

Report

International Fact-Finding Mission

Locking up foreigners, deterring refugees: controlling migratory flows in Malta

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1- MISSION BACKGROUND

1-1 Purpose of the mission and mandate

During the first quarter of 2003, the attention of FIDH was drawn to the situation of asylum-seekers held in detention in Malta. Subsequently this information was confirmed by a number of sources: Amnesty International reports on the return of Eritrean citizens; a report (dated July 2003) by the Maltese Jesuit Refugee Service (JRS Malta) association; information communicated by the European Migreurop network which brings together NGOs and researchers working on the camps for foreigners in Europe; telephone calls between GISTI and asylum seekers detained in a number of centers describing detention conditions, incidents in the detention camps (hunger strikes, attempted escapes, attempted arson) and their concerns about the processing of their asylum applications; and a report by the MAHR (Malta Association of Human Rights), a member organisation of the FIDH.

The mission took place from 21 to 26 February 2004.

The mandate assigned by FIDH covered an examination of the situation of asylum-seekers and foreigners in Malta and in particular of the conditions in which they are held in administrative detention.

As the fact-finding and meetings progressed, the delegation discovered that the conditions in which immigrants are held in administrative detention are really problematic, but that beyond them the entire Maltese policy of managing immigrant flows - especially of asylum-seekers - is an issue, especially in view of Malta's accession to the European Union on May 1, 2004. This question is not raised in the international reports currently available. The question is also side-stepped in the pre-accession reports presented by the European Commission to the Council¹.

It therefore appeared necessary to broaden the scope of this report to cover more than the initial objective. The report is therefore presented in two main parts:

- 1 - Systematic detention of "illegal" aliens
- 2 - A 'trompe-l'œil' right to asylum

The recommendations of the FIDH delegation are structured

around these two issues, making a distinction between emergency measures and measures that should result from a reform of the law. Given Malta's special geography and the fact that this country serves as a transit point for migrant flows from Africa to Europe, a recommendation is made to the European institutions in addition to those made to the Maltese authorities.

1-2 Persons and NGOs met

On February 10, the FIDH Secretariat asked the Maltese authorities to receive the delegation and authorize it to visit the detention centers. These requests were sent to:

- Mr. Tonio BORG, Minister of Justice and Home Affairs
- Mr. Joe BORG, Minister of Foreign Affairs²
- Mr. Charles BUTTIGIEG, Refugee Commissioner
- Mr. Anton TABONE, Speaker of the Maltese Parliament

Meanwhile, the MAHR (Malta Association of Human Rights), an affiliate member of FIDH, had scheduled meetings with Maltese NGOs, the Emigrants' Commission and several lawyers working with foreigners.

By fax dated February 23 - i.e. while the mission was under way - and signed by the Permanent Secretary to the Ministry for Justice and Home Affairs, the FIDH delegation was refused authorization to enter the detention camps. The refusal was based on the fact that such an authorization to visit the centers could be granted only to "UN or Council of Europe or EU Institutions, Ombudsman / Prison Board of Visitors [and] Maltese NGOs specializing in migration matters"³.

As for requests for meetings, they received no response from members of the government and the President of the Parliament.

Our delegation therefore met with:

- Mr. Charles BUTTIGIEG, Refugee Commissioner
- Mgr Philip CALLEJA, Emigrants Commission

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- Ms Ruth FARRUGIA, representative of the UNHCR in Malta prior to publishing the CPT report.
- Dr. Katrine CAMILLERI, Fr. Pierre GRECH MARGUERAT, Malta Jesuit Refugee Service (JRS) In addition, our delegation was able to obtain the latest (2002 and 2003) reports of the Maltese Ombudsman, Mr. Joseph Sammut, in each of which a section was devoted to the detention of foreigners. In early 2004, at the request of the Labour Party, the Ombudsman also carried out an enquiry on the conditions in which these foreigners were held at the Mount Carmel psychiatric hospital, the conclusions of which were made public on 16 February 2004.
- Dr. Frank CASSAR, lawyer
- Dr. X.A., lawyer
- M. David BUSUTTIL, Malta Association of Human Rights (MAHR)
- M. Mowafah TOUTOUNGI, the Iman of the Sliema mosque
- Mr. X. B., a Moslem cleric working with detainees
- Mr. X.C., a Palestinian refugee housed at the open Hal Far center
- Mr. A.B., a detainee held at Hal Far center
- Mr. B.C., a detainee held at Hal Far center

A number of these persons devoted a substantial amount of time to us and made documents and information available to our delegation. We wish to thank them for that.

1-3 A series of recent investigations

Between the decision to organize an FIDH mission and the mission itself, investigations were also initiated by two international bodies:

- Mr. Alvaro Gil-Robles, Council of Europe Human Rights Commissioner, visited Malta from 20 to 21 October 2003;
- A delegation from the European Committee for the Prevention of Torture carried out an ad hoc visit from 18 to 22 January 2004; CPT missions had previously taken place in 1990, 1995 and 2001.

Only the report of the Council of Europe Human Rights Commissioner⁴ had been published at the time of the FIDH mission; a response from the Maltese authorities was awaited

1. See, in particular, the reports of the European Commission to Council dated 5 November 2003 and 24 March 2004.

2. As of 1 May Mr. Joe Borg has held the office of Maltese European Commissioner.

3. Fax from the Ministry for Justice and Home Affairs to FIDH dated 23rd February 2004.

4. Council of Europe: *Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his visit to Malta, 20-21 October 2003* ; Strasbourg, 12 February 2004 [CommDH(2004)4].

2- MALTESE IMMIGRATION POLICY - BACKGROUND

2-1 Lying along the migration route from the South to Europe

Malta is one of the 10 countries acceding to the European Union during the latest enlargement. The Mediterranean island is the smallest of the new accession countries (smaller than the British Isle of Wight); it also has the highest population density (395,000 inhabitants, 316 km² area). These facts were long used by opponents of accession as an argument in their favor: the Maltese feared being diluted in the larger Europe and losing their cultural and social identity, which is highly specific as a result of their insularity.

In addition, Malta lies geographically along the natural migration route from the South (Africa, Middle East) to Europe: it lies 290 km east of Tunisia and north of Libya and only 93 km from southern Sicily - i.e. Italy. This explains the waves of sometimes substantial numbers of foreigners arriving in the country since the end of the 1980s. It should be pointed out that the vast majority of these migrants state that Malta was not their destination and that they had arrived there either fortuitously (vessel capsized in Mediterranean; people-smuggler abandoning them on the coast) or deliberately in order to seek a way to reach the European coast.

Statistics regarding the phenomenon are hard to come by. For example, our delegation was unable to obtain any precise information concerning requests for entry at the airport. There were an alleged 2,204 refusals of entry in 2002 but it has been impossible to check this figure. On the other hand, we obtained precise data concerning group arrivals by sea. It lists the date of arrival of the vessel and the name of the port or the coastal area; it also shows the number of persons rescued or intercepted at sea by the Armed Forces.

In 2002, for example, of a total of 1,686 persons arriving by sea, 466 had been intercepted by the Armed Forces. In 2003, of a total of 497 people landing, 80 had been intercepted by the Armed Forces. It should be pointed out that some of the vessels transporting these migrants - generally fishing boats - contained more than 200 passengers.

2-2 Constraints cited by Malta

In view of these facts, the entire Maltese immigration and asylum policy is predicated on two constraints regularly cited

by the Maltese authorities: inability to receive the foreigners arriving in successive waves, and inability to settle them in Malta.

The spirit and the application of two laws currently in force should be interpreted against that backdrop:

- **The Immigration Act of 21 September 1970**, amended in 2002, *"to restrict, control and regulate immigration into Malta and to make provision for matters ancillary thereto"*

- **The Refugees Act of 1 October 2001**, *"to make provisions relating to and establishing procedures with regard to refugees and asylum seekers"*

Respecting to the reception of the migrants, the Maltese authorities claim that the waves of sometimes substantial arrivals create difficulties for a small country with no ad hoc infrastructure. This thereby justifies having no other solution than to systematically place what are termed "illegal" foreigners, including asylum-seekers, in administrative detention. The FIDH delegation observes that this argument is difficult to support nearly three years after the massive arrivals began. The phenomenon is now familiar, and it is known to follow seasonal pattern: unexpected emergencies no longer constitute sufficient justification for the lack of human and material investment that would make it possible to provide migrants with treatment respecting their dignity.

And yet apparently the views of the Maltese government are shared by the various international observers drawing up reports concerning Malta in recent years and by the Ombudsman as well. Although they all would seem to generally judge harshly the conditions of detention in which foreigners are held by Malta, they seem nevertheless to agree with the idea that the country's specific features explain the emergency measures taken with respect to migrants and refugees. At best, they recommend that the government seek alternative solutions to administrative detention for asylum-seekers only.

As for the European authorities called upon to assess the situation in Malta as part of pre-accession reviews, they seem also to accept that the system of detaining "illegal" foreigners as an accomplished, even legitimate, fact and confine themselves to recommending that a legal framework be defined for it⁵.

On the question of foreigners integration, the limits invoked by Malta are based on the idea that a country with such a high population density and an average income far below the European⁶ one cannot provide the resources needed to enable a foreign population - which, by volume over the last two years, is equivalent to 50% of the country's births - to have access to the resources to settle, even temporarily, on the island. It also can be added that according to the observation made by ECRI in its second report on Malta (2002)⁷, despite a general spirit of tolerance toward foreigners, reflecting the island's multiculturalism, prejudice - and even some hostility - exists against groups of foreigners, especially persons of Arabic origin and black Africans, and this is reflected in housing and job discrimination.

Considering that migrants are not really welcomed in Malta, the Maltese authorities, without saying so outright, have made a major effort to encourage foreigners to leave the country - be they statutory or humanitarian refugees or persons refused asylum but released from detention centers. This is a task entrusted in particular to the Emigrants' Commission.

2-3 EU accession: a further constraint

Although the issue is never mentioned in the recent international and European reports, Malta's accession to the European Union is not expected to directly solve the problems raised by the influx of foreigners, but it does create a number of additional obligations for the country.

Regarding the right to asylum, the country will soon be called on to adapt its legislation and its practice to community standards concerning the reception conditions for asylum applicants and procedures for determining refugee status. Of course this legislation is not very binding on member countries and the framework it establishes will not suffice to correct the fundamental problems currently observed in Malta (see below). But Malta should at least be prompted to implement the minimum standards defined with respect to detention of asylum-seekers and procedural deadlines.

The fact remains that accession also includes Malta in the "Dublin system"⁸. Application of that regulation may seriously conflict with the country's current policy of encouraging people to leave. Even against the backdrop of a shared interest between the refugee - who does not want to remain in Malta - and the Maltese authorities - who do not want to be burdened with him - the rule of country of first entry in the EU is expected to oblige Malta to process requests for asylum from those "transiting" through Malta and to offer recognized refugees the means to live there.

As for those foreigners who have not applied for asylum and who, having transited through Malta, have found a way to "dissolve into" the mass of migrants circulating in Europe, they will ultimately be subject to the Schengen agreement. This means that they will have to be deported from the EU countries in which they are staying and "returned" to the Maltese authorities; it will then be up to these authorities to remove them.

In both cases, Malta would thus be forced to manage a flow of immigrants, which will in all likelihood not abate, and with which it considers it does not have the resources to cope. Given this unavoidable process - barring adoption by the country of a policy of refusing entry to all foreigners at its borders - close involvement of the EU in the procedure for receiving migrants and asylum-seekers in Malta is indispensable.

5. "(...) Malta should (...) extend legislation to cover the issue of detention procedures concerning persons having received 'deportation orders', and persons whose entry has been refused" in European Commission: *Comprehensive monitoring report on Malta's preparations for membership*; 5 November 2003.

6. Malta's GDP is estimated to be 55% of the average of the 15-member EU.

7. ECRI: *Second report on Malta adopted on 14 December 2001 and made public on 23 July 2002*; CRI(2002)22.

8. The Dublin regulation sets out rules for determining the member state responsible for examining an asylum application lodged in one of the Member States by a third-country national, i.e. the first country through which the foreigner entered community territory.

3- THE FACTS

Over a period of a few months, several reports on detention conditions for foreigners have been made public. But in Malta itself the public is largely unaware of the issue, except when the press reports incidents that occur in the camps because of their dramatic (suicide, hunger strike) or spectacular (escape) human consequences, and the political debate remains muted. The FIDH delegation also observed that only few NGOs are able to take action in this field. This is largely due to their lack of resources, but also to the fact that they have no legal standing unless they are affiliated with International NGOs such as Amnesty or the Red Cross.

The information used to prepare the mission was thus varied and ultimately meager. In addition, it was virtually exclusively focused on the conditions of detention of asylum-seekers and migrants. It was therefore only in the course of the mission, as we received testimony and analysis from international observers and Maltese NGOs - particularly the Jesuit Refugee Service - and from several lawyers and detainees, that we understood the underlying problems relating to the Maltese asylum procedure itself, especially when it is compared to the relevant international instruments.

The observations of our delegation are broken down into two broad issues: the detention of foreigners and the exercise of the right to asylum.

3-1 Systematic detention of foreigners

3-1.1 Detention of "illegal" foreigners as a way to control immigration

As part of the wave of asylum and immigration reform, entry into the country without valid papers was decriminalized in December 2002. On entry, the undocumented foreigner - commonly known as a prohibited immigrant - is not subject to any criminal prosecution. On the other hand all undocumented migrants - including asylum-seekers - are systematically placed in closed centers under the administrative detention system.

Beyond the questionable legal basis of this policy of depriving foreigners of their freedom, the conditions in these camps have proven unacceptable from the point of view of respect for human dignity, to such an extent that for a number of years there have been an increasing number of reports condemning them by the Ombudsman, the Council of Europe, the CPT,

Amnesty International. The Maltese response, in terms of its position and the steps it has taken, is far from satisfactory and far from meeting the standards in force in the European Union.

3-1.1.1 The basis for a policy of generalized detention of immigrants

The policy of placing foreigners in detention is the result of the implementation of the provisions of the Immigration Act which considers that any person in the country without papers (right to enter, visa, right of movement or transit, residence permit) is a prohibited immigrant and as such must be placed in administrative detention with a view to his removal from Malta.

Immigration Act. To restrict , control and regulate immigration into Malta and to make provisions for matters ancillary thereto.

Any person, other than one having the right of entry, or of entry and residence, or of movement or transit [...] may be refused entry, and [...] he shall be a prohibited immigrant [section 5(1)]

Where leave to land is refused to any person arriving in Malta on aircraft, such person may be placed temporarily on land and detained in some place [...] [section 10(1)]

Where leave to land is refused to any person arriving in Malta by any other means, such person at his own request may [...] be placed temporarily on shore and detained in some place [...] [section 10(2)]

Any person, while he is detained under sub-article (1) or (2), shall be deemed to be in legal custody and not to have landed. [section 10(3)]

If any person is considered by the Principal Immigration Officer to be liable to removal as a prohibited immigrant under any of the provisions of article 5 [...] the said Officer may issue a removal order against such person [...] [section 14(1)]

Upon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta. [section 14(2)]

Asylum seekers treated as illegal aliens

It should be pointed out that this text applies to both so-called prohibited immigrants and asylum-seekers, since the Refugees Act of 2000 does not provide for any specific protections for the latter if they have entered the country "illegally". On the contrary, the law seems to consider this as one of the usual measures that can be applied to them. With no defined legal basis, this placement in detention applies not just to foreigners who have applied for asylum once they

have been detected undocumented within the country but, under a practice pre-dating the new legislation, to all asylum-seekers who do not request asylum as soon as they arrive (see below).

In addition, and although the legislation on asylum contains a prohibition on expelling or deporting an asylum-seeker until such time as his application has received a final determination, the same detention measures apply to those refused asylum who have appealed the decision of the Refugee Commission.

It seems surprising that this practice of placing so-called "illegal" foreigners in detention even though they have requested asylum has not been identified by the European Union institutions as one of the reforms required for Maltese accession. However depriving asylum-seekers of freedom contravenes the principles governing implementation of the Geneva Convention and the European Convention for the Protection of Human Rights, to which Malta is a party.

