, in case persons did not nominate a private lawyer.

This is indeed a positive development. However, the CPT must stress that it can only be seen as a first step in the right direction. The Committee is very concerned by the fact that the right of access to a lawyer is still subject to important limitations which are likely to largely undermine the effectiveness of this right as a safeguard against ill-treatment (as distinct from a means of ensuring a fair trial). Firstly, it remains the case that detained persons are not allowed to have a lawyer present during any police questioning. Secondly, access to a lawyer may be delayed (with the approval of an officer not below the rank of superintendent) for a period of up to 36 hours, in the event that a person is suspected of having committed a crime (as opposed to a contravention) and if it is considered that a consultation with a lawyer might jeopardise an ongoing investigation or the collection of evidence⁴².

75. The CPT has repeatedly stressed that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and ill-treatment is at its greatest. The existence of the possibility to have access to a lawyer 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.

To be fully effective as a fundamental safeguard against ill-treatment, the right of access to a lawyer must be guaranteed *as from the very outset* of a person's deprivation of liberty as well as *during police questioning*, irrespective of how serious the offence is of which the person detained is suspected. Indeed, persons suspected of particularly serious offences can be among those most at risk of ill-treatment, and therefore most in need of access to a lawyer.

The Committee recognises that it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his/her choice. 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 legitimate interests of the investigation should be organised. It is perfectly feasible to make satisfactory arrangements in advance for this type of situation, in consultation with the Bar Association.

In the light of the above, the CPT calls upon the Maltese authorities to take the necessary measures to ensure that all persons detained by the police can effectively benefit, if they so wish, from access to a lawyer throughout their police custody, including during any police questioning, and that the relevant provisions of the Criminal Code are amended accordingly.

⁴² See Section 355AT, paragraphs 3, 5 and 7, of the Criminal Code.

76. The CPT is also concerned that the current legislation does not provide for specific safeguards for juveniles who are detained by the police. The delegation was told that whenever juveniles under the age of 16⁴³ were taken into custody, the parents (or other relatives) would be informed without delay and that the juveniles would only be questioned by the police in the presence of a parent or another trusted person.

That said, juveniles aged 16 to 18 were treated like adults, which means that they were subjected to police questioning and requested to sign statements without the benefit of the presence of either a trusted person or a lawyer.

The CPT recommends that the Maltese authorities take steps to ensure that all juveniles (including those aged 16 to 18) are not subjected to police questioning or required to sign any statement related to the offence of which they are suspected, without the benefit of a lawyer and/or a trusted person being present. The relevant legal provisions should be amended accordingly.

⁴³ It is recalled that the age of criminal responsibility in Malta is nine.

APPENDIX I

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

Co-operation

requests for information

- the Maltese authorities are requested to provide without further delay a copy of the report on the audit which was carried out into the prison system (paragraph 5).

Follow-up visit to Corradino Correctional Facility (CCF)

Preliminary remarks

requests for information

- up-to-date information on the reform of the criminal justice system (paragraph 8).

Management issues and staff

recommendations

- the Maltese authorities to take urgent steps to fill all available posts with appropriately qualified staff (paragraph 10);
- steps to be taken to provide prison officers with professional training (initial and ongoing) (paragraph 10).

Ill-treatment

recommendations

- the management at the CCF to be instructed to remind their staff that all forms of ill-treatment of prisoners (including verbal abuse) are not acceptable and will be punished accordingly (paragraph 11).

requests for information

- as regards the case of a Dutch prisoner who had allegedly been severely ill-treated by prison officers in August 2008, the outcome of the ongoing criminal proceedings as well as a copy of the final report of the Board of Inquiry (paragraph 12).

Material conditions

recommendations

- the Maltese authorities to draw up a comprehensive plan to renovate the entire CCF as soon as possible and to provide a timetable for the implementation of the different stages. Female Unit A, the so-called “New Infirmary”, and Divisions 2 and 3 should be renovated as a matter of priority (paragraph 20);
- immediate steps to be taken to ensure that:
 - cells nos. 7 (Division 13) and 28 (Division 12) are no longer used for accommodating prisoners;
 - cells nos. 51 (Division 2) and no. 114 (Division 3) are temporarily withdrawn from service, pending their refurbishment;
 - occupancy levels are reduced and access to natural light and artificial lighting improved in Division 6;
 - sanitary and shower facilities in all divisions are kept in an acceptable state of repair;
 - toilets in multi-occupancy cells throughout the CCF are adequately partitioned (i.e. to the ceiling)
(paragraph 20).

comments

- if Division 15 remains in operation in the future, it would be desirable for it to be primarily used to accommodate persons serving very short terms (paragraph 14).

