

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 17 to 22 September 2020

The Maltese Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2021) 2.

Strasbourg, 10 March 2021

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a “rapid response” ad-hoc visit to Malta from 17 to 22 September 2020. The visit was considered by the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT: Alan Mitchell (Head of the delegation), Jari Pirjola and Răzvan Horațiu Radu. They were supported by Francesca Gordon of the Committee's Secretariat, and assisted by Ivona Todorovska, migration expert.

3. The report on the visit was adopted by the CPT at its 103rd meeting, held from 3 to 6 November 2020, and transmitted to the Maltese authorities on 16 November 2020. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Maltese authorities to provide within three months a response containing a full account of action taken by them to implement the Committee's recommendations and replies to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and cooperation encountered

4. In the course of the visit, the delegation held meetings with senior officials from the Ministry for Home Affairs, National Security and Law Enforcement, including the Permanent Secretary, Mr Kevin Mahoney. In addition, the delegation met with the Head of Detention Services, Mr Roberto Zammit, the CEO of the Agency for the Welfare of Asylum Seekers (AWAS), Mr Mauro Farrugia, and the CEO of Malta's International Protection Agency, Dr Roberta Buhagiar, as well as with senior representatives from Malta's Police Force (Immigration Police, Criminal Investigation Department and Custody) and the Armed Forces of Malta. It also had discussions with officials from the Ministry for Health and senior doctors responsible for Malta's public health strategy and, notably, its Covid-19 prevention strategy.

The CPT's delegation also had discussions with the Commissioner for Children's Rights, Ms Pauline Miceli, Magistrate Dr Marse-Ann Farrugia,¹ members of the Monitoring Board for Detained Persons and representatives from Malta's Red Cross. Further, it met with the UNHCR Representative in Malta, Ms Samar Mazloum and with non-governmental organisations active in areas falling within the CPT's mandate.

5. At the time of the visit, Malta was experiencing a resurgence in the number of Covid-19 cases, as well as facing the challenges associated with receiving a steadily increasing number of migrants arriving by sea.

¹ The magistrate responsible for the inquiry into the recent death of a young migrant at Hermes Block, Lyster Barracks, on 2 September 2020.

The CPT notified the Maltese authorities of its intention to visit the country a week in advance and it appreciated the excellent cooperation provided by the Ministry for Home Affairs, National Security and Law Enforcement in facilitating the visit, notably in enabling the delegation to also visit establishments under Covid-19 quarantine. It would particularly like to express its appreciation for the assistance provided by the CPT's liaison officer, Lavinia Seguna, and by Detention Services Welfare Officer Kyle Mifsud.

C. Focus of visit and establishments visited

6. During the visit, the CPT's delegation examined the conditions of detention for, and treatment of, migrants deprived of their liberty, including families with young children and infants and unaccompanied and separated minors.

The delegation visited the following establishments: Marsa Initial Reception Centre, Hermes Block (Lyster Barracks), Hal Far Reception Centre / "China House", Safi Detention Centre, Floriana Police Station and Lock-Up, and Zejtun Police Station.

D. Immediate observations under Article 8, paragraph 5, of the Convention

7. At the end of the visit, the CPT's delegation delivered its preliminary observations to the Maltese authorities which included a number of requests on matters requiring urgent attention. These requests, including six formal immediate observations under Article 8, paragraph 5, of the Convention, were confirmed in the written preliminary observations transmitted on 2 October 2020. The Maltese authorities were requested to provide a response within one month to these immediate observations to ensure that:

- every detained person who tests positive for Covid-19 is isolated immediately and not allowed to mix with other Covid-19 non-positive migrants;
- as a minimum during the Covid-19 pandemic, all detained migrants are provided with at least one hour of outside exercise per day, and preferably more, and are offered the possibility to regularly communicate with the outside world (i.e. increase the provision of phone cards and access to phones (especially in Safi, C Block, where no phone exists));
- unaccompanied and separated minors, and those who are awaiting age assessment results, in Hermes Block (Lyster Barracks), China House and Safi Detention Centre are accommodated separately from unrelated adults, until their transfer is effected to an open centre;
- the poor hygiene situation at Safi's Warehouses and B-Block, notably, access to functioning toilets, showers, sufficient hygiene and washing products, is rectified; and

- the 24-year-old Sudanese man in the sick bay on Marsa IRC's 2nd floor is provided with a package of care whereby his health and social care needs are appropriately addressed such that he does not have to rely on fellow detainees to cater for his basic needs, including assistance with washing and dressing. Indeed, this person should no longer be detained at Marsa IRC but rather accommodated in the community, with an appropriate care and support package in place.