During his visit in October 2003, Alvaro Gil-Robles, Human Rights Commissioner at the Council of Europe, stated that: *Regarding asylum seekers, I would like first of all insist that, in principle, they should not be detained when they have not committed any offence, and that States should take the necessary steps to avoid incarceration. [...] . The law should allow detention only in exceptional circumstances*⁹. This comment is especially warranted in view of the fact that, as he points out, Malta had recently created "open centers" where refugees are placed; this experience could therefore be extended, similarly to the practice of other European States. Failing that, like JRS, one of the few NGOs to work in the camps¹⁰, the Commissioner suggests that a "system of bail or warranty tied to an obligation to report daily to a police station"¹¹. He asks, in any case, that the legislative texts on immigration and asylum law be amended to provide an alternative to detention and that detention be the exception and strictly circumscribed by law.

Maltese justifications for detaining migrants

The Maltese authorities justify their practice by saying that virtually all foreigners arriving in Malta request asylum. Under these circumstances they feel that there is no real distinction between the two types of population; this is tantamount to considering that asylum-seekers are in principal illegal migrants.

Responding to criticism, they add that they have no choice in any case because of the increasing numbers of foreigners

arriving on their soil (*"The country is not prepared for such an influx"*¹²). But the fact is that as each year goes the argument based on emergency and crisis is repeated.

This justification loses some of its force when Tonio Borg, Minister of Home Affairs, also mentions reasons related to security. He feels that leaving migrants at large generates a risk of creating more problems, not only for Malta but also for neighboring countries¹³. In Malta's response to the Human Rights Commissioner, the same argument is given, to the effect that the government *"does not considers that it would be in Malta's national interest to do away with the policy of detention. If [the migrants] [...] had been immediately released, they would have caused upheavals on the labour market and major problems regarding their accommodation"*¹⁴.

These official explanations suggest that Malta is subject to the same syndrome as a large number of EU countries and is applying the same restrictive policy to both asylum and immigration. The immigrant detention system - which, it must be remembered, has been practiced for over thirty years - appears dictated by the goal of controlling the influx of migrants and discouraging those who wish to emigrate to Europe from using Malta as a transit country (*The specific situation [...] militates in favour of a firm stand against irregular immigration*¹⁵).

Nevertheless, given the island's geographic location, the reality is that Malta is and will remain a point of passage on the migrant route from Africa and the Middle East to Europe. And even with a readmission agreement reached with Libya - or other countries of the Mediterranean rim¹⁶- there is every reason to expect that the accession of countries to the European Union reinforces their status as transit countries, as is likewise pointed out by A. Gil-Robles report (2004).

Scope of immigrant detention

The status of persons detained therefore varies:
undocumented foreigners entering the country who have been refused entry;
foreigners apprehended in the country who either lack a residence permit after illegally entering the country or whose residence permit has expired;
foreigners rescued or intercepted at sea by the military authorities;
foreigners who have applied for asylum or humanitarian or temporary protection following notification of refusal of entry or apprehension in the country;
Asylum-seekers refused asylum by the Refugee

Commissioner who are awaiting the outcome of their appeals. This, according to everyone interviewed, is numerically the largest category, reflecting the duration of the appeals process;

asylum-seekers refused asylum on appeal who refuse to leave the country and cannot be deported;

foreigners under deportation order, especially those whose deportation has been suspended pending confirmation of their identity by the authorities of their country of origin;

foreigners volunteering to return but who are unable to pay for their transportation;

asylum seekers having obtained protection (conventional or humanitarian) but for whom no housing is available (see below).

The list of persons detained in these immigrant camps is confidential and no official statistics are available to provide a clear picture of the phenomenon as a whole. According to the Ministry of Home Affairs, in December 2002 the number of foreigners held was 900, in October 2003 it was 550 and at the time of our mission it was 240¹⁷.

As we see, the figures fluctuate rapidly and widely as groups of people are deported or their cases processed, and also according to the seasonal pattern of arrivals. The information on the number of so-called illegal immigrants must be compared over time to gain a better overview of the situation; keeping in mind that the majority are held for several months or even several years. In 2002, the number of arrivals by ship is estimated at 1,686, with 700 persons were "removed" the same year. In 2003, the figures are respectively 497 and 300. It should also be pointed out that this data concerns only arrivals by sea and not arrivals recorded at the airport or persons apprehended within the country.

According to the Ombudsman's report dated May 2002¹⁸, the system was originally designed for approximately one hundred people and beyond that he believes the country faces an emergency situation. It is therefore clear that when applied to a number of arrivals representing 5°/° of the population (i.e. half the country's annual number of births), as it was the case in the 2002-2003 period, and over a lengthy period of time, detention structures are totally inadequate.

The emergency designation nevertheless cannot apply to a situation that has lasted for over two years. As early as 2002, the Ombudsman, recognizing the absence of immediate solutions, deemed it necessary to set up a genuine long-term plan¹⁹. Against that backdrop, it is difficult to interpret the failure of the Maltese authorities to put forward alternative

proposals as anything other than the expression of a determination to criminalize foreigners in order to deter them.

3-1.1.2 Detention centers for foreigners

Most of the "camps" set up in Malta are closed detention centers. Information concerning these facilities set up for foreigners is not made public. It can only be checked indirectly by talking to the few people (lawyers, NGOs, religious representatives) who have access to them or have lived there. But even then, the data is to some extent uncertain. Some camps have been, or are being, closed down, while others have been set up to cope with an influx of immigrants.

Camp status and organization varies widely

The term "camp" covers a variety of facilities: military barracks, military housing, sometimes even tents at periods of strong influx. Originally they were supposed to be administered by the police and most of the "illegal" immigrants were held in a group at Ta'Kandja, the police headquarters. But in order to cope with the growing number of arrivals, the Maltese authorities gradually opened new centers within military compounds.

There is no legal basis setting out the general conditions of incarceration in these camps and no regulation defining how they are to be operated, particularly with respect to prisoner rights and the limits on the decision-making powers granted to guards.

In the centers coming under military authority, standing orders (dated 14 March 2002) do however set out the daily routine of the detainees (meals, cleaning, recreation, rest) and measures to be taken in case of illness. There is no such regulation in the center under police authority and the detainees as well as outside observers say that there is a marked difference in the practices of police and military guards. The army imposes strict rules but is better prepared to protect people, whereas the police appears to be organized in a more flexible manner but is also less disciplined.

" Procedures used by the Police Force contrast sharply with the disciplined organisation of the Armed Forces of Malta which was quick to issue detailed standings orders on the duties of Army personnel and the methods that AFM members should adopt when dealing with illegal immigrants "

" The Police Force is not adequately equipped to organize and handle arrangements for the detention of illegal migrants "
Annual report of the Ombudsman ; 2002 (p. 104-105)

Thus, the time allotted to outdoor exercise, the right to receive visitors and to use the telephone, etc. vary from one center to another. Camp organization varies from one camp to another and depending on the oversight authority or director, as well as over time depending on influx. This shows that the management of each center is to some degree subject to arbitrary assessment of the situation by the person assessing it.

It should be pointed out that this absence of common rules - and therefore of an ability to carry out inspections - could be a source of serious problems. The fact that acts of violence by guards against detainees are almost never reported (see below) and that, on the contrary, there is a large volume of testimonies - including from detainees - on the fact that some guards are obviously doing their utmost - albeit within the limits of their enforcement duties - to make the detention of foreigners less inhumane can by no means be considered as grounds for exemption from a legal and regulatory basis for administrative detention.

The fact that the "guards" work only part time and are trained for other work would seem to make it especially essential for the organization of the centers to be clearly spelled out. As the Ombudsman underlines, the guards are completely unfamiliar with the law governing foreigners and do not recognize the psychological effects that detention for an undetermined time has on detainees. It would therefore be advisable for them to at least be trained in this function. This is also one of the comments made by the European Commission in its monitoring report (November 2003) with a view to Malta's accession.

"Open" centers

In parallel with these detention centers, an open camp to house some one hundred people, including families, was recently created, in June 2003, in the immediate vicinity of Hal Far and another was set up in Lyster, also housing some one hundred refugees .

This is the first destination of foreigners released following acceptance of their request for asylum. They are free to come and go but those who have obtained humanitarian protection have only a short- term (6-month) renewable residency permit and are not allowed to work.

Open centers also house asylum-seekers whose appeals are unduly protracted, or persons refused asylum to whom a "special treatment" has been granted (see below).

This possibility of "supervised" release reflects the fact that

supervision of the movements of foreigners is facilitated by Malta's status as a small island. It shows that alternatives to administrative detention of asylum-seekers do exist.

The five camps identified in February 2004

At the time of the mission, based on information collected and two on-site visits, five camps for foreigners were identified:

- **Hal Far:** construction started in the summer of 2000; it began to effectively operate in February 2002, and was intended to replace the Ta'Kandja police complex and to receive the entire population of migrant detainees. It included both a detention center under the authority of the armed forces receiving only unmarried persons (80 people maximum²⁰) and, just outside, an open center.

- **Hal Safi:** military base under the authority of the armed forces where a few families are placed, in addition to unmarried persons;

- **Lyster Barracks:** camp under the authority of the armed forces and made up of a barracks and a military housing complex. Originally it was developed to receive families - with the wife sometimes pregnant - and single women. Single men were placed there only later. It has received up to 230 asylum-seekers. The conditions of detention in this center were strongly condemned by JRS in particular. It was not in use in February 2004 during our mission.

- **Floriana:** at Police HQ (300 to 400 people); the press gave wide coverage to the living conditions of detainees following an attempted escape. It was also closed at the time of the mission.

- **Ta'Kandja (Siggiewi):** placed under the authority of the police. The CPT recommended that this detention center be closed in 2001 ("premises [...] characterised by filth and disrepair. [...] miserable situation")²¹.

In his 2002 report, the Ombudsman also deemed the center unsuited to receive detainees. However in 2004 it seems to be still in use, the Maltese authorities having claimed in their response to the CPT (July 2003), as previously, that they were obliged to cope with an "emergency" caused by large numbers of arriving refugees ("*In view of the unusual and exceptional situation encountered during this year. [...] there was no alternative but to utilise [...] This would be closed down as soon as possible*")²². But in view of the "works" recently carried out on the premises (electricity, plumbing, woodwork renovation, increase in the number of showers, new television set, etc.) the temporary would seem set to last and the closure announced to once again be postponed! The center is on the list of premises inspected by the CPT during its visit of January 2004.

In addition to the five detention centers, there are also:

- the warehouse at the International airport, where foreigners being deported are held; it is not a place of residence, even though they may have to sleep there;
- Mount Carmel Hospital to which detained foreigners are sent when they show signs of psychiatric disorders,
- a housing center for a few unaccompanied minors at the Vincenzo Bugeja Institute (Dar is-Sliem) operated by the HSBC Cares for Children Fund.

The FIDH Office sent a request to the relevant authorities for authorization to go to the holding camps. The answer²³ was negative, on grounds that visiting rights can be given only to:

- "UN or Council of Europe or EU Institutions ;
- Ombudsman/Prison Board of Visitors ;
- Maltese NGO's specialising in migration matters"

As a general rule, few people receive permission to visit the detained foreigners. The 2002 report of the Ombudsman highlights his repeated efforts to support the request of an NGO wishing to enter Ta'Kandja which was being obstructed by the administration. These efforts only succeeded after a year, after the Minister of Home Affairs intervened. In his 2003 report, the Ombudsman reiterates the request that NGOs be allowed to visit the centers.

We nevertheless did succeed in gaining access to the Half Far center where we met two detained migrants. In addition to their testimony, we received the testimony of a Palestinian who recently obtained refugee status and was placed in an open center, as well as that of several NGO representatives, Moslem clerics working with foreigners and several lawyers. These testimonies corroborate the conclusions drawn from the various enquiries recently published and supplements them with respect to a number of points.

3-1.2 Living conditions in the camps

All testimonies converge to denounce the conditions in which foreigners are detained. The criticisms highlight as much material issues as the psychological ones - deemed incompatible with the respect of fundamental rights ("appalling conditions"²⁴) - and far inferior to those at the recently renovated Corradino prison²⁵. The Maltese government acknowledges the problem, but states that the Maltese resources are limited and that it "does not consider it right to sacrifice other projects having higher national priority to construct a new detention centre for immigrants."²⁶ This statement echoes that of Tonio Borg, the Interior Minister, who asked: "How is a small country with limited resources be expected to invest such amounts in new detention centers?"²⁷

3-1.2.1 Material conditions are precarious but nonetheless perennial

Originally, immigrants were withheld at the police facilities, in Ta'Kandja. In order to face the increasing flow of foreigners arriving in Malta in so-called illegal situation, detention centers had to be multiplied. But none of these centers had been built for the long-term detention of hundreds of people, single men and women, unaccompanied minors, pregnant women, and families with children. The detainees' security cannot really be guaranteed, sanitary conditions are deplorable, promiscuity ubiquitous, even though the detainees do not really complain as their concerns are focused almost obsessively on the uncertainties of their future.

The buildings are ill-adapted to long-term detention

As Maltese officials expressed their will to improve the immigrants' cause, the Hal Far barracks were especially renovated. These barracks were supposed to replace the Ta'Kandja center and serve all the asylum seekers and illegal immigrants. However, these barracks can only accommodate between 60-80 people, and are therefore undoubtedly insufficient, where detention conditions are not better than in the other camps. Consequently, "short-term" solutions are constantly being implemented, by requisition of buildings commonly known to be inadequate to accommodate long-term detainees.

Hal Far

"The conditions met in the Hal Far centre [...] are for the most part similar with respect to overpopulation, the lack of activities offered to migrants and inadequate sanitation. It was obvious that here again detainees are packed into a centre lacking adequate accommodation and recreational facilities for such large numbers. [...] It would appear that the conditions I was able to observe myself extend to all the places where migrants are detained.

[...]The overall situation is all more shocking if compared it to entirely acceptable conditions to be found in the Corradino prison."²⁸

In Hal Safi "migrants live either in barracks, formerly used by soldiers, or in a former military garage made of corrugated iron. [...]As the authorities met with conceded, this shelter is 'a microwave in summer and a fridge in winter' "²⁹. In Hal Far, the buildings are made out of bricks, but badly insulated, therefore torrid in the summer and freezing in the winter. And, when migrants were too numerous, tents were provided by the facilities.

Overpopulation and promiscuity

All investigation reports, even the least critical, state a

concerning population density and the obvious maladjustment of the structures to long-term detention.

Bedrooms are crowded with beds, including bunk beds [with some eleven beds in each room, there is overcrowding (Hal Safi); rooms ... are crowded with beds (...) dining room halls where the number of chairs and tables is inadequate. (Lyster)³⁰; beds so close together that there is little standing room left between them, and absolutely no privacy (Floriana)³¹]. In Ta'Kandja, the Ombudsman observed in 2002 that the number of beds had been increased by re-allocating service rooms (hall, kitchen, pantry). In January 2004, G. Giulia reported that 60 men had been divided between two large rooms ("Beds where barely 36 cm apart with no privacy whatsoever"³²)

Generally, detainees do not have access to storage space for their personal belongings. At Lyster Barrack and Safi, where entire families are accommodated, hanging bed sheets replace missing walls.

Hal Safi, October 2003 (more than 200 detainees)³³

"Migrants live either in barracks, formerly used by soldiers, or in a former military garage made of corrugated iron. Between 10 and 15 migrants live in each room of the barracks, obliging migrants' families to build flimsy structures with sheets in order to obtain a minimum of privacy. [...] The persons detained in the other part of the base benefit from a larger living space live, all 60, in an iron hangar. [...] Moreover, it seems that the situation has been even worse in the past, with its population reaching up to 320 persons in November 2002, forcing a number of migrants to live in tents over the winter."

At Hal Safi, Alvaro Gil-Robles reported that the camp management had attempted to group migrants according to national, linguistic or religious criteria. In many other camps however, limited space does not allow such coordination. Therefore the general hubbub of a dense crowd living in confined space is amplified by the linguistic cacophony and frequent altercations, as many detainees find that nationals of some countries are better treated than themselves (for example, Erythreans³⁴ compared to Iraqis or Sudanese, according to a detainee and a lawyer.)

Hal Safi, October 2003: "The base was divided in different "sections" in which a separation is made, if possible, on the basis of the migrants' origin and familial status."³⁵

Floriana, July 2003 (121 detainees) "Detainees from different cultures, religions and ethnicity are thrown together at all times, with little or no consideration given to ethnic or religious differences and the tensions that may arise."³⁶

In these conditions, all detainees complain that it is impossible to find any kind of private space, and during our visit at Hal Far, we have experienced that noise is uninterrupted and excessively high: the migrants call one another, shout, argue; the television is on day in and day out, just as in the other camps. The atmosphere is obviously tense and the guards fear that every minor incident could result in the upheaval of the detainees ("there is no assurance that these premises are ready to cater for any emergency situation that may arise from time to time."³⁷)

The success of escape attempts in November 2002 (27 Erythreans) followed by more escapes in July 2003 (Floriana, July 19, 54 detainees; Ta'Kandja, July 27: 23 people) is always on the mind of the guards and the camp management.

