

UNITED NATIONS HUMAN RIGHTS COUNCIL

**17<sup>th</sup> Session of the Working Group on the Universal Periodic Review**

21 October to 1 November 2013

**COMPARISON OF ICJ SECOND CYCLE RECOMMENDATIONS FOR THE UPR OF MALTA  
WITH CORRESPONDING FIRST CYCLE RECOMMENDATIONS AND COMMITMENTS**

<b>Concerning administrative detention of migrants</b>		
<i>Second cycle ICJ recommendations</i>	<i>Corresponding 1<sup>st</sup> cycle recommendations</i>	<i>Corresponding 1<sup>st</sup> cycle voluntary commitments</i>
i) Provide in legislation for alternatives to administrative detention of migrants and asylum seekers, the application of which must be decided on a case-by-case basis;	Related recommendations (partially taken up): 80(40) (Brazil). Consider updating its domestic law to suppress the term “prohibit immigrants” and avoid its legal consequences, particularly administrative detention, for all undocumented asylum seekers – <i>Not accepted</i> .	Related voluntary commitment: Concerning 80 (40): UN Doc A/HRC/12/7/Add.1/Rev.2, 34: It is considered that adequate procedural safeguards are in place in order to ensure that the detention of illegal immigrants does not infringe international standards.
ii) Provide in legislation that administrative detention of migrants and asylum seekers shall be resorted to only where it is strictly necessary in the particular circumstances of the case, and that it should be subject to a clear maximum duration;	Related recommendations (partially taken up): 80(26) (Sweden, Argentina). Take all possible measures to ensure that the detention regime is brought into line with international human rights law; consider a reduction of the detention time of irregular migrants and asylum seekers – <i>Not accepted</i> .	Related voluntary commitments: Concerning 80(26): UN Doc A/HRC/12/7/Add.1/Rev.2, 35: Administrative detention is subject to a maximum period of 18 months for illegal immigrants and failed asylum seekers, and to 12 months for asylum seekers. With regards to the 18-month maximum it should be noted that this too has been agreed upon at EU level.  UN Doc A/HRC/12/7/Add.1/Rev.2, 29: Given that the Immigration Board reviews only the reasonableness of the duration of administrative detention, it is not considered that the absence of free legal assistance in this context can operate to the disadvantage of those subject to detention.
iii) Provide for regular periodic judicial review of the necessity and proportionality of administrative detention;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>

iv) Provide for free legal assistance to those subject to administrative detention and/or alternative measures, regardless of their status of asylum-seeker and of the appeal or review proceedings;	Related recommendation: 80(43) (Sweden). Continue efforts to ensure that those subject to administrative detention are provided free legal assistance – <i>Not accepted</i> .	Related voluntary commitment: Concerning 80(43): UN Doc A/HRC/12/7/Add.1/Rev.2, 29: Given that the Immigration Board reviews only the reasonableness of the duration of administrative detention, it is not considered that the absence of free legal assistance in this context can operate to the disadvantage of those subject to detention.
v) Give competence and jurisdiction to courts - or in the alternative to other effective, independent and impartial bodies authorised by law to exercise judicial power – to review on the merits, promptly and without delay, the grounds and the procedure of administrative detention, to ensure observance of domestic and international law;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
<b>Concerning conditions of detention and reception</b>		
<i>Second cycle ICJ recommendations</i>	<i>Corresponding 1<sup>st</sup> cycle recommendations</i>	<i>Corresponding 1<sup>st</sup> cycle voluntary commitments</i>
vi) Ameliorate the conditions of detention in the administrative detention centres for migrants and asylum seekers, and in particular in the Safi barracks;	Related recommendation: 80(25) (United States, Nicaragua and Argentina). Improve detention conditions by a variety of measures, including reducing overcrowding, separating men and women in facilities and ensuring that people have access to legal counsel; take all necessary measures to guarantee dignified conditions of detention, corresponding to the level of development of the country; strengthen efforts to improve the living conditions in detention centres – <i>Not accepted</i> .	Related voluntary commitment: Concerning 80(25): UN Doc A/HRC/12/7/Add.1/Rev.2, 31: Referring to para. 22-32 of the WG report, Malta addressed migration issues; concerns relating to gender, children and equality; legal issues and other general issues. Every effort is made to provide adequate conditions in detention, with health care being provided on the same level as for national including the treatment for HIV. Vulnerable migrants, including women and children, are not detained except for the period to establish their vulnerability. While unaccompanied, minors are placed under a State Care Order, it was underlined that significant progress had been registered in the time lapse between referral of vulnerable cases and their release.

