



GNV 1/7/29-204

**Ms Sarah Cleveland**

Special Rapporteur for Follow-up to Concluding Observations  
Human Rights Committee  
Office of the High Commissioner for Human Rights  
Palais des Nations  
1211 Geneva 10

Geneva, 4<sup>th</sup> October 2016

Ms Special Rapporteur,

I refer to your letter dated 26<sup>th</sup> September 2016, in which you refer to the Follow up to Concluding Observations of the Human Rights Committee and in particular paragraph 24 that requested Malta to provide further information on the specific areas identified in paragraphs 13 and 16.

The Government of the Republic of Malta hereby informs that in relation to **paragraph 13** on Abortion the de jure legal status of abortion in Malta holds that the practice is illegal. Malta is the only country in the European Union to prohibit abortion entirely. However, as with other European nations, de facto procedures differ from the exact letter of the law.

When it comes to the subject of abortion in Maltese law, the Criminal Code states: "Whosoever, by any food, drink, medicine, or by violence, or by any other means whatsoever, shall cause the miscarriage of any woman with child, whether the woman be consenting or not, shall, on conviction, be liable to imprisonment for a term from 18 months to three years."

The same punishment will apply to any woman who procures her own miscarriage.

Moreover, the Criminal Code specifies: "Any physician, surgeon, obstetrician, or apothecary, who shall have knowingly prescribed or administered the means whereby the miscarriage is procured, shall, on conviction, be liable to imprisonment for a term from 18 months to four years, and to perpetual interdiction from the exercise of his profession."

Although abortion is illegal according to Maltese law, the authorities *do allow for abortions in cases where the mother's life is at risk, as in reality doctors* observe the principle of "**double effect**" in Malta.

The principle of double effect means an indirect killing and not a direct one, therefore this is not strictly considered to be abortion.



According to the double effect principle, if a mother needs to be given treatment and as a result the embryo or foetus is harmed, this is morally right. In cases of ectopic pregnancies and cancer, the principle of double effect is strictly observed and the patient and family are consulted when treatment is being given.

Furthermore, Malta's Ministry for Health does not feel that there is a medical need for therapeutic abortion in Malta. It emphasizes increasing education and awareness initiatives on prevention measures on sexual health in line with our national sexual health policy and strategy (A copy of the National Sexual Health Policy for the Maltese Islands – 2010, and the National Sexual Health Strategy – 2011 are hereby being submitted).

As part of the judiciary's salaries review, magistrates are attending seminars on particular subjects to ensure consistency in the interpretation of laws and a seminar on End of Life was in the pipeline.

The Government of the Republic of Malta replies below to the areas identified in **paragraph 16** on 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;**

It should be noted that the Maltese authorities have introduced substantive reforms to the migration detention system, in particular through amendments to the Immigration Act (Cap. 217 of the Laws of Malta) and the Reception Conditions Regulations under the Refugees Act (Cap. 420). As a consequence of the amendments in question, an asylum seeker may only be detained if a detention order is issued, which detention order must clearly lay down the reasons for which detention has been ordered, in line with the reasons indicated in the mentioned Regulations. The reasons in question, which include inter alia the verification of identity, reproduce the reasons indicated in the European Union's re-cast Reception Conditions Directive. It should also be noted that detention orders indicate that the decision by the Principal Immigration Officer (PIO) is subject to review by the independent Immigration Appeals Board. The review must be held within 7 days from the issuance of the detention order by the PIO. Free legal aid is available at the review stage.

It should be noted that if an asylum seeker is in detention after a period of 2 months, another review is conducted. Further reviews are conducted every 2 months thereafter if the person is still in detention. In accordance with the aforementioned Regulations the detention of asylum seekers may in no case exceed a period of 9 months.

Detention may also be pursued in respect of irregular migrants and over-stayers pending their return, provided that the return of the persons in question is feasible. The Return Regulations enacted under the Immigration Act (Cap. 217), which transpose the European Union's Return Directive, lay down the rules relating to such detention. The Maltese authorities have also issued a Strategy for the Reception of Asylum Seekers and Irregular Migrants, which strategy also lays down practices and guidelines relating to detention of asylum seekers and irregular migrants. A copy of the Strategy is attached. It should also be noted that the legislation referred to above is available online on the Laws of Malta website.

**(b) Further develop specific needs assessments of migrants in a vulnerable situation, particularly of unaccompanied children;**

It should be noted that in accordance with the Strategy referred to in point a) above vulnerable persons, including all minors, are not being subjected to detention at any stage of the procedure. As a matter of fact, newly arrived migrants are being



accommodated in Initial Reception Centres, which are intended to ensure that relevant processing (for instance medical clearances, and assessment of need for detention where applicable) is conducted. The duration of stay in an Initial Reception Centre cannot, as a general rule, exceed a period of 7 days. In the case of vulnerable persons, as well as other migrants in respect of whom detention decisions are not issued, arrangements are made for accommodation in apposite Open Reception Centres.

Needs assessments of vulnerable persons are conducted by the Agency for the Welfare of Asylum Seekers (AWAS).

**(c) Guarantee that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings;**

It should be noted that no detention orders are being issued in respect of minors; hence the issue does not arise. Wherever the authorities are in doubt as to whether a person is a minor or not, it is assumed that the person in question is a minor.

**(d) Ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children;**

This principle is already being adhered to; even more so now as a result of the reform carried out.

**(e) Establish in its legislation a specific time limit and alternatives for detention;**

Time limits for detention and alternatives to detention have been established in legislation. An asylum seeker may not be detained for more than 9 months, in accordance with the Reception of Asylum Seekers Regulations. Moreover, should alternatives to detention be applied in accordance with the same Regulations, these provisions cannot extend beyond the maximum term of detention.

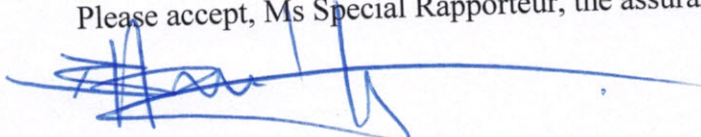
As regards those detained pending return, the legislation specifies a period of 6 months, which may however be extended to a maximum of a further 12 months.

**(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.**

The detention of asylum seekers in accordance with the Reception of Asylum Seekers Regulations is subject to a review after a period of 7 days from the issuance of the detention order. This review is conducted by the independent Immigration Appeals Board, and the asylum seeker is entitled to free legal aid at this stage of the procedure. Moreover, should an asylum seeker be still in detention after a period of 2 months, another review by the same Board is conducted. Further reviews are conducted every 2 months thereafter; however, no asylum seeker may be detained for more than 9 months.

The detention of irregular migrants and over-stayers is regulated by the Returns Regulations, which stipulate that a review is carried out by the Principal Immigration Officer (administrative) after a period of 3 months. Should a person be still in detention after a period of 6 months an independent review by the Immigration Appeals Board would be conducted. Should detention be extended, further reviews would be conducted by the Board.

Please accept, Ms Special Rapporteur, the assurances of my highest consideration.



f/ Olaph Terribile  
Permanent Representative of the Republic of Malta to the United Nations Office and  
Other International Organisations in Geneva