Lack of activities

The only occupations of the detainees are the cleaning duties and other chores related to their laundry and preparing of the meals. "They often complain that their life is a succession of days spent sleeping, eating or staring - and, inevitably, worrying about their future" as JRS reports³⁸.

This evident physical and intellectual lack of activity could be qualified of "rest" as does the Ombudsman³⁹, but it is more realistic to say that the detainees spend their time hanging out and brooding, surrounded by the noise of the television. And in these military camps, for security reasons, they can only walk around outside at the time of supervised recess. In the centers managed by the police, the rooms/dorms are usually opened during the day and the migrants are free to walk around inside the camp. But even there, outside areas are very restricted and insufficient to allow for real physical activity for such large populations.

The Ombudsman himself can only acknowledge that "these recreational areas have an atmosphere that is generally reminiscent of prison"; ("the yards [...] are small and reminiscent of prison yards")⁴⁰. At Hal Far, where the barracks have been especially fitted out, the 80 detainees only have access to half a basketball court circled with barbed wire, and a small court where they are only allowed to walk in circles. The same observation can be made about Safi. At Floriana, it is the same thing: a very small barbe-wired court, which gets overheated during the summer: "it is impossible for the detainees to stay in the yard for long periods."⁴¹ Only Ta'Kandja offers slightly better conditions, where the outdoor space is a larger one.

Boredom is therefore generalized and is not without

consequences, especially psychosomatic problems and observed depressions (see below).

Since there are no social workers, who would allow the migrants to express their personal issues and feel a little less isolated, the only support they receive comes from NGOs, such as Migrants' Commission of the Catholic Church, Jesuit Refugee Service, Malta Red Cross Society, Islamic Welfare Fund. Unfortunately, this support depends upon volunteer work, which often suffers drawbacks, as exemplified by the Red Cross, which had to cease its activities there because of insufficient funding. The only regular entertainment resides in the prayer times organized by the same NGOs.

Sanitary conditions below international standards

Investigation reports show that camp management teams are aware that it is necessary to provide minimal hygiene conditions ("*Food, clothing and standards of cleanliness are considered to be satisfactory*"⁴²) These conditions nevertheless remain largely below international standards, here again because of overcrowding of the camps, and also for lack of adequate resources.

Each detainee is supposed to receive soap, but often it is in insufficient quantity. In camps managed by the police, they can sometimes solicit the guards to purchase these items outside of the camps. NGOs also organize distributions, notably of clothing, and especially for children.

The buildings are kept clean, at least as much as is possible in overcrowded housing; the detainees themselves are in charge of their maintenance. They are also responsible for taking care of their laundry. However, when the Ombudsman visited the camps in April 2002, he reported that either there are no washing machines in the center (Lyster Barracks, Ta'Kandja), which is an obvious problem for families with children, or that the existing machine had been out of order since the opening of the center (Safi). At Floriana, the laundry is washed out in the courtyard in plastic containers and hangs to dry on barbed wire.

Therefore, depending on the periods and on the camps, hygiene is usually insufficient. The frequency to shower access for example is very limited because there are not enough sanitary equipment. It is the same for the toilets, which are hard to keep clean under such intensive utilization.

Floriana, July 2003 (121 detainees)⁴³ : "*six toilets, which are often dirty because the detainees, who carry out their own cleaning, say they are not supplies with enough disinfectant with which to clean them. [...] There*

are three showers, partitioned by plastic bags normally used as rubbish recipients, which serve as shower curtain, and two water pipes."

*Hal Safi, October 2003: "deterioration of the sanitary installations, which are totally ill adapted to the number of people using them."*⁴⁴

In addition, while the detainees are fed three meals a day, several observers have noticed signs of malnutrition. This can be explained first by the lack of means of the administration, which generally prepares the meals on the premises, bringing little variety, especially of fruit and vegetables. This can also be related to the geographical origins of the migrants: they have a hard time getting acquainted to this western food, which often does not allow for the respect of religious dietary laws. Consequently, they have insufficient and unbalanced diets.

Comparison with the conditions of detention at the Corradino prison

The foreigners' statements and NGOs reports about the miserable conditions of detentions of migrants are especially heinous when compared to those at the Corradino prison.

This prison had been severely criticized in a report by the CPT in 2001 and had since then been renovated. The detainees have been progressively transferred to another wing where each of them has an individual cell. "*The inmates would appear to be perfectly well treated. Equal praise is due for the new building designed to accommodate juveniles, who receive all the necessary attention.*"⁴⁵ The only reservation formulated by the Commissioner for Human Rights concerns the detainees, who - as the sexual delinquents - require particular attention from the guards and are isolated from the rest of the detainees "*in damp cells denied daylight.*"

To sum up, migrants, who are considered illegal but in no way suspect of criminal activities, are not treated as well as the incarcerated criminals. There is a clear discriminatory practice that must be pointed at and that the argument of emergency cannot possibly justify, especially since the Maltese government has been informed of such a situation for years.

Difficulty to access medical care

Promiscuity and overpopulation is a permanent risk of epidemic and contagion; all reports concord on this point ("*Those affected by contagious diseases are not adequately separated from the other migrants, increasing the risk of spread.*"⁴⁶). But there is no medical base camp or onsite nurse, and the Red Cross, which used to send workers once or twice a week has interrupted its work. The access to

medical care is therefore a real concern for all the detainees. And in such conditions, detainees have to do daily with mange, lice, worms and the flu.

In cases of declared pathologies, the situation is hardly better: the migrants, as their lawyers and the NGO workers, report that the access to hospital care is difficult and that requests often have to be reiterated several times before being eventually granted. In fact, since exiting from the camp involves security issues for the camps' administrations, they are only permitted under tight surveillance, which reveals expensive. Therefore, the administration usually waits to have enough demands to justify such a logistical expenditure.

When prescriptions are written by doctors after medical consultations, they are administered by the camps guards.⁴⁷ They purchase the drugs and organize their distribution without any proper or formal training as medical assistants. They do not control that drugs be taken at the right time and regularly, whereas for certain infections to be contained, the instructions must be followed drastically. Most of the migrants cannot read Maltese or English, and therefore cannot understand the posology and administration directions. To sum up, says JRS, by twisting the principle granting every adult the freedom to undergo or not a treatment, it is the rule of "*laissez-faire*" that prevails, another metaphor for negligence.

Some lawyers expressed concerns for the health of their clients, and the Ombudsman contested this procedure, but they were told that those who provide the prescriptions at the pharmacy must have an adequate diploma, while at the detention center, the situation is similar to that of an outpatient: they are responsible for taking their medications.

JRS points out at the health of some of the detainees, which is incompatible with detention conditions where they do not receive proper daily care, nor proper diet, or proper isolation. Despite the numerous medical attempts to release these prisoners for "humanitarian" reasons, the camp administrators more often than not ignores such pleas and the detainees' exiting of the camp for medical reasons are rather infrequent.

E.R. (Hal Far) presented several medical certificates. The management has not answered its plea for release.

M.B. (Hal Far) suffers from serious respiratory problems, attested by two distinct medical certificates. Three months after having submitted his plea for release to the administration, he has yet to be answered.

Little or no contact outside of the camp

Theoretically, the detainees are allowed to have visitors. But depending on the camps, depending on the periods, the

camp administration grants the necessary organizations more or less easily. Sometimes, when the guards give them permission, the detainees get to exchange a few words with people outside the camps, through the barbwire, during their "recess".

NGOs themselves at certain times have had to ask the Ombudsman to contact the Home Affairs Minister so that they could bypass these administrative hurdles. In his latest report (2003), he insisted that the control measures must be simplified and that these authorizations be finally concentrated within the field of action of one specific administration, without having to consult individually with all those in charge with the camps. In some cases the visitation rights granted are limited to the access to the communal parts of the center, excluding the possibility to enter in the rooms or dormitories where they could have private conversations with the immigrants.

For many immigrants, especially for those who do not speak English or Maltese, the phone is often the only means of communication available to speak to friends or family members. Similarly, each camp is supposed to be equipped with a payphone available freely to the detainees. But the application of this principle depends largely upon the discretionary power of the guards whose understanding can vary arbitrarily.

Access to the phone

Hal Far : the detainees can give and receive phone calls, but they must purchase the phone card

Ta' Kandja : detainees have the right to a phone card per month, but no payphone is accessible

Safi : detainees are not authorized to give phone calls

Floriana : the detainees are allowed to give phone calls, but not to receive them, and must purchase the card.

When detainees cannot use the phone - because it is prohibited or inaccessible - the director of the Emigrants Commission is responsible for transmitting their messages to their families or friends. But the detainees trust that process little, notably because of the linguistic differences, they can never be sure that their messages are transmitted accordingly.

Excessive security measures and prejudicial to human dignity

Overpopulation and inactivity of the detained immigrants are conducive to a climate of permanent tension in the centers. Verbal squabbles between regional groups can escalate at any time. Every witnesses admit that the conditions of

detention require constant vigilance from the guards, afraid of mutiny and escape attempts. All the more so because in this detention system after all organized continually in haste, the number of guards affected to each center does not seem to increase proportionally to the number of incoming detainees. Nevertheless, allegations of violence committed by the guards are very infrequent. The detainees or former detainees even show some sort of gratefulness for the efforts that some of them made to make their detention more humane (" [...] *this migrants are treated very well by the personnel in charge* "48; [...] *they had words of praise for military personnel as well as for the Maltese authorities*"49.

Certainly F.A., a Sierra Leonese detained at Floriana, reports being beaten by the police because he had granted a phone interview to the journalist at The Times of Malta who was preparing an article on the living conditions of the immigrants detained at the center (July 2003). But he insists even more on the fact that afterwards, he was never given any more of these phone cards that he needed to call outside of the camp. Be that as it may, because of security concerns, the administration of the camps is often times brought to implement measures that can only be deemed humiliating by the detainees and that have been pointed at by the Ombudsman as well as the Commissioner for Human Rights of the Council of Europe.

First of all, detainees at Ta'Kandja must take off their shoelaces.

Secondly, it is generalized practice for the immigrants - once they obtain an authorization for a doctor's appointment at the hospital - to be handcuffed systematically by the guards in charge of their transfer, whether they are military or police personnel. According to A. Gil-Robles, they pretend to be following orders (such as those in the by-laws of the military commandment of March 2002). " *The migrants understandably consider that this practice of handcuffing, to which I will return, is humiliating* "50 and some of them refuse to be taken to the hospital for fear of being seen in this condition. This practice is a significantly recurring grievance that those we had been able to reach on the phone had expressed strongly.

The Ombudsman, who recently witnessed such practices, denounced them: " *This is a despicable and degrading act towards a person who has not been accused of committing a crime* "51. But according to a response that the Maltese government addressed to the Commissioner for Human Rights, the authorities do not plan to go back over that: " While it is difficult for the police to stop using handcuffs, ways will be

sought to make the practice more acceptable."52

Finally, the detainees are never called by their names but by the number that is attributed to them when they arrive at the camp53. This is how the roll calls are made at least twice a day.

3-1.2.2 Numerous psychological problems

Imagine 100 to 200 people in an enclosed and insalubrious place, without any contact with the outside, without any activities, without information on their future for several months... It is not surprising that some of them have strong depression, try to commit suicide or to escape.

The origins of the psychological problems

All witnesses agree to say that, after several months, the immigrants break down : " *One detainee describes himself as having been reduced to the conditions of an animal in cage. 'They throw the food and close the cage'* "54. The wait for a result of the appeal procedure to the status of refugee is particularly exhausting, as it is very lengthy, with no information and no set date55. The slightest piece of information from outside provokes speculations and every event can cause dramatic proportions. This was the case when it was announced that the Erythreans were to be released last December. After the surprise, the Sudanese who had been waiting for 2 ½ years, felt revolted and despaired. At Hal Far, the Ombudsman reports that when the denial of the status request for 36 people was announced, it gave rise to a violent riot largely related by the press (*they were very understandably very excited and anxious to know what was going to happen to them after this refusal*)56.

This permanent state of anxiety is translated into many types of psychosomatic pains that the detainees often complain about and for which they ask to see doctors regularly. But JRS find particularly an increase in the number of prescriptions for tranquilizers and antidepressants, as well as for the number of admissions to the psychiatric hospital of Mount Carmel. Numerous detainees, including children, declare to have attempted to commit suicide, with the chronic risk on the rest of the detainee population. Some of them do not hesitate and undergo hunger strikes for a chance to be heard " *There are clearly the result of the extreme frustration born of long months, with no end to their incarceration in sight* "57.

Suicide

A.G., Algerian, 31 years old. He had arrived in April 2001, and his asylum request was rejected in January 2002. After being part of a rebellion, he was condemned to 20 months of imprisonment. Since June 2003, after

Locking up foreigners, deterring refugees: controlling migratory flows in Malta

the term of his sentence, he was placed at Hal Far, while waiting for his papers to be sent back by the Maltese authorities. After attempting to suicide several times, he was sent to Mount Carmel, and then sent back to the detention center after the doctors had diagnosed that he was not suffering from any mental problems. The day after his release, he slit his wrists with another detainee. They were both hospitalized but once recovered, A.G. was sent back to the Floriana police depot where he hang himself with his wrists bandages, on November 3, 2003.

Hunger strike

Safi, April 2004, new hunger strike. The detainees had arrived in 2002 and were denied their asylum request because they could not prove their Liberian nationality. They asked to go before a judge and declared they would rather be sent to prison than to remain at the detention center.

Hal Far, March 2004, the detainees had only ceased their hunger strike because they were promised that the Home Affairs Minister would visit them at the camp.

Ta'Kandja, December 2003, Eritreans detained for 15 months started a hunger strike to protest the lack of information on their files

Safi, October 2003, 80 Eritreans and Ethiopians interrupted the hunger strike that they had started 10 days earlier, as they could not get the obtain from the Maltese authorities to improve their conditions of detention or to release them. They were transferred to an opened center on December 23rd.

Ta'Kandja, February 2004, 30 detainees started a hunger strike to protest the length of their detention. On January 1st, 14 other detainees had put an end to a strike started for the same reasons.

In certain cases, the doctors deem the patients' psychological state so serious that they attempt to convince the administration to liberate them to avoid further drama. Most of the time, in vain.

Medical certificate (Delivered to a Palestinian denied asylum and that consulted the hospital several times because of suicidal inclinations)

M. M. has been detained as an illegal immigrant in Malta for about a year and half. His application for refugee status was rejected including on appeal. He is basically an intelligent, courteous and cooperative man who, only complains when his dignity is not adequately respected. He has only threatened harm to himself and never to my knowledge to other, in spite of the essentially unsatisfactory and uncertain nature of his general situation. In view of the deep and continual distress suffering from, which may also be aggravating his feeling eyesight, I am convinced he deserves to be granted provisional freedom during the day on a modified bail basis. In my opinion this humanitarian alternative to continued detention is overdue and should be accorded with urgency. (Dr. X. 12/2/04)

A study carried out by the Royal Australian and New Zealand College of Physicians for 18 months shows however that in the detention centers the suicide rate is 10 times superior to

that of general population and that mental health problems are increasing exponentially with detention time. This phenomenon, sometimes called " collective depression syndrome ", can lead to much worse problems than those observed in the camps in Malta, for the foreigners detained and for the guards in charge of their surveillance.

Finally, there is another group that the different reports never refer to. However, since the moment of their arrival, they would need psycho-medical care; it is the group of foreigners who had fled their country because of sufferings and events they had experienced there. Indifference is all they are welcomed with, and shows how the reasons for their asylum applications are often ignored, as if they were simple administrative reasons to enter Malta. The rate of humanitarian or conventional protection nevertheless approaches 50% and this very figure should bring further attention to the reality of their situation.

Only JRS recalls regularly that these detainees (*vulnerable persons such as unaccompanied minors, unaccompanied elderly persons, torture or trauma victims, persons with a mental or physical disability*) are fragile, traumatized, that they have been subjected to torture and physical violence and that they do not belong in camps⁵⁸. All these refugees should be assured minimum and specific care and medical and social follow-up as soon as they reach the camps. But they remain within general population.