vii) Reduce dependence on detention through an effective plan of alternatives to detention, with detention being only the last recourse;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
viii) Guarantee thorough and effective legal representation to asylum seekers through their asylum claims, including for any other legal issues that may arise from their detention;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
ix) Permanently close the Hal-Far Hangar Reception Centre;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
x) Ameliorate the conditions in the other migrant reception centres;	<p>Related recommendation:</p> <p>80(25) (United States, Nicaragua and Argentina). Improve detention conditions by a variety of measures, including reducing overcrowding, separating men and women in facilities and ensuring that people have access to legal counsel; take all necessary measures to guarantee dignified conditions of detention, corresponding to the level of development of the country; strengthen efforts to improve the living conditions in detention centres - <i>Not accepted</i>.</p>	<p>Related voluntary commitment:</p> <p>Concerning 80(25):</p> <p>UN Doc A/HRC/12/7/Add.1/Rev.2, 31: Referring to para. 22-32 of the WG report, Malta addressed migration issues; concerns relating to gender, children and equality; legal issues and other general issues. Every effort is made to provide adequate conditions in detention, with health care being provided on the same level as for national including the treatment for HIV. Vulnerable migrants, including women and children, are not detained except for the period to establish their vulnerability. While unaccompanied, minors are placed under a State Care Order, it was underlined that significant progress had been registered in the time lapse between referral of vulnerable cases and their release.</p>
xi) Continue its dialogue with relevant NGOs and extend it to all the detention policy of migrants;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
xii) Publish the results of the inquiry into the death of Mamadou Kamara in detention;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>

<b>Concerning criminalisation of abortion</b>		
<i>Second cycle ICJ recommendations</i>	<i>Corresponding 1<sup>st</sup> cycle recommendations</i>	<i>Corresponding 1<sup>st</sup> cycle voluntary commitments</i>
xiii) Decriminalize abortion and ensure that women in Malta have access to safe and legal abortions in situations where their life or health may be at risk or where respect for the right to freedom from torture or cruel, inhuman or degrading treatment or punishment so requires;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
<b>Concerning gender identity and marriage</b>		
<i>Second cycle ICJ recommendations</i>	<i>Corresponding 1<sup>st</sup> cycle recommendations</i>	<i>Corresponding 1<sup>st</sup> cycle voluntary commitments</i>
xiv) Take steps to legally recognize a person's chosen gender identity in all aspects, including the right to marry, and to ensure that individuals are not discriminated against on the basis of gender identity;	Related recommendation (partially taken up): 80 (13) and 22 (Czech Republic, Netherlands). Adopt further measures to fight discrimination and promote the realization of human rights by all persons belonging to minorities, including persons of minority sexual orientation or gender identity; take further steps to advance equality on the ground of sexual orientation and gender identity, using the Yogyakarta Principles – <i>Not accepted</i> .	Related voluntary commitments: Concerning 80(13) and (22): UN Doc A/HRC/12/7/Add.1/Rev.2, 10: The National Commission for the Promotion of Equality is relentlessly committed to combat discrimination and promote equal treatment. However, as of 2007, NCPE had its remit widened as per Legal Notice 85 – Equal Treatment of Person Order. Consequently, NCPE also covers equality and non-discrimination on the grounds of race and ethnic origin in the provision of goods and services. The NCPE organised an awareness raising campaign in Valletta to disseminate information on the rights of persons coming from minorities of the six grounds of discrimination.  UN Doc A/HRC/12/7/Add.1/Rev.2, 16: Malta will not use the Yogyakarta Principles as a guide for policy making; these principles were discussed and adopted by a number of experts acting on their own behalf.

Concerning international human rights instruments and mechanisms		
xv) Become party to the OP to ICESCR, the OP to CEDAW, the third OP to the CRC, the ICMW and the ICEPD;	<p>Related recommendations (partially taken up):</p> <p>80(3) (France, Slovenia, Turkey, Argentina). Ratify the OP-CEDAW and the OP-CRC on the sale of children, child prostitution and child pornography – <i>Not accepted</i>.</p> <p>80(5) (Argentina). Consider ratifying the ICEPD and the OP of ICESCR – <i>Not accepted</i>.</p>	<p>Related voluntary commitments:</p> <p>Concerning 80(3):</p> <p>UN Doc A/HRC/12/7/Add.1/Rev.2, 3: Malta will be ratifying the OP to CRC, as the required amendments to the criminal law provisions to allow such ratification have been made.</p> <p>Concerning 80(5):</p> <p>UN Doc A/HRC/12/7/Add.1/Rev.2, 5: Malta does not consider ratifying the ICEPD, particularly in view of the fact that there have been no cases of enforced disappearance. Malta is not in a position to sign the OP to ICESCR.</p>
xvi) Provide without delay its outstanding periodic reports to the Committee against Torture and the Committee on Economic, Social and Cultural Rights;	<i>No corresponding recommendations</i>	<i>No corresponding voluntary commitments</i>
xvii) Present to the Council, as soon as possible after adoption of the outcome document for the UPR of Malta, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and	<i>Recommendation calling for action in future UPR engagement</i>	-
xviii) Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.	<i>Recommendation calling for action in future UPR engagement</i>	-