Further, as concerns the death of a young migrant, Mr A.,² on 2 September 2020, at Hermes Block (Lyster Barracks), the CPT's delegation requested to receive, within one month, a copy of the full death certificate and, in due course, a copy of the Magistrate's report to be submitted to the Attorney General.

By letter of 2 November 2020, the Ministry for Home Affairs, National Security and Law Enforcement provided a response to the delegation's preliminary observations, including as regards the action taken to address the above-mentioned requests. This information has been taken into account when finalising the report.

² In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the name has been deleted.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Foreign nationals deprived of their liberty

1. Preliminary remarks

a. background context

8. Malta, a small densely populated Mediterranean island of around 515,000 people, measuring some 246 km², is situated in a highly strategic location at the border of Europe, lying directly north by sea from Tripoli, Libya. For asylum seekers and migrants crossing the Mediterranean, some from conflict-ridden home countries and others desperate to better their lives, it is one of the first countries that they can reach by small boat or indeed rubber dinghy.

The CPT previously visited Malta in 2015, when very few asylum seekers and migrants were reaching Malta, in part due to the Mare Nostrum policy³ and bi-lateral agreements with Italy and the EU, including European maritime rescue operations and Italy's automatic disembarkation of all rescued persons, which resulted in Italy intercepting and receiving many migrants and asylum seekers who might have otherwise reached Malta by sea. From 2015 to mid-2018, during a period of relative calm, Malta embarked on various reforms to prepare for the rise in the number of migrants heading to the borders of Europe (see section c). After a change in the above policies and agreements, Malta now has to cope with those migrants leaving Libya and heading to its shores.

At the time of the visit, the reception system was straining to manage the arrival of a steadily rising number of migrants. As of September 2020, Malta hosted an estimated 13,000 refugees and asylum seekers, one of the largest numbers per capita in Europe. Sea arrivals increased from 1,445 in 2018 to 3,405 in 2019.⁴ From January to August 2020, 2,162 people were rescued at sea and disembarked in Malta. According to UNHCR, around 26% declared themselves to be children, of whom 500 were unaccompanied. There was an exceptionally low number of arrivals in April and May 2020 due to the Covid-19 pandemic and Malta's Search and Rescue (SAR) policies, followed by an increase from June 2020 onwards, when disembarkation was permitted again, although occasionally delayed by negotiations for EU relocation. The Maltese authorities have called for help from other EU member states to take on some of the "disproportionate burden" faced by Malta.

9. Further, the Covid-19 pandemic and a resurgence in the number of cases over the summer of 2020 in Malta, have placed additional strain on Malta and its asylum and reception system.

10. The CPT acknowledges that the challenge of a public health crisis combined with the arrival of relatively high numbers of migrants cannot be underestimated and requires a pan-European and multi-stakeholder approach to assist Malta in implementing its strategy on the reception of migrants and asylum-seekers. Nonetheless, the State cannot derogate from its duty to ensure that all migrants who are detained are treated with dignity and held in humane and safe conditions. This was not the case at the time of the visit.

³ Operation Mare Nostrum was a year-long naval and air operation undertaken by the Italian authorities in 2013 facilitating migrants' arrival to Europe.

⁴ UNHCR Malta, <https://www.unhcr.org/mt/figures-at-a-glance>.

b. key findings

11. Overall, the CPT's delegation found a system that was struggling to cope, and which relied on a purely "containment" approach for immigration detention. Conditions of detention and associated regimes for migrants deprived of their liberty appeared to be bordering on inhuman and degrading treatment as a consequence of the institutional neglect.

Migrants were generally locked in accommodation units with little, if any, access to time outside, in severely overcrowded spaces, and essentially forgotten for months on end. This neglect came from both the management and staff of the establishments, but also from a government policy that has not focussed sufficiently on how to cope with the increasing numbers of migrant arrivals. As a result, it was detaining migrants *en masse*, many for unlawful and arbitrarily long periods under public health orders and others for long periods under the reception and removal orders, along with a lack of due process safeguards.

The cumulative effect of a lack of basic rights, poor conditions and frustration at long detention periods and a lack of information on their situation, has contributed to a notable increase in escapes, attempted escapes and riots from June 2020 onwards. Further, the Detention Service, whose staff and resources were over-stretched by the crisis, also needs significantly greater investment (see the section on *Staff* below).

Indeed, the CPT considers that certain of the living conditions, regimes, lack of due process safeguards, treatment of vulnerable groups and some specific Covid-19 measures undertaken are so problematic that they may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights.