Difficulty to access mental care

It can be estimated that - given the conditions of detention and psychological distress - the rate of hospitalized detained for psychiatric problems is surprisingly moderate. However, the serious problems are nonetheless real. At the time of the mission, 9 immigrants were cared for at Mount Carmel (out of 240 detainees, according to the figures of the Home Affairs Ministry) and had reached 14 in the previous months.

Given the testimonies, these figures are probably far below real needs. The foreigners face great difficulty to have their requests heard and obtain to be taken to Mount Carmel for consultation. Indeed, the administration of the camps seems to only initiate hospitalization in cases deemed very urgent, namely in cases of suicide attempts or when the agitation state of a patient could create further trouble in the center. On the other hand, many psychiatrists at the hospital seem to think that hospitalization is not necessary or that does not need to be extended, and regularly send the detainees back to their detentions centers.

According to the Ombudsman, the immigrants usually have a rather positive opinion on the way they are treated at the hospital. The buildings, comfort and hygiene are largely superior to that of the camps. These foreigners are obviously treated in isolation, within their room-cells in the basement and constantly under police surveillance. For them, there is no possibility of contact with the other patients, no walks in the garden or use of the physical therapy room.

In short, they arrived at the hospital handcuffed and stayed there in conditions hardly different from those of the camps. However, as the Ombudsman and A. Gil-Robles emphasized, they are not criminals ! And except for some isolated cases, *"these people [do] not suffer from chronic mental health problems"*⁵⁹ but are simply depressed and anxious because of the uncertainty of their future.

It is true that using handcuffs to bring the detainees to their consultation seems also to emanate from the hospital staff. They also demand, as the Ombudsman noticed, that the immigrants be strictly guarded in their room 24 hours a day by 5 police officers *"just in case something happened"*⁶⁰. In fact, as one of JRS members puts it: *"we have also lodged in people's minds that these people are criminals"*⁶¹, and that the medical staff also fear to meet 'criminals' especially since it is rare that they understand their language.

3-1.3 Young children are also in detention

Administrative detention is not solely for adults. There are many young children, sometimes unaccompanied, often with their families, and it is particularly worrying that these children are placed in the same accommodation as adults of both sexes.⁶²

In reality, as for other 'vulnerable' groups, there are no specific provisions for children. Looking at reports on this issue, the Maltese authorities cannot ignore the fact that the material and moral conditions which characterise the detention centres, combined with the length of their stay, seriously damage their mental and physical health and constitute a breach of their fundamental rights. It is true that the country has only recently created a legislative mechanism to protect children (the Children's Act only came into force on 5th December 2003), but the United Nations Convention on the Right of the Child (ICCPR) stipulates that the primary consideration for any action undertaken by a member state must be the best interests and the protection of the child (article 3). This could not include placing the child in detention. As a member of this Convention, Malta must do everything in its power to enforce it absolutely.

Of all the children, those who are unaccompanied require special attention from the public authorities and should be placed under their protection, instead of in detention. Official statistics show that there are very few such children, and that this should therefore not be opposed on economic or social grounds. It seems that the Maltese authorities have made efforts, and that the ad hoc structures will be able to accommodate some of the children that are under the protection of the Minister for Social Policy until the age of 18 - e.g. in the Vincenzo Bugeja Institute, where the HSBC Cares for Children Fund gives social and educational support. A 'housing' project for minors also appears to be under discussion by the government and JRS. This is of little consolation for the tens of other children who have had their freedom taken away.

August 2003

17 unaccompanied children housed in the Vincenzo Bugeja Institute.

Most of these under 'humanitarian' protection.

They had previously spent between 6 and 15 months in a detention centre.

When minors are in detention, it is difficult for them to get an education. Since June 2003 there have been plans to introduce schooling but this takes time, and can only happen once ad hoc medical certificates have been obtained and enrolment has taken place at the local school. Even after these conditions have been satisfied, there is still the problem of organizing daily transport to school for the children. This is a complicated task for the camp managers. Amnesty International points out that some children wait more than six months before they can leave the camp⁶³. JRS adds that the children's ability to fit back into education after leaving the camp is badly affected by the fact that they spend long periods of time unoccupied. Having spent too much time doing nothing, they find themselves completely disorientated when they get out of the camp and incapable of managing their time. Schooling inside the camp would be a simple alternative but would deny the child the daily release from the camp. Evidently there is a project envisaged by the Foundation for Educational Services along those lines, but by February 2004, it still hadn't been implemented.

Conclusion

The systematic detention of asylum seekers combined with the excessive duration of processing appeals filed by rejected applicants obviously contributes to the overpopulation of the detention centres and to an increase in the problems highlighted in this report. The Maltese authorities can point out, undoubtedly in good faith, the difficulty in making the

necessary improvements to these detention conditions owing to the sharp rise in the number of detainees and in the cost that this would represent.

In no case can detention be justified for asylum seekers (see below). Consequently, Malta is in contravention of the principles set forth by the Geneva Convention.

Concerning so-called illegal migrants, the Special Reporter to the 59th session of the United Nations⁶⁴ observed that infractions of immigration laws and regulations must not be considered criminal offences under national legislation. Their detention can only in fact appear to be a disproportionate measure - as these people have committed no crime other than to come ashore in Maltese ports, sometimes completely unintentionally. By not seeking an alternative solution to this policy of detention, the State of Malta expresses a repressive attitude toward immigrants.

Furthermore, whenever this detention takes place in facilities that are not designed for this use and a state of emergency or surprise can no longer be invoked, whenever the surveillance of detainees is assigned to police or military personnel who are certainly devoted but not trained for this, whenever these foreigners are left physically, morally and psychologically abandoned because no medical or social service provides them with the necessary support, whenever minors are placed in the same conditions...beyond the question of negligence, this treatment must be qualified as a repeated breach of fundamental rights and a violation of people's dignity and integrity.

In joining the European Union, Malta agreed to comply with the principle of respecting fundamental rights, which were a building block of this regional grouping. European refugee law and the reception accorded refugees are admittedly far from satisfactory - the FIDH and its member organisations have pointed this out many times in recent years. But the law does set minimal standards. It is not clear how Malta can exempt itself from adopting them.

3-2 A 'trompe-l'oeil' Right to asylum

3-2.1 Refugee law: from theory to reality

A signatory of the Geneva Convention of 1951 and the New York protocol since 1971, Malta did not act until 2001 to remove the limitation on its application to people fearing persecution following events taking place in Europe. On the same day, the first refugee law, which was approved in July

2000, took effect, transposing the obligations stemming from the Geneva Convention.

3-2.1.1 The situation before 2001

Before 2002, when the refugee law took effect, non-European asylum seekers were granted a temporary residence permit if, after their application had been reviewed by the HCR⁶⁵ - in reality the Emigrants Commission⁶⁶ acted for the HCR - they were placed under the mandate of this organization. This procedure provided the possibility to appeal a negative decision. Their residence permit authorized them to remain on Maltese territory until they were settled in another country. The average estimated time for a decision to be taken was two to three months.

The Maltese authorities offered medical care and access to free education to persons placed under the HCR's mandate, persons enjoying temporary protection and asylum seekers. None of these categories was authorized to work. The HCR provided financial assistance to people placed under its mandate for up to two years. This assistance could be supplemented by aid from the Emigrants Commission.

Rejected asylum applicants were supposed to leave Malta as soon as possible. If they did not, they were subject to detention until their deportation .

In the absence of a specific refugee law, asylum seekers who showed up at the border without an entry or transit visa for Malta were treated as undocumented foreigners and could be held in detention until the HCR made a decision on them. The same fate was reserved for people requesting asylum after having been arrested while they were undocumented, and for foreigners whose deportation had been ordered and who were awaiting departure. We will see that this "tradition" of holding asylum seekers in detention is a well-anchored practice in Malta.

3-2.1.2 The new context of seeking asylum in Malta

In November 2001, massive numbers of migrants began to arrive in Malta by boat. These arrivals were constant and grew in size until the end of 2002. While until 2001 the average number of asylum seekers was 150-200 per year, between November 2001 and December 2002 1,743 people entered the country illegally by sea in 2002 alone (versus 350 in 2001) - 1,686 of whom aboard twenty-one different boats -. Most of these people applied for asylum with the Maltese authorities. Whether or not they applied for asylum, they were

nearly always placed in detention camps that gradually came to serve only this purpose, pursuant to the law on immigration that calls for the administrative detention of foreigners who have illegally crossed the border (see above). Taking into account those released, those granted humanitarian or refugee status and those sent back, Malta sometimes held up to 600 foreigners at the same time. Since October 2001, the applications have been reviewed in accordance with the refugee law passed in 2000.

3-2.1.3 A look at the Refugee Act XX of 2000

The competent authorities

Pursuant to the Refugee Act of 25 July 2000, which took effect in October 2001, the Refugee Commission now processes all asylum applications, which is the competent authority at the national level. It comprises the Commissioner, who is assisted by three to six people. The decisions of the Refugee Commission can be appealed to the Refugee Appeals Board by the applicants when they have been rejected or by the government when the Commissioner's decision is positive. The Refugee Appeals Board is made up of three people.

Two statuses

Two types of protection are provided by the law :

- **refugee status**, according to the meaning contained in the Geneva Convention⁶⁷. This status provides for the issuance of a residence permit , unless the refugee is imprisoned for legal proceedings or conviction, as well as a travel document allowing him or her to enter and leave Malta without a visa. The holder receives social assistance and has the right to work.

- **humanitarian status**, for people who do not meet the criteria of the Geneva Convention but who need protection (Refugee Act, art. 8(7): "*the Commissioner may recommend to the Minister that, despite the fact that a person does not satisfy the requirements to be recognized as a refugee, such person should be granted humanitarian protection in Malta*). Humanitarian status, which provides for a renewable six-month or one-year residence permit, entitles its holder to remain in Malta for as long as he cannot return to his country and cannot be accepted in a third country (Refugee Act, Part I, general provisions). But it does not provide any other right (social, right to work).

The Refugee Act allows an asylum application to be rejected if it is considered to be "manifestly unfounded". It also integrates the notion of "safe countries" and "safe third countries", allowing the accelerated processing of asylum applications and the ability to return an asylum seeker to his

country of origin or of residence, or to a country through which he crossed before reaching Malta⁶⁸.

A bill modifying the Refugee Act XX of 2000 was proposed by the government in January 2004. It addresses four points:

- the conditions governing appointments and the power given to the Prime Minister to increase the size of the Refugee Commission and the Refugee Appeals Board;
- the limitation to two weeks of the deadline for an asylum application to be filed following the arrival of the applicant on Maltese territory;
- the ability for people who are ordered to be deported and detainees waiting for their asylum application to be reviewed to contest in court the legality of this detention if the duration is unreasonable or if it is unlikely that they could be deported within a reasonable period of time.
- the inadmissibility of asylum applications presented by nationals or legal residents of a country that is considered "safe".

3-2.1.4 The procedural framework

Any foreigner seeking asylum in Malta, regardless of whether or not he is documented, must submit an application to the Refugee Commission, which will call him in for an interview within one week. If the request is presented at the border following arrival from abroad, an immigration officer, who will inform him of his right to submit his request to the Refugee Commissioner, must interview him immediately. The interview is held confidentially, with the assistance of an interpreter if necessary. The applicant can also call on an HCR representative. This representative has free access to the applicant and can attend the interview by the Commissioner. The Refugee Commissioner considers the application and formulates a written and justified decision that he sends to the Minister of the Interior. He can recommend recognition of refugee or humanitarian status (see above), or rejection of the application. If the Commissioner's decision recommends acceptance of the asylum request, the minister shall either pronounce the applicant's eligibility for the status or appeal this decision.

If the Refugee Commissioner rejects the asylum request, the applicant is informed of his right to appeal to the Refugee Appeals Board with legal assistance for these proceedings, and to consult an HCR representative.

While the request is being reviewed, an asylum seeker, in accordance with the principle of non-refoulement provided by the Geneva Convention (Art. 33), cannot be deported from the country. Throughout the proceedings, he has access to education and training, and to medical care. But he cannot carry out a professional activity without authorization, must

reside wherever he is assigned and regularly appear at the immigration offices. Because the rule applied in Malta is the nearly systematic detention of asylum seekers, we will see that this residence-assignment system is almost never used in reality.

3-2.2 The asylum procedure in practice

When unauthorized immigrants arrive in Malta (these last few years, more often than not by boat), they are immediately placed in a closed centre (reception centre). Even though unauthorized residence ceased to be a criminal offence following a law made in 2002, an administrative decision may be made to detain foreigners who have no official residence permit. Such placing is almost systematic for all immigrants without residence permits, whether they are asylum-seekers or not. When immigrants declare that they wish to apply for asylum, the Refugee Commission has the task of examining their application. The Commissioner is mainly responsible for examining asylum requests in Malta. As he says himself, the composition of the rest of the Commission is variable. Assistants, who have to be trained, tend to leave as soon as they find a permanent job.⁶⁹

3-2.2.1 Examining the application

Civil servants who work in the centres (soldier or policemen, depending on the case) give an information leaflet to persons requesting asylum, in principle as soon as they arrive. The leaflet indicates that all information in their asylum applications will remain confidential; and that they have the right to request the help of a barrister and to contact the representative of the High Commissioner for Refugees (HCR). The information leaflet exists in at least eight languages (the Refugee Commissioner handed us copies (see appendix 3)). Asylum-seekers are also given a questionnaire (*Preliminary Questionnaire*), which is passed on to the Refugee Commission once completed. Submission of the questionnaire is not however obligatory. It is intended to help people with their applications.

These formal information methods seem to be very ineffectual. During telephone conversations before the assignment, asylum-seekers to whom we spoke were unable to explain the status of the documents they had completed. Several people questioned were unsure if their asylum requests had been registered, and all of them were unaware if and when they were likely to be auditioned.

In general the Commission representatives go to the different places foreigners are held to collect their applications and

carry out interviews. Occasionally, applicants are transferred to the Commission to be interviewed there. All interviews are recorded from beginning to end. According to the Refugee Commissioner, they may last several hours. It is nearly always necessary to have an interpreter present. The Commissioner sometimes calls on a second interpreter if something needs to be clarified. It is apparently difficult to find interpreters of certain languages, which has the effect of prolonging the procedure. At times the representative of the High Commissioner for Refugees comes to the interview. The interview with the applicant is not the Commissioner's only source of information. In certain cases, the latter may leave the applicant time to assemble necessary additional elements or documents intended to back up his/her application. After consideration of the application, the Commission gives the government its opinion. The latter then makes a decision and notifies the applicant formally. In fact, the government always follows the Commission's opinions. Decisions are passed on to applicants by the civil servants in the camp in closed envelopes.

Time limits

As we have seen, the time limit for an audition is eight days according to the law; but, in fact, it is much longer. It also varies according to whether the camps are filling up quickly or not, and this depends on the influx of immigrants. At the time of the assignment (end of February 2004), the average time between asylum applications and interviews with the Commission representative was three months. At other periods, the wait has been between eight and ten months⁷⁰. The time limits for being informed of decisions are also variable. In principle, decisions are communicated to applicants in the order in which applications are dealt with. But when a boat arrives full of people of the same nationality who are more or less in the same situation, those concerned generally wait until applications of all the boat's occupants have been examined before communicating the decisions all at the same time.

Appeals

If an application is rejected, the decision is accompanied by a note (which exists in several languages (see appendix 3)). The note indicates that they may appeal within two weeks of receipt of the decision, that they still have the right to consult the High Commissioner for Refugees and/or to call on a barrister, and that they may obtain legal aid.

The Refugee Appeal Council, responsible for examining appeals, uses the files to carry out its work. In practice, applicants are never auditioned at this stage of the

procedure. When the assignment took place, not a single appeal lodged with the Council had ever led to a decision by the first court being cancelled. No motives are given for rejection decisions, which are very succinct and often limited to just one line, apart from the letter ending.⁷¹

The Refugee Appeal Council's systematic rejection of appeals was interpreted differently by the different people met by the FIDH mission. For some, it was a tribute to the Refugee Commissioner's work, or could be explained by the great number of protection requests being accepted by the first court. One of the people to whom we spoke criticized the immense power it gave to the Refugee Commissioner. For example, in the case of a person's nationality being contested, insofar as we cannot consider that there is the possibility of appeal, if the Commissioner decides that X, who says he/she is Palestinian, is not Palestinian, then this decision suffices for X to be considered a criminal, and to justify his/her detention for an unlimited period. This is because the applicant's asylum request is rejected, but he/she cannot be deported as it is not known which country to send him/her back to.

