



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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1 August 2018

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 13 and 16 of the concluding observations on the report submitted by Malta (CCPR/C/MLT/CO/2), adopted at the 112th session in October 2014.

On 5 October 2016, the Committee received the reply of the State party. At its 123rd session, held in July 2018, the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see CCPR/C/123/2). I hereby attach, for ease of reference, a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Taking into account that the next periodic report of the State party is due by 31 October 2020, the Committee requests the State party to provide this information in the context of its next periodic report.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Mauro Politi'.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

H.E. Mr. Olaph Terribile
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Report on follow-up to concluding observations of the Human Rights Committee, CCPR/C/123/2:

New assessment of replies¹

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- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
 - B Reply/action partially satisfactory:** The State party took steps towards the implementation of the recommendation but additional information or action remains necessary.
 - C Reply/action not satisfactory:** Response received but actions or information not relevant or do not implement the recommendation. The action taken or information provided by the State party does not address the situation under consideration.
 - D No cooperation with the Committee:** No follow-up report received after reminder(s).
 - E Information or measures taken are contrary to or reflect rejection of the recommendation**
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Malta

Concluding observations:	CCPR/C/MLT/CO/2, 28 October 2014
Follow-up paragraphs:	13 and 16
Follow-up reply:	5 October 2016 ² (annexes I–III)
Committee's evaluation:	Additional information required on paragraphs 13[E][C] and 16[B][B][C]

Paragraph 13: Abortion

The State party should revise its legislation on abortion by making exceptions to the general ban on abortion for therapeutic purposes and when the pregnancy is the result of rape or incest. The State party should ensure that reproductive health services are accessible to all women and girls throughout the country. It should also increase the number, and ensure the implementation of education and awareness programmes at the formal level (in schools) and at the informal level (through the media and other means of communication) on the importance of using contraceptives and on sexual and reproductive health rights.

Summary of State party's reply

Abortion is illegal. The Criminal Code prescribes imprisonment for 18 months to three years for anyone that causes the miscarriage of any woman; this applies also to any woman who procures her own miscarriage. The Code also provides for imprisonment for 18 months to four years and permanent interdiction against

¹ Adopted by the Committee at its 118th session (17 October – 4 November 2016). The full assessment is contained in CCPR/C/119/3.

² See

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en.



practising medicine for any physician, surgeon, obstetrician or apothecary who knowingly prescribes or administers means whereby the miscarriage is procured.

Nonetheless, abortions are allowed in accordance with the principle of “double effect” (indirect killing) in cases where the mother’s life is at risk and she needs treatment that results in harm to the embryo or fetus. This is strictly observed in cases of ectopic pregnancies and cancer.

The Ministry for Health does not feel that there is a medical need for therapeutic abortion in Malta. It emphasizes the increase in sexual health education and awareness initiatives on prevention measures (see annexes II (2011)–III (2010) to the follow-up reply).

Committee’s evaluation

[E]: The Committee regrets that the State party has not acted upon the Committee’s recommendation and its assertion that the Ministry for Health does not feel there is a medical need for therapeutic abortion. The Committee reiterates its recommendation and requests information regarding plans to bring its abortion regulations and practices into compliance with the Covenant by ensuring effective access to safe, legal abortion when the life or health of a pregnant woman or girl is at risk and when carrying a pregnancy to term would cause the woman or girl substantial pain or suffering, most notably when the pregnancy is the result of rape or incest or when it is not viable.

[C]: The Committee regrets the lack of specific information on educational initiatives implemented after the adoption of the concluding observations on 28 October 2014 to raise awareness about sexual and reproductive health among women, men and adolescents, as well as about effective access to reproductive health services and contraception throughout the country. The Committee requires such information, and reiterates its recommendation.