Classification and allocation of prisoners and regime

recommendations

- 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 (paragraph 21);
- the Maltese authorities to amend the relevant regulations and take appropriate measures as regards placement in special security conditions, in the light of the remarks made in paragraph 22 (paragraph 22);
- the Maltese authorities to redouble their efforts to significantly expand the activities and training available to prisoners at the CCF. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day engaged in varied, purposeful activities. Special attention should also be given to setting up individualised treatment plans for prisoners (paragraph 23);

- a wider range of sports activities to be offered to prisoners. For this purpose, outdoor exercise yards should be equipped with some sports equipment (e.g. basket ball nets) (paragraph 25);
- the Maltese authorities to take steps 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 the light of the remarks made in paragraph 120 of the report on the 2008 visit (paragraph 26);
- the variety and quantity of purposeful activities offered to young prisoners at YOURS to be further increased (paragraph 28).

comments

- the CPT invites the Maltese authorities to re-consider their policy vis-à-vis life-sentenced prisoners (paragraph 27).

requests for information

- detailed information on the workshop activities currently being offered to prisoners (number of prisoners and hours per week) (paragraph 23);
- the Maltese authorities' comments on the claims made by a number of prisoners in Division 6 and the so-called "New Location" (located next to the infirmary) that they were not offered outdoor exercise every day (paragraph 24);
- updated information on the plans to set up a new facility for young offenders (male and female) outside the CCF and to transfer the entire YOURS Unit to that facility (within approximately two years) (paragraph 29).

Health care

recommendations

- the presence of general practitioners at the CCF to be increased to the equivalent of at least 1½ and preferably two full-time posts (paragraph 30);
- nursing staff resources at the CCF to be reinforced (paragraph 30);
- a doctor to be appointed as the head of health care, with responsibility for managing the health-care service and ensuring there is a regular consultation process among the health-care staff (paragraph 30);
- urgent steps be taken to reinforce the psychiatric and psychological services at the CCF (paragraph 31);
- the X-ray machine to be certified for use (paragraph 33);

- the Maltese authorities to take steps to ensure that any signs of violence observed when a prisoner is medically screened upon admission are fully recorded, together with any statements by the prisoner and the doctor's conclusions (including as to the consistency between any allegations made and the injuries observed); this information should be made available to the prisoner and to his/her lawyer. The same approach should be followed whenever a prisoner is medically examined following a violent episode in the CCF (paragraph 36);
- whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record to be systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned (paragraph 36).

comments

- in the CPT's view, it is indefensible that a prison setting ("suicide watch" cell) is considered by a psychiatric hospital a more suitable place for accommodating a mentally-ill prisoner to contain his behaviour than a hospital setting. Psychiatric patients should be treated in hospital, not just controlled in solitary confinement in the CCF (paragraph 32).

requests for information

- the Maltese authorities' comments on the delays observed as regards the carrying out of blood and other laboratory tests (paragraph 34);
- the outcome of the inquiries into the death of the prisoner referred in paragraph 37, and the results of the autopsy and any toxicological tests (paragraph 37).

Other issues

recommendations

- the necessary steps be taken to ensure that prisoners facing disciplinary charges are:
 - informed in writing of the charges against them (including the relevant facts);
 - granted the right to defend themselves (including to call witnesses on their own behalf and to cross-examine evidence given against them);
 - formally entitled to appeal to an independent authority against any sanctions imposed (irrespective of their duration and/or severity);
 - provided with a copy of any disciplinary decision concerning them, which should inform them of both the reasons for the decision and the modalities for lodging an appeal. The prisoners concerned should confirm in writing that they have received a copy of the decision(paragraph 38);

- steps to be taken to ensure that the “suicide watch” cell is equipped with a clean suicide-proof mattress and a clean blanket, and that prisoners placed in that cell are provided, if necessary, with suicide-proof clothing (paragraph 41);
- the register on the use of the “suicide watch” cell to be properly kept (paragraph 42).

comments

- disciplinary measures should only be applied following a formal disciplinary procedure and any restrictions on family contact as a punishment should be imposed only when the offence relates to such contact (paragraph 39).