Legal Assistance

According to the law, asylum-seekers may call on a representative of the High Commissioner for Refugees (HCR) and a barrister at any time during the procedure. At the appeal stage, they may obtain legal aid. On the one hand, the formal possibility of being assisted is already very insufficient in relation to the number of requests, and on the other hand, it does not reflect the actual situation. Indeed:

- A single person represents the HCR in Malta, and she also has other activities. If we suppose that applicants are sufficiently informed of their right to call on the HCR - which is highly improbable - we consider it impossible for that person to respond to every single applicant's request.

- access to a lawyer during the first stage of the procedure, except for those who are lucky enough to be assisted by voluntary lawyers, is merely hypothetical for most asylum-seekers, who are unable to pay the lawyer's fees. Indeed, legal aid is only provided for by law at the appeal stage. Several activist lawyers go regularly to the different camps. Others who have clients in the camps give occasional information to other detainees. But this activity is in the hands of volunteers and is therefore fragile and disorganized. For all that, the lawyers questioned about the matter estimated that less than six lawyers were involved in such activity. Lawyer's training is also called into question. Very few of them are competent in

immigration and asylum issues. The weak economic power of potential clients in no way leads us to expect this specialty to be developed among jurists, with the exception of activists. The only person who intervenes on a regular basis is the female lawyer working with Jesuit Refugee Service (JRS), that provides effective assistance and monitoring for asylum-seekers. But taking into account the number of persons concerned, and the distance between centres holding asylum-seekers, the help that this lawyer is able to provide is inevitably insufficient. According to the camps' layout and their management methods, the JRS association may provide collective information, by assembling several people (for example in the Lyster Barracks camp), or else hold individual interviews (as is possible at the Ta Kandia camp). However, the lawyer is strictly forbidden to circulate written information.

- The legal aid provided for by law during the appeal stage is in actual practice virtually non-existent. The system works very badly, firstly because it is not explained to asylum-seekers in the camps. No information on the subject is given out. It is necessary to request legal aid in writing and then wait for a barrister to be designated. Applicants often have to wait several months, and there seems to be no legal time limit. Sometimes the applicant has to write several times before receiving a reply. Often the requests come to nothing, and applicants are thus deprived of a right provided for by Maltese law. When a lawyer is designated, his name is not systematically passed on to the applicant, and nothing obliges the lawyer to go to his/her client's camp. Indeed, according to the law on legal aid, it is the client who has to go to the lawyer's office. The effectiveness of the right to legal aid is thus dependent on the designated lawyer's goodwill⁷².

Mr R. (Sudanese), detained since September 2002, who appeared alone before the Refugee Commissioner, appealed to the Refugee Appeal Council without assistance, though he had formally written to request legal aid. His appeal was rejected. According to the voluntary lawyer who met him after the rejection, Mr R had documents that he had never been able to show during the course of the proceedings, and which clearly indicated that he risked political persecution if he were sent back to his country of origin.

Mr B. (Mauritanian), detained since September 2002, had his application for asylum rejected by the first court on 19 December 2002. He appealed on 22 December 2002. In June 2003 he wrote to the legal aid office to request the assistance of a lawyer. He still had no news of this request at the beginning of 2003. Asked what had become of the dossier, the Refugee Appeal Council replied that it had still not be examined because the lawyer who had been designated in the meantime to deal with Mr B's case (but without Mr B being informed) had not come forward. The JRS association acted as an intermediary to put Mr B in contact with his

lawyer. Mr B was supposed to maintain regular contact with the latter. This was difficult at the camp where he was being held for several reasons. Firstly, the only telephone available was not easily accessible and it was very expensive to use it, and secondly Mr B was French-speaking and spoke English very badly.

NB : Mr B was released on humanitarian grounds in April 2004, after being held for 18 months.

Asylum-seekers left without any advice

To these obstacles must be added the fact already mentioned that most lawyers have not followed specific training, and also that the rules governing the detention of migrants and asylum-seekers in Malta make no provision for visits by social workers or any other persons able to provide practical or legal information on the rules on immigration and asylum in Malta. Asylum-seekers receive very little information on the procedures they could initiate or on their ongoing procedures. Added to the very long times they have to wait at all stages of the procedure, the absence of information helps to create a recurrent feeling of abandonment, insecurity and distress, which we perceived ourselves when we interviewed people in the camps.

The Refugee Commission: not enough staff

In the general opinion of the observers, the work carried out by the Refugee Commission was of very high quality. Neither the pressure created by the number of applicants, nor the excessive waiting times for people in the camps, seemed to alter the attention and precision with which the Commissioner and his assistants considered asylum applications. On the other hand, most observers agreed that there was far too few staff at the Refugee Commission. The Commissioner himself, when asked about possible solutions to improve the situation of asylum-seekers, replied that at his level, the solution would be to be able to respond more quickly to applications so as to avoid people being detained.

In his mission report, the Commissioner for Human Rights at the Council of Europe, Alvaro Gil-Roblès, considered it necessary " *the Maltese authorities ought, therefore, to provide the competent organs on asylum matters - i.e. Refugee Commissioner and Refugee Appeals Board - with an adequate and permanent staff to speed up the decision-making process without prejudice to the quality of the hearing and analysis of applications.*"⁷³

It was probably in reply to this recommendation that the bill presented by the government in January 2004 (see above) gave the Prime Minister the possibility of appointing assistant Commissioners and creating several divisions within the Refugee Appeal Council to examine appeals. In May 2004,

however, the situation was still the same.

3-2.2.2 Deficiencies of the asylum procedure

The fact that the examination of applications for asylum by the first court is of high quality does not compensate for the deficiencies at every other stage of the procedure. We will list those deficiencies here, in increasing order of seriousness:

Lack of information

Neither on their arrival nor at any stage during the procedure are applicants duly informed of the state of their applications or of their rights under the law on asylum. Such information is neither provided by the civil servants responsible for managing the centres; nor by documents distributed on an ad hoc basis; nor by social workers.

No interpreter

Though provision is made for an interpreter to be present during the interview with the Refugee Commissioner, this help is non-existent during the period preceding the interview, which may be very prejudicial for some foreigners who do not speak or understand a commonly spoken language, notably during their detention.

Excessive waiting times

In most cases the excessive waiting times are hard to accept when asylum-seekers are able to circulate freely in the country in which they have submitted their applications. When they are kept in detention, which is generally the case in Malta, the times they have to wait while their applications are examined before receiving a reply from the authorities are extremely unreasonable (more than a year in many cases).

Lack of legal assistance

Asylum-seekers are deprived of basic information about their rights and the relevant procedures (see above). What is more, they can only have access to a barrister in the first court at their own expenses, and this makes assistance impossible for many of them. Though in theory the law makes provision for legal aid after rejection of the asylum application by the first court, it is not given in most cases (see legal aid above).

Ineffectiveness of appeals

Since the law of 2000 on asylum came into effect, not a single appeal presented to the Refugee Appeal Council against a decision to reject an asylum application has led to that decision being cancelled. The systematic failure of appeals, combined with the fact that applicants are never auditioned during the appeal procedure, and also the fact that no

reasons are ever given for the decisions to reject appeals, makes the appeal procedure completely ineffective and turns it into a simple formality having no effect on the decision taken by the Refugee Commissioner.

But the systematic detention of asylum-seekers is without doubt the main problem with the asylum procedure in Malta.

3-2.3 The detention of asylum seekers

We have stated several times that the detention of asylum seekers is the norm in Malta. While the practice is not explicitly inscribed in law, it is not forbidden. The law states in article 10(2)b: an asylum seeker " *shall unless he is in custody, reside and remain in the places which may be indicated by the Minister.*" In practice asylum seekers who hold a valid visa and who present a demand for asylum (this is the case for the majority), are effectively treated as illegal immigrants and they are therefore subjected to detention applied in accordance to the law, and regardless of their age (the detention applies also to minors), sex, particular condition or vulnerable category (pregnant women and women with new born children).

This contravenes the principles of the Geneva Convention Relating to the Status of Refugees (art. 31) whereby Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees and shall not apply to the movements of such refugees restrictions other than those which are necessary. For a considerable time, Malta maintained a reservation concerning the application of article 31 of the Geneva Convention, due to its lack of compatibility with specific problems of that country. However, this reservation was lifted in February 2002.

Detention applies not only to asylum seekers and those awaiting an appeal, but also to those who have been rejected and are awaiting repatriation, and sometimes those who have been granted asylum and are awaiting suitable housing.

Above, it is the practice of asylum seekers detention combined with its duration which makes this principle intolerable. Because it is not laid down in the law, detention is thus not limited in time.

It lasts as long as the processing of asylum claim and sometimes even longer if the level of available housing for refugees is insufficient.

3-2.3.1 Responses to the detention of asylum seekers

The Maltese policy of systematic detention of asylum seekers

gave rise to numerous international and national reactions. We mention here only the most recent ones.

- The UNHCR has informed the Maltese authorities of its concerns regarding the prolonged detention of asylum seekers on several occasions. In November 2003, the spokesperson of the Rome delegation recalled that, in principle, asylum seekers in Malta should only be detained in exceptional circumstances. For example: to check their documents. Even so, this should be limited to when asylum seekers have either false documents or none and is suitable only if they refuse to cooperate. During the investigation of the asylum claim, detention must not go beyond a preliminary interview and must never last until the moment when a decision has been made about the claim. The detention of asylum seekers is only justified if the claimant is a criminal or if national security and public order are menaced. The UNHCR underlines that the sanction envisioned against migrants who have illegally crossed the border cannot be applied to asylum seekers because they could neither have entered the country legally nor meet the formal qualifications for entry⁷⁴.

- Amnesty International, in a report published in April 2004, said to be concerned by the policy of the unlimited detention of asylum seekers. The association reveals that detention can last for one or two years and involves all categories of asylum seekers, even the most vulnerable. It has restated its previous demand that the Maltese authorities take the necessary measures, conforming to international standards, to ensure that asylum seekers are not detained except when legal motives justify such treatment with the condition that there is no alternative and that it is only for a short period⁷⁵.

- In a report published in January 2004, after a visit to Malta three months before, Alvaro Gils-Robles, Commissioner for Human Rights for the Council of Europe, reconfirmed that "*in principle, [asylum seekers] should not be detained when they have not committed any offence, and that States should take the necessary steps to avoid incarceration*"⁷⁶

- The Maltese political class has said relatively little on the subject. However, we remark the interventions of two representatives of the opposition parties. Mr Gavin Gulia, leader of the Labour party, has rebelled several times against the excessively long process of asylum claims, which he attributes to the notorious inefficiency of the Refugee Commission. He has denounced the poor conditions of detention for the asylum seekers and has declared that for the Labour party detention is not acceptable unless they live

in decent condition and their claims are dealt within a reasonable time limit⁷⁷. For the Alternattiva Demokratika (Maltese Green Party), asylum seekers should not be locked up in detention centres but housed in open centres which would allow them to mix with the local population, to send their children to school and to live as normal a life as possible⁷⁸.

- It is without doubt the work of the association JRS Malta that has provided the most complete argument against the systematic detention of asylum seekers, about which it has produced several publications (see Bibliography in Appendix 1). JRS analyses other international and national texts concerned with the respect of human rights and the rights of refugees to reinforce its own position. The association pleads the case for freeing asylum seekers incarcerated in Malta, and it proposes some recommendations linked to this position:

1) The authorities must urgently look for and put into place alternatives to the detention of asylum seekers, including the installation of open centres.

2) The detention of asylum seekers can only be considered if there are clear rules to define the circumstances when it will be used and must include the following guarantees;

- There must be precise presumptions against the asylum seeker

- Detention can only be applied in individual cases where the authorities can demonstrate the inefficiency of alternative measures

- The detention must not go beyond the time strictly necessary

- A maximum period of detention must be fixed by law

- Special measures must be taken for those judged to be vulnerable

- Detained asylum seekers must be heard by a judge or another competent authority to demand their liberty if prolonged detention is not considered to be necessary

- The European Union institutions, have pronounced on the question of the detention of asylum seekers in Malta during its adhesion to the Union. Contrary to other analyses, they have been most understanding in their analysis of the situation, stressing the inherent difficulties given the size of the country and the length of the asylum process.

- 18th September 2003 a Member of the European Parliament raised the question of the arrangements that had been made to ensure that Malta, only a few months away from adhesion, conformed to its international obligations and the aquis communautaire of the EU in this matter. In its

response of 4th April 2004, the Council of European Union said it was aware of the situation but also of the fact that Malta has only a limited capacity to welcome illegal immigrants and asylum seekers, which lead to overpopulation. It underlined that the Maltese authorities have yet to find an adequate solution but endeavored to provide the best possible conditions given the circumstances and the large number for the illegal immigrants and asylum seekers. In this context, it considered it necessary to assess the conditions of detention for asylum seekers with respect to the limited capacity of Malta to host them⁷⁹.

- The European Commission is in charge of following the progress of candidate States to the EU in their compliance to communitarian norms. Since 1999, it has made several reports about each candidate country. In its report of November 2003 on Malta, the commission congratulated Malta for the progress made in 2003. Nevertheless it encourages the country to make an effort with regard to asylum. It considers that Malta in particular must reduce the length of the asylum process and improve the conditions of the detention of claimants. In March 2004 it observed that, with regards to the asylum legislation, Malta must make more efforts to speed up the procedure, legal assistance and the integration of those granted asylum. Taking into account the length of the process, the asylum seekers are detained for several months⁸⁰.

3-2.3.2 The position of the Maltese authorities

Confusion between asylum and immigration

The government has had several occasions to express itself about the policy of the systematic detention of those arriving in Malta in an irregular situation, through the Minister of Justice and Home Affairs. Normally this serves to justify it, citing the specificities of the country (small size, geographical position), the migratory context (huge increase in the number of arrivals during the last 5 years) and the protection of the public order. In this explication there is never any distinction between asylum seekers and other foreigners. On the contrary the confusion is perpetuated in official declarations by the usage of the expression illegal immigrants, even when the subject refers to the process of asylum seekers or the recognition of refugee status. The Home Affairs Minister confirms this practice, he is quoted as saying - against all evidence. "*the Immigration Act made it illegal for asylum seekers to be set free*⁸¹" All this leads us to think that the systematic detention of asylum seekers is in fact a choice. Representatives of JRS, with whom we have met, consider it as the will of the Maltese government to discourage people

from trying to use Malta as an entry point into Europe by making Malta an unattractive destination, or to dissuade fraudulent or unfounded asylum seekers. The association considers anyway this will as ineffective.

Speeding up the asylum process seems to be an objective of the Maltese authorities, to this end the proposed law that was deposited in January 2004 will increase the number of staff who are capable to make a decision about refugee or humanitarian status(see p.24). However, there is no sign that the authorities plan to put an end to the system of detention of refugees. On the contrary:

The detention of asylum seekers: a deliberate choice

During a press conference held with his visiting Italian homologue in July 2003, the Home Affairs Minister, Tonio Borg, declared his intention to speed up the asylum or humanitarian process by enlarging the number of personnel in the Refugee Commission. With the aim of reducing the time that claimants spend in detention. However he equally insisted: *"the government is set to continue with its policy to detain illegal immigrants who land in Malta⁸²,"* without any indication of the particular regime that will be applied to those "illegal immigrants" who claim asylum.

Some months after the visit of the Commissioner for Human Rights of the Council of Europe in October 2003, the Home Affairs Minister announced that they would be a reform of the law to speed up the asylum process (N.B. This was presented in January 2004), and that *"the government is planning to [...] set free illegal immigrants whose detention drags on beyond a reasonable time⁸³."* Effectively, the government has, from time to time and without a set of criteria, occasionally freed some asylum seekers, who had usually been detained for more than a year. At Christmas 2003 a group of Eritreans were the subjects of such "kindness". In the opinion of those familiar with the camps, this action, although welcomed, caused bitterness amongst other detainees, notably Sudanese, who had been

locked up for longer than the freed Eritreans.

The position of the Maltese government was not shaken by the report of the visit of the Commissioner for Human Rights of the Council of Europe. In response to the observations made by the Commissioner, it observed: *"The Maltese government appreciates the Commissioner's comments but it does not consider that it would be in Malta's national interest to do away with the policy of detention. If the 2000 persons who entered Malta illegally in the last two years had been immediately released, they would have caused upheavals on the labour market and major problems regarding their accommodation.⁸⁴"* When in February 2004 the Home Affairs Minister declared that the law project, designed to allow cases where the detention had been excessively long to be brought before the courts, would soon be presented before Parliament, he added that detention would not be put into question; *"Minister Borg said that it is against the national interest to have illegal immigrants free⁸⁵."* Once again for the Maltese authorities the fact that the large majority of these "illegal immigrants" are in fact asylum seekers was not taking into account.