Paragraph 16: Administrative detention of migrants and asylum seekers

The State party should:

- (a) **Guarantee that administrative detention for immigration purposes is justified as reasonable, necessary and proportionate in light of the specific circumstances and used as a measure of last resort for the shortest appropriate period;**
- (b) **Further develop specific needs assessments of migrants in a vulnerable situation, particularly of unaccompanied children;**
- (c) **Guarantee that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings;**
- (d) **Ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children;**
- (e) **Establish in its legislation a specific time limit and alternatives for detention;**
- (f) **Ensure that administrative detention for immigration purposes is subjected to periodic evaluation and judicial review by an independent judicial body, in accordance with the requirements of article 9 of the Covenant.**

Summary of State party’s reply

(a) and (f) In the light of substantive reforms to the migration detention system, an asylum seeker can be detained only if a detention order, clearly laying down the reasons for ordering the detention, is issued. The reasons replicate those indicated in the recast European Union Reception Conditions Directive



(2013/33/EU). Detention orders are subject to review by the independent Immigration Appeals Board within seven days of issuance. Free legal aid is available at the review stage. Further reviews are conducted every two months thereafter by the Board. However, no asylum seeker may be detained for more than nine months.

Detention may also be pursued in respect of irregular migrants and overstayers pending their return, provided that the return of such persons is feasible. Such detention is governed by the return regulations enacted under the Immigration Act, which transpose the European Union Return Directive (2008/115/EC) and stipulate that a review is carried out by the Principal Immigration Officer (administrative) after a period of three months. Another review by the Immigration Appeals Board is conducted if a person is in detention after six months and further reviews would be conducted should detention be extended.

The authorities have issued a strategy for the reception of asylum seekers and irregular migrants, which lays down practices and guidelines relating to the detention of asylum seekers and irregular migrants (see annex I to the follow-up reply);

(b) As set out in the above-mentioned strategy, vulnerable persons, including all minors, are not subjected to detention at any stage of the procedure. Newly arrived migrants are being accommodated in initial reception centres to ensure that relevant processing (e.g. medical clearance and assessment of the need for detention, where applicable) is conducted. The duration of stay in such a centre cannot, as a general rule, exceed seven days;

(c) No detention orders are issued in respect of minors. In case of doubt as to whether a person is a minor or not, the assumption is that the person in question is a minor;

(d) The principle of the best interests of the child is already being adhered to;

(e) Time limits for and alternatives to detention have been established in legislation. Should alternatives to detention be applied, they cannot extend beyond the maximum nine-month term of detention.

The detention of persons pending return is limited to 6 months; however, it may be extended to a maximum of a further 12 months.

Committee's evaluation

[B] (a) and (f): The Committee appreciates the adoption of revised legislation and policies that abolish the automatic and mandatory detention of asylum seekers and provides for, inter alia, legal grounds for detention and judicial review of the lawfulness of detention. It requires information on the implementation in practice of the new legal regime.

While noting the reduction to nine months of the maximum period of detention of asylum seekers, the Committee requests clarification as to whether: (a) relevant legislation and policies provide explicitly that the detention of an asylum seeker is a measure of last resort, applied for the shortest appropriate period, and must be justified as reasonable, necessary and proportionate in the light of the circumstances; and (b) there are plans to reduce further the initial judicial review of detention orders set at seven working days following the adoption of the decision.

[B] (b), (c) and (d): While appreciating the information on the treatment of migrants in vulnerable situations, including minors, the Committee requires information on the development of specific needs assessments of such migrants, particularly unaccompanied children, and clarification as to the maximum duration of stay in an initial reception centre, beyond the seven days.

The Committee welcomes the information that no detention orders are issued in respect of minors and that the principle of the best interests of the child is adhered to.



It requires further information on specific measures taken to ensure compliance with that principle.

[C] (e) The Committee notes that, under the revised legislation, irregular migrants could be detained for purposes of return for up to 18 months (6 months initially, with possibility of extension for a further 12 months). It however requires information on measures taken to ensure that detention beyond the initial six-month period is permissible only if the return within six months could not be secured despite vigorous efforts by the State. The Committee regrets the absence of specific information on alternatives to detention in national legislation and policy. The Committee reiterates its recommendation and requests such information, including clarification as to whether alternatives to detention are examined before deciding on detention, and on measures taken to ensure that such alternatives are effectively implemented in practice.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 31 October 2020.