Lyster and Safi Barracks Detention Centres for Foreigners

Ill-treatment

recommendations

- the Maltese authorities to take steps as a matter of priority to ensure the presence of at least one female officer around the clock at Lyster Detention Centre (paragraph 47);
- the Maltese authorities to remind all members of staff working in detention centres for foreigners that disrespectful behaviour and racist remarks vis-à-vis detainees are not acceptable and will be punished accordingly (paragraph 48);
- the Maltese authorities to put an end to the practice of staff calling detainees by their immigration file/tag numbers (paragraph 49);
- a comprehensive inquiry to be carried out by an independent body into the manner in which foreign nationals were treated by police officers and soldiers in the context of the incident of 16 August 2011 at Safi Detention Centre (paragraph 52).

requests for information

- the outcome of the investigation into the complaint lodged by a female foreign national that she had been the subject of sexual abuse by a detention officer at Lyster Detention Centre (paragraph 46);
- the results of the inquiry referred to in paragraph 52 and information on the steps subsequently taken (paragraph 52);
- the outcome of the inquiries into the incident at Safi Detention Centre on 16 April 2011, described in paragraph 53, and information on any action subsequently taken by the relevant authorities (paragraph 53);
- a copy of the autopsy report concerning the detainee who died in the context of the incident on 16 April 2011 and a list of all the investigative steps taken in the context of the inquiries concerning that incident (paragraph 53).

Conditions of detention

recommendations

- the Maltese authorities to take the necessary measures to ensure that all immigration detainees currently being held in the two Warehouses at Safi Barracks are transferred as soon as possible to Ta' Kandja Detention Centre and that both Warehouses are in future only used for short-term detention in emergency situations (paragraph 55);
- immediate steps to be taken to ensure that all immigration detainees at Lyster Detention Centre are offered at least one hour of outdoor exercise per day (paragraph 56);
- the Maltese authorities to introduce a regime providing purposeful activities to foreign nationals held at Safi and Ta' Kandja Detention Centres (paragraph 57).

Health care

recommendations

- the Maltese authorities to carry out a thorough review of the current arrangements for the provision of health care in the detention centres for foreigners. More specifically, steps should be taken to ensure that:
 - the working hours of doctors are increased and that for each detention centre one doctor is designated to co-ordinate the health-care services within the centre;
 - the nursing cover is significantly increased in all centres. This should make it possible for a nurse to be present every day (including at weekends) and for the provision and distribution of prescribed medicines to be handled by nursing staff;
 - someone competent to provide first aid is always present on the premises of all detention centres (including at night);
 - all newly-arrived detainees benefit from comprehensive medical screening by a doctor or a fully-qualified nurse reporting to a doctor;
 - whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a foreign national (or which, even in the absence of allegations, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned;
 - all detention centres are regularly attended by a psychiatrist and a psychologist;
 - all medicines prescribed are promptly dispensed thereafter;
 - the confidentiality of medical examinations and data is fully respected (paragraph 59).

Other issues

recommendations

- the Maltese authorities to take steps to ensure that foreign nationals are allowed to receive visits on a regular basis and that specific facilities are set up for that purpose. Relevant information on the visiting arrangements should also be included in the information brochure “Your Entitlements, Responsibilities and Obligations while in Detention” which is given to detainees (paragraph 61);
- the Maltese authorities to take steps to ensure that immigration detainees subject to the disciplinary sanction of “removal from association” have the right to be heard on the subject of the offences which they are suspected of having committed, to present evidence to defend themselves and to appeal to a higher authority against any sanctions imposed (paragraph 64).

comments

- in the event of means of mechanical restraint being used in a detention centre for foreigners, the requirements set out in paragraph 70 should be met. The relevant regulations should be amended accordingly (paragraph 65);
- the existing ventilation system (i.e. a small ventilator) would clearly be insufficient for use during hot weather and should be significantly improved (paragraph 66).

requests for information

- updated information on the steps taken to add the CPT to the list of international bodies to/from which detainees can send/receive letters confidentially (paragraph 62).

Mount Carmel Hospital

Preliminary remarks

requests for information

- comments of the Maltese authorities on the lack of clarity in a number of cases as regards the criteria for transferring prisoners from the CCF to Mount Carmel, or vice versa (paragraph 68).