To the best of our knowledge, the question of the detention of asylum seekers has not been the subject of in depth debate by the Maltese Parliament. In January 2004, when the President of the Social Affairs Committee was questioned by a Labour MP, he announced that the question would be put on the agenda of the Commission as soon as possible. By the end of the mission (end of February 2004), it had not yet been discussed.

3-2.4 The asylum process

3-2.4.1 Granting refugee status

Between 1st January 2002 and 24 February 2004, 926 claims were made for asylum, involving 1 162 persons. The table below outlines the responses to these claims.

Status	Number of claims	Numbers of persons involved
Granted refugee status	53	76
Granted Humanitarian protection	384	522
Rejected	434	496
Claim withdrawn	18	31
Claim Pending	36	36
Total number of claims (treated or pending)	925	1161
Treatment (+1 waiting first Interview)	(+1)	(+1)

(source Refugee Commission, February 2004)

N.B. This table covers the entire period from the date of the application of the Asylum Law in Malta and the date of the FIDH mission

By adding together the two types of status they can be accorded there is a total of 598, as opposed to 496 rejected claims, or roughly half receive a positive response. Many commentators have remarked, like the Commissioner for Human Rights of the Council of Europe, that " *the proportion of asylum status and humanitarian protection granted is significantly superior to most of the European countries*"⁸⁶.

This interpretation combines the refugee status with the humanitarian one. However, there are six times more humanitarian status granted than refugee status (6.5% of claims treated), and it does not take into account that only refugee status gives the legal rights of permanent residency and the right to work which make possible permanent integration in Malta.

Humanitarian Protection: a precarious status

On the contrary, the humanitarian status granted to 45% of claimants is based upon a limited right of residency and it is precarious: they have neither the right to work nor the right to live outside of open centres and the food they receive. Taking into account this position of complete dependence on the authorities, those who receive humanitarian status have a only relative freedom. With no possibility of integration and no future in Malta, it leads us to believe that this humanitarian status is a "safe conduct" that prepares the person, on leaving the camp, to go to another country, rather than a recognition of his or her right to stay in Malta. This is confirmed by the absence of a policy of integration and the activities of the Emigrants Commission with regard to those "leaving".

Official statistics do not show the nationality of those who have been granted status. For those working in the domain humanitarian protection (not defined by the law) is granted to those fleeing civil war. But it is not applied to those fearing cruel or degrading treatment, torture or other serious violation of their fundamental rights. Since 2002 this status has been mainly granted to Somalians, Ivorians, Liberians and, until March 2003, Iraqis⁸⁷.

The case of the Eritreans

From March 2002 onwards, more than 400 Eritreans have arrived in Malta in several waves. Not all of them have claimed asylum hoping to go to another country. Others have only taken the decision to claim asylum after a decision of expulsion has been made, without it being taken into account. Between 30th September and 3rd October 2002, 223 had been sent back by force to Eritrea. Amnesty International protested against this decision, and made its concerns known

to the Maltese authorities about the "*disturbing human rights situation in Eritrea*". In its report of 18th September 2002 they evoke "*the numerous arbitrary and secret detentions without charge or trial of prominent government critics, journalists, civil servants, and objectors to military service (...) Hundreds of people are reported to have fled Eritrea in recent months to avoid or escape from military service. Those caught are reportedly arrested; tortured (...) They are detained without any judicial process for months with hard labour; then sent back to the army. Under national service regulations, the punishment for evading conscription is up to three years imprisonment, but the penalty for desertion in time of war could be the death*".⁸⁸ In May 2004, Amnesty reported that some of the Eritreans sent back to Eritrea were tortured and imprisoned upon their return to Eritrea. The controversy provoked by this affair led the opposition to call for an independent inquiry into the matter. The Home Affairs Minister, who had expressed his doubts about the allegations of torture, reaffirmed his confidence in the refugee Commissioner and maintained that the government had nothing to hide. Commenting on the speech of a UNHCR representative, who had said the government had been too hasty in sending back the Eritreans, he attacked those who "wash their hands of it" by judging in 2004 what they had not condemned in 2002⁸⁹.

3-2.4.2 Denied asylum seekers

Around half of the people asking for asylum in Malta are denied their claim. Those who are not freed, generally for humanitarian reasons as a result of an excessive detention time, are removed, in the framework of either voluntary returns or forced returns (voir infra).

The case of Sudanese victims of legislative transition

A group of Sudanese arrived in November 2000; their asylum claim, perfectly plausible according to a lawyer who defends several of them, was rejected just before the law passed in 2000 was in effect (but it was enforced only in January 2002) in the framework of the determination, at that time managed UNHCR Roma delegation representatives. Denied asylum before the applicability of the disposition relative to the humanitarian status, which they could have claimed, they were not authorized to ask for the reexamination of their situation in this perspective. During the February 2004 mission, they were still in detention, more than two years after their arrival. The lawyer, who informed us of this situation, mentioned that representatives of Sudanese authorities (Sudanese ambassadors in Libya and in Italy) had twice, during visits to Malta, wanted to meet the detainees, who

refused to see them. In spite of this refusal, it seems that Maltese authorities have accepted to give their Sudanese homologues all the informations necessary to identify the detainees.

3-2.4.3 Leaving the camp

Placing asylum seekers in camps does not correspond to the application of the law but rather to a policy of systematic administrative incarceration. Their departure from the camps is not legally defined and this process is vague, erratic and improvised. In principle those asylum seekers who have been rejected, as well as those who have been refused the right to remain in Malta, should leave Malta of their free will, or be ejected from the territory. Those who have been granted asylum status should be freed. However, a careful consideration of the practices followed reveals some surprises:

Freedom does not just happen to those who have been granted a status: when detention has lasted for too long, decision can be taken on discretionary basis to end the incarceration of certain asylum seekers, even if they had been rejected or before a decision has been made in their case. This was the case at Christmas 2003 when the government decided to free a group of Eritreans. This decision was made without consulting either the associations or the lawyers of these persons. One of the lawyers, who regularly spend time in the camps, reported that he had been aware, in an informal manner, several days beforehand of the government's decision. In order to prevent violent reactions to it, he had tried to prepare those who were not going to be released for the decision.

M.B., Mauritanian, had been incarcerated for more than eighteen months. The Commission had refused his claim for asylum at the end of 2002. He had appealed in 2003, and was waiting the decision of the Appeal Court when he was freed in the first trimester of 2004. Housed in an open centre, he had not received any document pertaining to his right to reside in Malta. After several weeks, he received a Maltese "travel document" valid for three months(see Appendix 3) which authorised him to travel outside of Malta and to come back during this period. In his own words, by granting him this document the authorities were inciting him to leave the territory and never to come back.

On the other hand, being granted a status doesn't mean freedom. The reception services for refugees is well below the demand. It has been the case, notably in the first semester of 2003, that those granted refugee or humanitarian status were kept in the camps while waiting for a solution to be found.

JRS has mentioned that, at this time, some 256 persons were kept under detention, without knowing that they had been granted refugee status,

because there were no places in the reception centres. It was only when the government decided to transform some building that had previously served as detention centres into an open centre that they were finally freed.

At the same time, the Iraqis who had had their asylum claims suspended following the changes in the context in Iraq were kept in detention. The UNHCR has advised that they be granted a temporary residency permit while waiting for an evolution of the situation in Iraq.

3-2.4.4 The return

The official statistics show that a thousand foreigners either not allowed into the territory or rejected asylum seekers have left Malta between 2002-2003. The number of voluntary or forced returns is not known. JRS believes that the majority are voluntary departures. They esteem that those who have been kept in detention after being rejected and those who have not applied for asylum but who do not have the right to enter the territory end-up preferring to leave rather than to continue in such unsupportable conditions. In this case, detention plays a dissuasive role. However, the will to leave voluntarily does not guarantee that the departure will be rapid. We have heard of cases where people were ready to go back to their country, but were kept in detention for a further six months owing to problems with the necessary travel or civil documents. Foreigners have also been asked to pay for their own return journey. Normally, the authorities look to gather together groups of people from the same country to reduce the cost. This can equally prolong the detention.

Forced returns

Information about forced returns is rare. Nevertheless, Amnesty International has been made aware of several occasions when excessive force was used to send back several groups of Eritreans during September-October 2002(see p.32 The Eritrean Case). At this time the organization demanded that the Maltese government made sure that the police received clear instructions to not use excessive force beyond that which was necessary to send back these persons.⁹⁰

The majority of forced returns from Malta occur to those who arrive by airplane and who are forced to go back without having left the airport and before placement in camps. Formally the law allows them to claim asylum at this stage, but it is difficult to have precise information about the procedure applied. To our knowledge, no NGO, lawyer or social worker is planned for the airport and the asylum process is entirely in the hands of the airport police and the immigration officials.

3-2.4.5 The freedom... to leave Malta

We have seen that immigrants with different status and even those with no status can be freed after having claimed asylum and having been detained for several months or years in a camp. As to the fate of those who leave, there is no need to distinguish between those who have been granted refugee status, humanitarian status for those who do not qualify as refugees following the Geneva Convention, an ad hoc temporary residency permit (like the Iraqis see p.34) or indeed those who have been rejected but who benefit from a favourable measure that has put an end to their detention. Because finally, despite the different nuances their situation is relatively comparable.

Lack of an integration policy

Effectively, there is no policy of integration of refugees in Malta. The Emigrants Commission, a local NGO charity looks after migrants and refugees arriving in Malta, previously it looked after Maltese migrants abroad. Prior to the Asylum Law of 2002, non-Europeans could not obtain refugee status, the Commission helped those whom the UNHCR had given their protection to emigrate to a third country, notably to be reinstated in Canada, Australia or the USA. It helped almost 3 000 people until 2002. The objective of reinstatement outside of Malta does not seem to be called into question despite the Maltese law that plans the reception of refugees.

The Commission is able to deliver documents necessary to help refugees to rejoin their families abroad. It is the opinion of Mr Philipp Calleja, director of the Commission, that the majority do not wish to stay in Malta. The Emigrants Commission does not encourage it either. Rather than the installation of refugees in Malta, its chief objective seems to be the departure of refugees from Malta. This is an opinion he shares with the authorities and explains the deficiency of reception services for those who have been recognized as refugees and the maladjustment to those who remain.

Dissuasive reception conditions

The same sort of buildings, like Hal Far, are used for the detention of immigrants and the reception of those who have been freed, the only difference is the latter has the possibility to go out. Refugees receive a small financial allowance and everyone has the right to three meals per day (ex-prisoners have reported that these are "the same as in the camps"). The freedom to circulate is relative, because in reality the camps are far from urban centres and poorly served by public transport that stops working in the early evening. People are therefore obliged to spend the whole day in the reception centre or to come back by foot for several miles. In such conditions it is difficult to imagine social insertion - this is very limited for the majority of those who

have humanitarian status or no status as they are not allowed to work. Several testimonies suggest that certain persons are able to find undeclared work in certain sectors.

The precarious administrative, legal and social positions of the foreigners allowed to leave the camps adds to a climate of xenophobia. Several refugees have described this, as has the report by the ECR¹⁹¹. A Palestinian, X, who had been granted refugee status and who was freed after ten months of detention said that he was "never at ease when he went far from the centre where he was housed".

The open housing center at Hal Far is anything but attractive. The FIDH mission met X in "his" room which he shared with five others. This contains three bunk beds, a small table and four chairs, between which bags and suitcases are kept, there is no spare place. The bags and suitcases hold all of their personal belongings, and boxes serve as cupboards to hold toiletries and food.

The director of the Emigrants Commission insisted that the foreigners don't want to stay in Malta, and numerous testimonies show that they are encouraged and even financially aided to leave the country to go elsewhere, often to Italy. This indicates an absence of integration measures for the refugees is choice, to discourage from staying in Malta by making living conditions unpleasant.

M.J., an Ivorian was detained for a year and his asylum claim had been rejected. He was freed and given a three month travel document. First of all, he went to Sweden where he did not manage to establish himself, his return to Malta was poorly received and the authorities to whom he turned to for help, reproached him to have come back.

Conclusion

Reform to the Asylum Law was presented 12 May 2004 to Parliament by the Minister of Justice and Home Affairs, Tonio Borg. It seeks to speed up the asylum process by reinforcing the institutions and personnel of the decision process. In this way detention will be shorter. It includes clauses that will allow those placed in detention to contest this decision if their detention goes beyond reasonable limits. The notion "reasonable" is already strictly defined by law, the right to contest detention is only possible after one year of detention and can be rejected for several reasons, including menace to the public order or the non-establishment of the identity of the claimant.

These improvements are the response of the authorities to the different criticisms that have been levelled against it during the last few months, notably to those of the Commissioner for Human

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Rights of the Council of Europe concerned with the length of detention. They haven't improved the real problems that exist in the application of the "trompe-l'oeil" asylum laws in Malta.

Firstly, in his speech before MPs, the Home Affairs Minister once again justified the systematic detention of asylum seekers: "**it was not possible to allow migrants to roam freely, even when they sought refugee status**".⁹²

Secondly, and most importantly, irrespective of the material conditions given to asylum seekers, **the asylum process and its results do not respect the rights due to asylum seekers or refugees, as laid out in the international texts applicable.**

Asylum seekers: despite the uncontested attention brought by the Refugee Commissioner to each of the cases submitted, the process is marked by a number of malfunctions that can only reduce the reliability of the responses. Moreover, the lack of suitable appeals mechanisms gives an arbitrary nature to the initial decisions.

Refugees: The Maltese government is pleased that the Commissioner for Human Rights of the Council of Europe recognises that Malta attributes a higher proportion of refugee and humanitarian status than in most other European countries. This was reproduced before the delegation of the FIDH by the representative of the UNHCR in Malta. However, it is largely unfounded. refugee status is granted to only 6.5% of

cases. The majority of positive responses, almost half, are given the precarious humanitarian status that does not allow for a prolonged stay in Malta and implies that in the short term the claimants will go somewhere else. For those who are given refugee status, a small percentage, the lack of integration policies means it is not improbable that they will seek to leave Malta. Such projects are strongly or even actively encouraged by the Emigrants Commission.

Yet within the interior of Europe, which Malta has become part of, the refugees and others with a protected status don't have the freedom to install themselves in another country other than that which granted them the status. Therefore, most of those who leave Malta either by choice or by invitation by the Maltese authorities, have every chance of becoming illegal immigrants when they install themselves in another country where being granted immigrant status is rare and refugee status is impossible since the entry of Malta into the EU.

Asylum does not consist in 'non-turning back' principle. While Malta continues to satisfy itself by granting protected status but without assuring lasting integration and by turning a blind eye on the departures of these persons to other European countries, it is only partially responding to the problems posed. It has taken quick fix measures to remedy the worst aspects of its treatment of those granted protection. However, it is only by a real European policy towards asylum that a lasting solution can be found.

9. Council of Europe: *Report by Mr. Alvaro Gil-Robles (AGR), Commissioner for Human Rights on his visit to Malta*; 12 February 2004 [CommDH(2004)4] (hereinafter referred to as the AGR report).

10. Jesuit Refugee Service, which drafted two very well-argued reports on detention conditions of asylum-seekers (1999 and 2003)

11. AGR report

12. Tonio Borg, Minister of Justice and Home Affairs, at the *Conference on human rights and the treatment of asylum seekers* ; Malta dive-news, 20 Nov. 2003.

13. Declaration of Tonio Borg, Minister of Home Affairs, on the occasion of the visit to Malta, on 27 July 2003, of the Italian Minister of Home Affairs.

14. *Comments and observations of the Maltese authorities regarding the report of the Commissioner for Human Rights on his visit to Malta* ; Council of Europe, AGR report, 12 February 2004

15. Statement by Tonio Borg, Minister of the Interior, reported in Malta dive-news, 20 Nov. 2003

16. Egypt, Morocco, Tunisia, Algeria. Malta also signed cooperation agreements with 11 countries in 2003: : Albania, Algeria, Cyprus, Egypt, Spain, France, Greece, Israel, Italy, Libya, Tunisia, Turkey. An agreement of this type is expected to be reached with Morocco in 2004.

17. Information provided by the Maltese government in response to the report by the Commissioner for Human Rights ; 12 February 2004. Op. cit.

18. Annual report of the Ombudsman : *The detention of illegal immigrants by the Police - an own motion investigation by the Ombudsman* ; 24 May 2002 (hereinafter referred to as the Omb. report)

19. "[...] It must be pointed out at this stage that there seems to be no short term solution to this problem. A coordinated long term plan is therefore necessary that will cater for the problems that such a situation creates." Omb. 2002 report

20. The figures quoted are not official (since there is no official source that can be consulted). They reflect a cross-comparison of information collected from a variety of persons interviewed during the mission. In fact, the size of the detained population fluctuates widely at times, increasing during the "good season" (August to November); it was clearly larger than in 2002 according to the Ombudsman's report

21. *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 13 to 18 May 2001

22. *Follow-up response of the Maltese Government to the report on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* from 13 to 18 May 2001 ; Strasbourg, 17 July 2003

23. Fax from the Ministry of Justice Home Affairs to FIDH dated 23 February 2004

24. Testimony of Sharon Spiteri on Floriana, The Times of Malta (21 juillet 2003). At the time of that article, 121 persons were detained in the center, but it sometimes received up to 400 people. The testimony of S. Spiteri are confirmed by the observations of JRS.

25. The investments for the renovation of Corradino amount to 5.5 millions ML. For a population of 275 detainees, the running costs are evaluated at 2 millions ML.

Datas quoted by Tonio Borg, Minister of Home Affairs (20 Nov. 2003)

26. *Comments and observations of the Maltese authorities regarding the report of the Commissioner for Human Rights on his visit to Malta* ; Council of Europe, AGR report, 12 February 2004

27. *Malta-dive-news* ; 20 nov. 2003

28. AGR report

29. AGR report

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30. Omb report
31. Sharon Spiteri ; *id*
32. Declaration of Gavin Giulia, speaker of the 'opposition for Home Affairs, reported by Sunday Times of Malta (11 January 2004). That "opotion" to the government remains moderate and does not concern the principle of detention itself : " The Labour Party is not against detention of illegal immigrants but the conditions [...] at Ta'Kandja and Hal Far definitely need to be improved " (G. Giulia)
33. AGR report
34. Eritreans released in December 2003, after a campaign of Amnesty international denouncing the return of their compatriots a year before.
35. AGR report
36. Sharon Spiteri, *id*
37. Omb report
38. Jesuite Refugee Service : " *Detention of asylum seekers in Malta : a human rights perspective* " ; jul. 2003.
39. " *Their timetable allows enough time for rest and for some light work that may be necessary* ". Omb report
40. Omb report
41. Sharon Spiteri, *id*.
42. Omb report
43. Sharon Spiteri, *id*
44. AGR report
45. AGR report
46. AGR report
47. In Ta'Kandja, the guards changing too often, they cannot ensure this and the detainees have to deal with it.
48. AGR Press release, 22 oct. 2003
49. Omb report
50. AGR report
51. The Ombudsman, after a visit he paid at psychiatric Mount Carmel Hospital ; *Times of Malta* ; 17 February 2004
52. *Comments and observations of the Maltese authorities* ; AGR report, *id*
53. This number of personal identification is preceded by two letters corresponding to the codification of the boats in which the migrants arrived in Malta.
54. *The Times of Malta* ; 21 July 2003
55. " *The main reason behind their depression was being left in dark about their status and being detained indefinitely* " ; Omb report
56. Omb report
57. JRS ; *id*
58. Like non-weaned children and women in the final months of pregnancy. JRS, *id*
59. Omb report
60. *Times of Malta* ; 17 February 2004
61. P. Grech Margerat, in *The Times of Malta* ; 4 nov. 2003
62. In 2002, there were 176 children (90 boys and 86 girls) among 1,686 arrivals by boat; in 2003, there were 13 (from a total of 497 arrivals)
63. 2003 Amnesty International report
64. United Nations - Economic and social council: E/CN.4/2003/85; 30 December 2002
65. The HCR delegation in Rome
66. A Maltese NGO.
67. Geneva Convention, Art. 1 : (any person who has a) "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"
68. These concepts are contained in the draft version of the European Directive on "minimal standards on procedures for granting and withdrawing refugee status", which was to be adopted by the EU Council before the end of 2004
69. At the end of 2002, the High Commissioner for Refugees (HCR) organized training in Malta for a team of twelve or so people likely to be given a job at the Refugee Commission
70. JRS calculation, *Detention of asylum-seekers in Malta : a human rights perspective*, July 2003
71. In his mission report, Alvaro Gil-Robles said he was "astonished to see that most of its 'decisions' consisted of a simple letter with no legal explanation, sometimes even limited to one sentence". Council of Europe, Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Malta, 12 February 2004, item 23.
72. The JRS association reported on the case of twenty-five asylum-seekers who, more than four months after having made a request for legal aid, which was not an easy matter for them, had still not been able to contact the lawyers appointed to assist them. The lawyers for their part did not consider that they had been officially contacted by their clients.
73. AGR report, item 23.
74. Taken from a speech by Laura Boldrini, spokesperson for the UNHCR Rome Delegation, and reported by the *Malta Independent*, 16/11/03.
75. See Amnesty International Europe and Central Asia June-December 2003, and *Malta*, April 2004
76. AGR report, item 9
77. Taken from a speech by Mr Giulia that was reproduced by *Malta Independent*, 16/11/03
78. Taken from a speech by Mr Arnold Cassola, General Secretary of the European Green Party and spokesperson for Alternattiva Demokratika, that was reproduced by *Malta Media News*, 06/10/03
79. Written question p-2875/03 posed by H  l  ne Flautre (Green/ALE) to the Council of EU, reply
80. See the reports of the European Commission to the Council with regard to the adhesion of Malta, 05/11/03 and 24/03/04
81. *Times of Malta*, 10/05/03
82. *Malta Independent Online*, 29/07/03
83. *Times of Malta*, 21/11/03
84. Commentary of the Maltese government given in the appendix of the Report by Mr Alvaro Gils-Robles on his visit to Malta. Office of the Commissioner for Human rights, CommDH(2004)4. Strasbourg, 12/02/04
85. *MaltaMedia*. Com, 09/02/04
86. AGR report
87. >From March 2003, with the American military intervention in Iraq, the examinations of claims by Iraqis has been suspended. Following the recommendations of the UNHCR, they have been granted a temporary residency permit while awaiting an evolution of the situation in Iraq
88. Amnesty International : *The Government must stop the expulsions of Eritreans*, 10/10/02
89. *Times of Malta*, 26/05/04
90. Amnesty International : *The Government must stop the expulsions of Eritreans*, 10/10/02
91. European Council against Racism and Intolerance, Second report on Malta, 23/07/03
92. *Times of Malta*, 13/05/04

4- CONCLUSIONS AND RECOMMENDATIONS

The mission was carried out at the end of February 2004, a moment of transition because of the integration of Malta into the European Union, which came into effect from 1st May 2004. The application of European norms made necessary to adapt Malta's asylum practices-

The most recent declarations by the Maltese authorities do not leave much cause for hope of a fundamental change in orientations from which stems one of the two major criticisms by the mission: the use of systematic detention of illegal migrants in the territory as a way to manage the flow of migrants. There are several measures to be undertaken immediately.

Furthermore, the announcement by the Maltese government, at the beginning of 2004, of a reform of some of points of the asylum law does not seem fit to correct neither the dysfunctions of the asylum procedure nor the lack of reception mechanisms and the absence of integration for those recognised as refugees, which are the second major problem identified by the mission. In both of these respects, practices, more than legislation, need to be changed.

The Maltese authorities have invoked arguments dealing with the geopolitical and topographical character of the country to justify its exceptional treatment of migrants and asylum seekers. This is in direct contradiction with the international and regional texts and with the interpretations given by the bodies responsible for their enforcement.

However, the members of the mission are aware of Maltese specificities. Due to its geographical position, it is and will remain a passage on the routes of migrants and of those seeking protection in Europe, from Africa or the Middle East.

The entry of Malta into the EU can only reinforce its role as a transit zone and may lead to an increase in the number of claims that it will have to process. The application of the European rules on the determination of which country must deal with an asylum claim⁹³ will oblige Malta to readmit those who have passed by Malta before going elsewhere in the Union. For the same reasons, it will be impossible to enforce a practice of encouraging foreigners to leave rather than a policy of insertion of foreigners, whether humanitarian and statutory refugees, or refugees denied asylum but freed from detention centres.

These data must be apprehended by taking into account the very small size and high population density of the country. This context means that solutions to Malta problems must be sought beyond its national boundaries.

Yet, the evidence is far from being fully understood: in April 2004 the European Commission did not bother about Malta going on with its detention policy of asylum seekers and migrants. The Commissioner for Human Rights of the Council of Europe, while severely criticising the procedures and recommending changes, made neither the dysfunctions nor his recommendations within a European perspective. UNHCR has issued some reserves about the detention policy, but said nothing about the application of the asylum law. This is why FIDH proposes two series of recommendations.

The first is directed to the Maltese authorities and aims put procedures for the reception of those in irregular situation as well as those for asylum seekers and refugees, in conformity with the principles and the obligations of the various international and regional conventions Malta has ratified:

- International Convention against torture and other cruel, inhumane and degrading treatment.
- International Convention of Children's Rights
- Geneva Convention for Refugees
- European Convention for the Protection of Human Rights

The second is addressed to the institutions of the European Union. It invites the Union to adopt adapted measures to anticipate and foresee the accentuation of imbalances which, if not corrected, will in the next years weigh heavy on Malta. This will have negative effects on the fate of migrants or those seeking protection.

4-1- Recommendations to the authorities

4-1.1 General recommendations for the reception of immigrants

Since the systematic detention of migrants in an irregular position or of asylum seekers cannot be used as border control,

Put in place an alternative reception system to detention, by enlarging the system of open centres as it has been done in two Hal Far buildings.

4-1.2 Urgent recommendations about the detention of foreigners

In parallel to an alternative to detention, the following measures are necessary:

4-1.2-a) Legal framework of administrative detention

- define the criteria for placing foreigners in detention
- the possibility to detain asylum seekers is to be used only for short periods in exceptional cases that have been laid down by law
- ban the detention of all recognised as refugees
- put detention centres under the control of a single authority and establish common internal rules
- fix a maximum detention duration
- plan to explain to foreigners, in a language they understand, why they are deprived of liberty and what are their rights to appeal
- to this end, foreigners should benefit from free legal and interpreter assistance
- automatic control mechanisms for administrative detention

4-1.2-b) Detention regime

- organise detention in appropriate places which meet international hygiene and security norms, notably those defined by CPT
- foresee that detainees have unrestricted access to social and medical services, including psychiatric, by the installation in detention centers of a medical antenna and a social workers office
- enable communication between the foreigners detained and the different personnel (guards, care staff, social workers) by the presence of interpreters
- guarantee access to NGOs who aim to support and help the detained foreigners
- guarantee that the detainees can communicate with the outside world; free and easy access to phones and visits

4-1.2-c) Foreign Minors

- revise legislation so it forbids detention of isolated minors, unless, and in accordance with the CIDE, it is as a last resort, for as short a period as possible and if it is in the child's own best interests
- in cases where the age of the immigrant is in question, assume that he/she is a minor until proved otherwise
- from their arrival, place all minors under the care of social services to assure their protection and to respect their rights, under the same conditions as nationals
- ensure that family units are respected when minors are in the company of their parents

- guarantees that minors have access to education, recreation and medical and social care adapted to their needs

4-1.2-d) Training

- give training on foreigner and refugees rights to immigration officers in charge of the first contacts, and to interpreters
- heighten the awareness of lawyers and judges to these rights
- train the guards who keep watch over foreigners and refugees to respect fundamental rights and foreigners' and refugees' rights
- train the medical personnel dealing with foreigners to recognise and treat physical and psychological traumas
- organise public awareness campaigns about cultural diversity and the struggle against racism and discrimination

4-1.3 Recommendations relating to the asylum procedure

The asylum procedure must be evident and fair. To this end, it should;

- provide asylum seekers, from the submission of their application and for the whole duration of its determination, with clear and regular informations on the procedure that is being applied to them and on the implications of decisions taken against them;
- at all stages of the asylum procedure, guarantee asylum seekers the opportunity to receive assistance from an interpreter, and legal counsel, whose expenses will be paid for in the form of legal aid;
- for this assistance to be effective; guarantee asylum seekers access to their counsel, and ensure that they are informed about asylum procedures;
- recruit and train to asylum rights a sufficient number of social workers
- enable the intervention of specialised NGOs - especially in situations, which must remain exceptional, of administrative detention.

4-1.4 Recommendations relating to the definition of "humanitarian" protection and other forms of protection

- do not grant humanitarian protection to people who actually come under the 1951 Geneva Convention and could, in this respect, be awarded refugee status.
- do grant humanitarian protection as a minimum, for people who do not come under the 1951 Geneva Convention, in situations justifying the right to "subsidiary protection" in the sense of art. 15 of the EU directive of 28 April 2004, *concerning the minimum standards relating to the conditions*

that third country nationals or stateless people must satisfy in order to claim refugee status, or those who, for other reasons, require international protection, i.e., people reporting risks such as:

- death or execution; or
- torture or inhumane or degrading treatments inflicted on an asylum seeker in his country of origin; or
- serious and personal threats against the life or the person of a civilian resulting from indiscriminate violence or in the event of internal or international armed conflict.
- prescribe forms of complementary protection of a humanitarian nature to take into account the situation of:
 - sick people whose health prognosis will be jeopardised if they return
 - victims of human trafficking, unaccompanied minors, or all vulnerable people.
 - people the authorities decide not to send back to their country of origin or provenance.

The terms of recognition for these forms of protection must be clearly stated by the law and implemented.

4-1.5 Recommendations relating to the status granted by the recognition of humanitarian protection, and to the integration of refugees and those granted other forms of protection

- to grant foreigners, whose right to humanitarian protection, as prescribed by law, is recognized, the benefits awarded to those under subsidiary protection, by the 28 April 2004 directive cited previously, namely:
 - the right to a residence permit, valid for at least one year,
 - the right to work,
 - the right to professional training.
- ensure the conditions for the successful integration of the people whose refugee status is recognized, or who are granted humanitarian status or another form of protection, while enforcing active mechanisms to help them in their search for a job and for accommodation, guaranteeing their independence, and enabling family reunification.

4.2 Recommendations to the European Union

A "mechanical" application of the "Dublin" regulation, and the subsequent obligation for Malta to readmit lost of the asylum

seekers having transited on its territory before going elsewhere, would have the following consequences;

- 1 - taking account of the size of the country and its geographical situation, lead to a serious imbalance, detrimental to the quality of the reception for asylum seekers and of the handling of their cases;
- 2 - by a knock on effect, lead the Maltese authorities to an increased turning back policy towards future asylum applicants, to the detriment of the protection principles.

Consequently the European Union should take urgent ad hoc measures. They can be of two orders:

- *either*, to provide a special dispensation to the application of the "Dublin" regulation by discharging Malta of the responsibility of handling an asylum application from a foreigner who would have left Malta territory after submitting the application, and transferring the handling of this application to the authorities of the country where the seeker wishes to present⁹⁴
- *or* to allow people recognized as refugees or whose humanitarian status is recognized in Malta, to settle freely and legally in another member state.

In any case, the European Union - in this instance the Commission through its management of ERF II (European Fund for Refugees), established by the Council in its decision of 8 June 2004 - is urged to decide expressly on the allocation of specific credits, so that Malta can receive refugees and displaced people in conditions conforming to the respect for people's dignity, and with fairness, and so that it can withstand the consequences of this reception.

- These financial measures should privilege two of the sectors that the ERF provides for: reception and asylum procedure; and integration. On this last goal, Malta's resources should be equally abundant as part of the EQUAL programme to support the effort for the professional integration of refugees.
- Finally, it is especially urged that "Community programmes" are created, to evaluate the pertinence and the impact of Malta's initiatives, as much in regards to quantity as to quality; these evaluations could be conducted by the NGOs.

93. Dublin rules no. 343/2003, 18/02/03. Which make the country that allowed the initial illegal penetration of her territory, and of the Union, responsible for treating the asylum claim even if it has been made later in another country.

94. See, on this point, Recommendation 1327 of the Parliamentary Assembly of the Council of Europe (1997), which urges (pt 8-vi) member states to alter [the "Dublin" mechanism] "with a view to allowing asylum seekers to express a choice as to the country where they want to apply for asylum, if they can demonstrate an association with that country."