III-treatment

recommendations

- immediate steps to be taken to ensure that CS gas canisters and similar devices are no longer used against patients at Mount Carmel Hospital (paragraph 70);

- immediate steps to be taken at Mount Carmel Psychiatric Hospital to ensure that whenever a patient is subjected to mechanical restraint:
 - only equipment is used which is properly designed to limit harmful effects, discomfort and pain during restraint (e.g. soft cloth straps);
 - the duration of the application of means of mechanical restraint is for the shortest possible time (usually minutes or a few hours). The exceptional prolongation of restraint should warrant a further review by a doctor;
 - the patient concerned is continuously and directly monitored by a member of the health-care staff; supervision solely by means of CCTV is not sufficient;
 - the patient concerned is always provided with a mattress (paragraph 70);
- staff to be trained in restraint techniques and the use of the restraint equipment. Such training should not only focus on instructing staff on how to apply means of restraint but, equally importantly, should ensure that they apply professional techniques which minimise any risk of harm to the person concerned and that they know how to care for a restrained patient (paragraph 70);
- steps to be taken at Mount Carmel Hospital to ensure that all patients who are considered to be at risk of suicide/self-harm are provided with a suicide-proof mattress and suicide-proof clothing during their stay in a seclusion room (paragraph 71).

Living conditions

- steps to be taken in the Forensic Ward to ensure that:
 - all patients are provided with a bed as well as with lockable space to store their personal belongings;
 - toilets in double- and multi-occupancy rooms are adequately partitioned;
 - the general level of hygiene is improved (paragraph 72);
- the Maltese authorities to take immediate steps to ensure that all patients held in the Irregular Migrants' Ward whose state of health so permits are offered at least one hour of outdoor exercise per day (paragraph 73);
- steps to be taken to improve the artificial lighting in the cells of the Irregular Migrants' Ward (paragraph 73);
- steps to be taken to ensure that all foreign nationals are provided with more congenial and personalised surroundings (including a table and a chair) and are offered recreational activities (paragraph 73).

requests for information

- the activities which are organised for forensic patients on a regular basis (paragraph 72).

Safeguards in the context of police custody

recommendations

- the Maltese authorities to take the necessary measures to ensure that all persons detained by the police can effectively benefit, if they so wish, from access to a lawyer throughout their police custody, including during any police questioning, and that the relevant provisions of the Criminal Code are amended accordingly (paragraph 75);
- the Maltese authorities to take steps to ensure that all juveniles (including those aged 16 to 18) are not subjected to police questioning or required to sign any statement related to the offence of which they are suspected, without the benefit of a lawyer and/or a trusted person being present. The relevant legal provisions should be amended accordingly (paragraph 76).

APPENDIX II

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

A. National authorities

Office of the Permanent Secretary of the Ministry for Justice and Home Affairs

Mario DEBATTISTA	Permanent Secretary
Joseph ST JOHN	Director, Policy Development Directorate
Joseph ELLUL	Assistant Director (International Relations), Policy Development Directorate
Rowna BALDACCHINO	Policy Development Officer, Policy Development Directorate

Office of the Attorney General

Peter GRECH	Attorney General
Donatella Frendo DIMECH	Head of the Office of the Attorney General
Victoria BUTTIGIEG	Senior Lawyer

Malta Police Force

John RIZZO	Police Commissioner
Joseph CACHIA	Deputy Police Commissioner
Andrew SEYCHELL	Assistant Police Commissioner (Irregular Immigration)
Pierre CALLEJA	Assistant Police Commissioner (Criminal Investigation)
Mario SPITERI	Superintendent (Human Resources, General Headquarters)

Corradino Correctional Facility

Abraham ZAMMIT	Director of Prisons
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Detention Service

Lt. Col. Brian GATT	Commander
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Office of the Commissioner for Refugees

Mario Guido FRIGGIERI	Refugee Commissioner
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Agency for the Welfare of Asylum Seekers (AWAS)

Alexander TORTELL	Director (Operations)
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Mount Carmel Hospital

Dr Joseph R. SALIBA	Acting Chairman of the Department of Psychiatry
Mario HILI	Nursing Services Manager

National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention against Torture (OPCAT)

Mary Anne AGIUS Chairperson of the Board of Visitors for Detained Persons
Ivan Daniel MIFSUD Chairperson of the Board of Visitors for the Prisons

B. International Organisations

Office of the United Nations High Commissioner for Refugees (UNHCR) in Malta

C. Non-governmental organisations

Jesuit Refugee Service
Mid-Dlam ghad-Dawl