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Appendix 2- Note on the principles relating to the detention of Asylum Seekers in international legal instruments

Administrative internment as a method of managing the situation of foreigners who submit an asylum application is contrary to the principles laid down by the international legal instruments relevant to this matter. At the very most it can be allowed for a very short duration, on the arrival of the asylum seeker to a country's territory, for the purpose of identification, if they arrive there without travel documents, until they have drawn up their application. The fact that a national law permits the detention of foreigners who have entered or are staying in the country illegally is not sufficient to justify its implementation in regard to asylum seekers.

In its *Guidelines on applicable criteria to the detention of asylum seekers* (1999), the Executive Committee (ExCom) of the United Nations High Commission for Refugees (HCR) states that, so as not to be arbitrary, the detention applied to asylum seekers must comply not only with the national law of the states, but also with art. 31 of the Geneva Convention of 1951, concerning refugees (GC), and to the international law on human rights.

Article 31 of the GC prescribes that:

- 31(1) "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened [...], enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

- 31(2) The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

NB. the expression "refugees" in the sense of art.31 applies not only to recognised refugees, but also to asylum seekers awaiting determination of their status, in accordance with the recognised nature of refugee status.

Drawing on art.14 of the Universal Declaration of Human Rights (UDHR), according to which the right to seek asylum is a human right, the Guidelines lay down as a principle that asylum

seekers must not be detained. The exceptions to this principle must be prescribed by law, if they come within the field of "necessary" restrictions in the sense of art. 31 - 2 GGC. According to Conclusion No. 44 (XXXVII) ExCom of the HCR relating to the detention of asylum seekers and refugees (1986), detention, which must never assume an automatic character, that can be qualified as a "necessary restriction" are:

- the time to determine the identity of the asylum seeker;
- in the context of a preliminary interview, in order to identify the foundation of the asylum application (but under no circumstances for the whole duration of the determination procedure);
- in the case where the asylum seeker has voluntarily sought to withhold their travel or identity documents with the intention of misleading the authorities;
- to protect national security and public order (this refers to circumstances where the asylum seeker has a criminal history or when there is evidence to show that their admission to the territory would be liable to pose a problem for national security or public order).

Conclusion No. 44 ExCom specifies that a detention policy whose aim is to deter future asylum seekers, or to incite asylum seekers to withdraw their applications, does not come within the field of "necessary restrictions". Neither does the invocation of an emergency, for example in the case of the simultaneous arrival of a large number of asylum seekers, justify their placement in "closed camps", if this placement is not accompanied by an immediate search for solutions.

In its *Resolution 2000/01 on the detention of asylum seekers* (2000), the United Nations Sub-Commission for the Promotion and Protection of Human Rights, protecting against certain detention practices and policies likely to contravene the international principles, norms and regulations concerning human rights, or dissuade people from seeking refuge from persecution, strongly urges the States to honour their respective international obligations concerning detention practices and policies in regard of asylum seekers (...) and encourages [them] to adopt methods alternative to detention.

Deliberation No. 5 on the situation of immigrants and asylum seekers by the United Nations Working Group on Arbitrary Detention (2000) considers for its part that every asylum seeker or immigrant placed in detention must be introduced

in a short time to a legal authority or other (...) and that a time limit must be prescribed by law, detention under no circumstances being indefinite or of an excessive duration (...)

In the *Recommendation on the detention measures of asylum seekers* (Rec(2003)5, 16 April 2003), the Committee of Ministers of the Council of Europe refers to art. 5 of the European Convention of Human Rights and Fundamental Freedoms (ECHR) of 1950 and sets out a certain number of principles, with a view to strictly restricting the terms under which an asylum seeker can be placed in detention. For the most part these principles repeat *Conclusion No 44 ExCom* of the HCR, cited previously.

Article 5 ECHR

- Everyone has the right to liberty and security of person. No one shall be deprived of this right, save in the following cases and in accordance with a procedure prescribed by law (...):

f) ... *the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

- Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for their arrest (...)

- Everyone arrested or detained (...) shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Art. 2 Additional Protocol No. 4 to the ECHR

1. Everybody lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence (...)

No restrictions shall be placed on the exercise of these rights other than, such as are in accordance with law, are necessary in a democratic society in the interests of national security and public safety, for the maintenance of order public, for the prevention of crime, for the protection of health and morals, or of the protection of the rights or freedoms of others.

In its judgement *Amuur v. France*, the ECHR Court ruled that the detention of asylum seekers in an airport zone passes from the status of "restriction" of the freedom of movement, in the sense of art. 2 of Protocol no. 4, to that of "deprivation of freedom", as prohibited by art. 5 ECHR, if it is prolonged beyond a certain period.

Recommendation 1327 concerning the protection and reinforcement of the human rights of refugees and asylum seekers in Europe, by the Parliamentary Assembly of the Council of Europe (1997), "urges the member states (vii) :

- to give priority to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems;

- to develop and disseminate clear criteria for the identification of asylum-seekers to be detained, in compliance with *Conclusion No. 44 (XXXVII) "Detention of Refugees and Asylum-Seekers"* adopted by the Executive Committee of UNHCR in 1986, specifying that unaccompanied children may not be detained;

- to introduce into their asylum laws rules on a maximum allowed period of detention of asylum-seekers, if they have not already done so ;"

Minors

Most of the texts mentioned exclude a priori the detention of minors who are asylum seekers, especially when they are unaccompanied. *The United Nations Convention on the Right of the Child, of 1990, which urges the signatory states to provide special treatment to refugee children or those seeking asylum in accordance with the principles that it sets out (art.22), asks them to ensure that "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" (art. 37.b).*

Appendix 3- Documents Given to the Asylum Seekers

**Information to Asylum Seekers
As per L.N. 253 of 2001, Refugees Act XX of 2000,
Asylum Procedures (Application for a Declaration) Regulations, 2001**

A person, seeking asylum in Malta, may apply for a declaration for refugee status. Moreover:

- (i) All information provided by applicant shall remain confidential;
- (ii) Applicant is entitled to the assistance of a lawyer throughout the asylum procedures;
- (iii) Applicant is entitled to contact the United Nations High Commissioner for Refugees (UNHCR)¹;
- (iv) Applicant is entitled to present his case fully and to make any submissions to the Refugee Commissioner;
- (v) Applicant has an obligation to fully co-operate with the authorities, in particular with the Refugee Commissioner, and to furnish any information relevant to his application; and
- (vi) Refusal on the part of the applicant, without valid reasons, to furnish any information requested by the Refugee Commissioner or to cooperate fully with the authorities may lead to the suspension or termination of the asylum procedures with regards to both his application and, where applicable, to that of any dependent member of his family.

1. UNHCR's agency in Malta is at 'Dar 1-Emigrant', Castill Place, Valletta, Tel: 232545, 222644

**MINISTERU TAL-GUSTIZZJA
U L-INTERN**

**MINISTRY FOR JUSTICE
AND HOME AFFAIRS**



MALTA

**KUMMISSJONI REFUGJATI
SANT' IERMU
VALLETTA**

**REFUGEE COMMISSION
ST. ELMO
VALLETTA**

Eligibility Memo to the applicant for refugee status

NAME AND SURNAME

Sir/ Madam,

Reference is made to your application for refugee status under Act XX of 2000.

Attached please find (a) a copy of the eligibility recommendation regarding your application that is being forwarded to the Minister for Justice and Home Affairs according to law and (b) a confidential memo with the motivation of this recommendation. I realise that this recommendation will be a disappointment to you and regret that it could not be favourable.

Please be informed that you have the right to enter an appeal against this recommendation to the Refugee Appeals Board.

Should you decide to appeal, Act XX of 2000 lays down that appeals to the Refugee Appeals Board shall be made within two weeks from the notification on the applicant of the recommendation of the Refugee Commissioner. An appeal should be addressed to the Chairman of the Refugee Appeals Board, St. Elmo, Valletta. It is recommended that such appeals be sent by registered mail.

The law requires that when an appeal is entered by the applicant, a copy of the appeal shall be served on the Minister for Justice and Home Affairs, and the Refugee Commissioner.

The right to consult the United Nations High Commissioner for Refugees (UNHCR) and to have legal assistance subsists throughout the appeal procedure.

An appellant also has the right to free legal aid. Applicants at accommodation centres can contact the centre's administration in case of difficulty.

Refugee Commissioner

DATE:

FIDH represents 141 Human Rights organisations

141 organisations

- Afrique du Sud**-Human Rights Committee of South Africa
Albanie-Albanian Human Rights Group
Algérie-Ligue Algérienne de Défense des Droits de L'Homme
Algérie-Ligue Algérienne des Droits de L'Homme
Allemagne-Internationale Liga fur Menschenrechte
Argentine-Centro de Estudios Legales y Sociales
Argentine-Comite de Accion Juridica
Argentine-Liga Argentina por los Derechos del Hombre
Autriche-Osterreichische Liga fur Menschenrechte
Azerbaïdjan-Human Rights Center of Azerbaijan
Bahrein-Bahrain Human Rights Society
Bangladesh-Odhikar
Bélarus-Human Rights Center Viasna
Belgique-Liga Voor Menschenrechten
Belgique-Ligue des Droits de L'Homme
Bénin-Ligue pour la Defense des Droits de L'Homme Au Bénin
Bhutan-People's Forum for Human Rights in Bhutan (Nepal)
Bolivie-Asamblea Permanente de los Derechos Humanos de Bolivia
Brésil-Centro de Justicia Global
Brésil-Movimento Nacional de Direitos Humanos
Burkina Faso-Mouvement Burkinabe des Droits de L'Homme & des Peuples
Burundi-Ligue Burundaise des Droits de L'Homme
Cambodge-Cambodian Human Rights and Development Association
Cambodge-Ligue Cambodgienne de Défense des Droits de L'Homme
Laos (France)-Mouvement Lao pour Les Droits de L'Homme
Cameroun-Maison des Droits de L'Homme
Cameroun (France)-Ligue Camerounaise des Droits de L'Homme
Canada-Ligue des Droits et des Libertés du Quebec
Centrafrique-Ligue Centrafricaine des Droits de L'Homme
Chili-Comite de Defensa de los Derechos del Pueblo
Chine-Human Rights in China
Colombie-Comite Permanente por la Defensa de los Derechos Humanos
Colombie-Corporacion Colectiva de Abogados Jose Alvear Restrepo
Colombie-Instituto Latinoamericano de Servicios Legales Alternativos
Congo Brazzaville-Observatoire Congolais des Droits de L'Homme
Côte d'Ivoire-Ligue Ivoirienne des Droits de L'Homme
Côte d'Ivoire-Mouvement Ivoirien des Droits de L'Homme
Croatie-Civic Committee for Human Rights
Cuba-Comision Cubana de Derechos Humanos y Reconciliacion National
Ecosse-Scottish Human Rights Centre
Egypte-Egyptian Organization for Human Rights
Egypte-Human Rights Association for the Assistance of Prisoners
El Salvador-Comision de Derechos Humanos de El Salvador
Equateur-Centro de Derechos Economicos y Sociales
Equateur-Comision Ecumenica de Derechos Humanos
Equateur-Fundacion Regional de Asesoría en Derechos Humanos
Espagne-Asociacion Pro Derechos Humanos
Espagne-Federacion de Asociaciones de Defensa y Promocion de los Derechos Humanos
Etats Unis-Center for Constitutional Rights
Ethiopie-Ethiopian Human Rights Council
Finlande-Finnish League for Human Rights
France-Ligue des Droits de L'Homme et du Citoyen
Georgie-Human Rights Information and Documentation Center
Grèce-Ligue Hellenique des Droits de L'Homme
Guatemala-Centro Para la Accion Legal en Derechos Humanos
Guatemala-Comision de Derechos Humanos de Guatemala
Guinée-Organisation Guineenne pour la Defense des Droits de L'Homme
Guinée Bissau-Liga Guineense dos Direitos do Homen
Irak (Royaume Uni)-Iraqi Network for Human Rights Culture and Development
Iran-Centre des Defenseurs des Droits de L'Homme en Iran
Iran (France)-Ligue de Defense des Droits de L'Homme en Iran
Irlande-Irish Council for Civil Liberties
Irlande du Nord-Committee On the Administration of Justice
Israël-Adalah
Israël-Association for Civil Rights in Israel
Israël-B'tselem
Israël-Public Committee Against Torture in Israel
Italie-Liga Italiana Dei Diritti Dell'uomo
Italie-Unione Fomcile Per la Tutela Dei Diritti Dell'uomo
Jordanie-Amman Center for Human Rights Studies
Jordanie-Jordan Society for Human Rights
Kenya-Kenya Human Rights Commission
Kosovo-Conseil pour la Defense des Droits de L'Homme et des Libertés
Kyrgistan-Kyrgyz Committee for Human Rights
Lettonie-Latvian Human Rights Committee
Liban-Association Libanaise des Droits de L'Homme
Liban-Foundation for Human and Humanitarian Rights in Lebanon
Liban-Palestinian Human Rights Organization
Liberia-Liberia Watch for Human Rights
Libye (Suisse)-Libyan League for Human Rights
Lithuanie-Lithuanian Human Rights Association
Malaisie-Suaram
Mali-Association Malienne des Droits de L'Homme
Malte-Malta Association of Human Rights
Maroc-Association Marocaine des Droits Humains
Maroc-Organisation Marocaine des Droits Humains
Mauritanie-Association Mauritanienne des Droits de L'Homme
Mexique-Comision Mexicana de Defensa y Promocion de los Derechos Humanos
Mexique-Liga Mexicana por la Defensa de los Derechos Humanos
Moldova-League for the Defence of Human Rights
Mozambique-Liga Mocancicana Dos Direitos Humanos
Nicaragua-Centro Nicaraguense de Derechos Humanos
Niger-Association Nigérienne des Droits de L'Homme
Nigeria-Civil Liberties Organisation
Nouvelle Calédonie-Ligue des Droits de L'Homme de Nouvelle Calédonie
Ouganda-Foundation for Human Rights Initiative
Pakistan-Human Rights Commission of Pakistan
Palestine-Al Haq
Palestine-Palestinian Centre for Human Rights
Panama-Centro de Capacitacion Social
Pays Bas-Liga Voor de Rechten Van de Mens
Pérou-Asociacion Pro Derechos Humanos
Pérou-Centro de Asesoría Laboral
Philippines-Philippine Alliance of Human Rights Advocates
Polynésie Française-Ligue Polynésienne des Droits Humains
Portugal-Civitas
RDC-Ligue des Electeurs
RDC-Association Africaine des Droits de L'Homme
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République de Djibouti-Ligue Djiboutienne des Droits Humains
République Tchèque-Human Rights League
Roumanie-Ligue pour la Defense des Droits de L'Homme
Royaume-Uni-Liberty
Russie-Citizen's Watch
Russie-Moscow Research Center for Human Rights
Rwanda-Association pour la Defense des Droits des Personnes et Libertés Publiques
Rwanda-Collectif des Ligues pour la Defense des Droits de L'Homme Au Rwanda
Rwanda-Ligue Rwandaise pour la Promotion et la Defense des Droits de L'Homme
Sénégal-Organisation Nationale des Droits de L'Homme
Sénégal-Rencontre Africaine pour la Defense des Droits de L'Homme
Serbie et Montenegro-Center for Antirwar Action - Council for Human Rights
Soudan (Royaume Uni)-Sudan Organisation Against Torture
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Suisse-Ligue Suisse des Droits de L'Homme
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Tchad-Association Tchadienne pour la Promotion et la Defense des Droits de L'Homme
Tchad-Ligue Tchadienne des Droits de L'Homme
Thaïlande-Union for Civil Liberty
Togo-Ligue Togolaise des Droits de L'Homme
Tunisie-Conseil National pour Les Libertés en Tunisie
Tunisie-Ligue Tunisienne des Droits de L'Homme
Turquie-Human Rights Foundation of Turkey
Turquie-Insan Haklari Dernegi / Ankara
Turquie-Insan Haklari Dernegi / Diyarbakir
Union européenne-FIDH AE
Uzbekistan-Legal Aid Society
Vietnam (France)-Comite Vietnam pour la Defense des Droits de L'Homme
Yemen-Human Rights Information and Training Center
Yemen-Sisters' Arabic Forum for Human Rights
Zimbabwe-Zimbabwe Human Rights Association Zimrights

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