12. Concerted action is required to radically change this situation. To begin with, there needs to be a shift of approach towards migrants, recognising that they are not criminal offenders and should not be held in prison-like conditions. The push-factors for migrants to undertake such hazardous journeys are far greater than any dissuasive effect harsh conditions might have.⁵ Moreover, subjecting migrants to the harsh treatment found during the CPT's visit is contrary to European values and international human rights law. In reviewing how to reform and restructure immigration detention policy and facilities, the dignity of the human person must be borne in mind.

From the above flows a second necessary reform, which is the need to reduce the length of immigration detention in Malta, notably by reviewing the application of the public health ordinance restriction of movement procedure and addressing the removal orders quicker in order to reduce the number of persons in detention. In addition, the immigration detention estate needs to be upgraded and policies revamped to ensure that migrants who are detained are held in open-plan centres (i.e. with a layout facilitating an internal open-door regime) and provided with access to a purposeful regime and the necessary support services. In this way, Malta will be able to better live up to the aspirations set out in its 2015 Reception Strategy and reformed legislation in practice, and not just on paper.

⁵ See Joint European Asylum Support Office (EASO)-IOM report "[Migration in West and North Africa and Across the Mediterranean](#)", Chapter 8, September 2020.

13. In addition, it is evident, as the CPT has stated in the past, that a country of the population and size of Malta should benefit from a European approach to the challenges of increased migration into the continent of Europe. As the CPT has reiterated in the past, Malta needs the European Union to play a far more proactive role in providing it with support and in facilitating the transfer of migrants to other European countries and/or back to their countries of origin in conformity with international human rights and refugee law.⁶

c. legal and institutional framework

14. Since 2015, Malta's immigration and reception system has undergone significant reform, steered most notably by its new Strategy for the Reception of Asylum Seekers and Irregular Migrants adopted in late 2015 (2015 Reception Strategy). In principle, this moved away from the immediate migration detention policy in respect of all persons who entered the country in an irregular manner and introduced screening at Initial Reception Centres⁷ and the placement of vulnerable persons, including children, in open centres under the care of Agency for the Welfare of Asylum Seekers (AWAS). The reforms supposedly established speedier remedies to challenge the lawfulness of detention and the Immigration Appeal Board was empowered to grant release from detention.

In addition, Malta has started some institutional reforms, including restructuring the Office of Malta's Commissioner for Refugees, in August 2020, into a government agency, to enable it to better address the considerable backlog of asylum claims that have accumulated since 2016 (over 4,000), and the steady rise in migrants that has added pressure on the processing of claims. The aim is to allow it more resources and flexibility to address the claims in a more timely fashion including establishing mobile units within immigration facilities.

15. There are currently three types of immigration facilities in operation in Malta, including Initial Reception Centres (IRCs), Open Centres, and Detention Centres (which can also hold persons who have been assessed as being suitable to be accommodated in an Open Centre, but who are awaiting an available place).

16. As of 22 September 2020, the legal basis for the deprivation of liberty of the 1,400 persons in detention comprised: (i) immigration detention orders (110 persons), (ii) removal orders (96 persons) and Dublin detention orders (6 persons); and (iii) 1,188 persons, on public health grounds. Thus, over 90% are detained on public health grounds upon arrival, based on Malta's Public Health Ordinance.

⁶ See also the proposed European Union Pact on Migration & Asylum, dated 23 September 2020, , https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en ; and October 2020 "Practical considerations for fair and fast border procedures and solidarity in the European Union" <https://www.refworld.org/docid/5f8838974.html>.

⁷ 2015 Strategy: "An assessment on the need or otherwise to detain individual asylum applicants who are manifestly not vulnerable shall be made in accordance with the *Immigration Act (Cap 217)* and the *Reception of Asylum Seekers Regulations, SL 420.06*. This assessment will be conducted by Immigration Police. In those cases where a detention decision is issued, the asylum seeker concerned shall be transferred to a Detention Centre upon release from the Initial Reception Facility. Those who are not issued with a detention decision, including those subjected to alternatives to detention pursuant to the *Reception of Asylum Seekers Regulations, SL 420.06*, and those subsequently released from detention, shall be offered accommodation in an Open Centre."

The grounds for immigration detention are regulated in the Immigration Act, the Refugee Act, and relevant parts of the Criminal Code and Procedure Law as well as Subsidiary Legislation enshrining the new Detention Service Regulations,⁸ in force since 15 January 2016. The reception of asylum seekers is regulated by the *Reception Conditions Directive* (RCD) 2013/33, which was transposed into Maltese legislation by the amended *Reception of Asylum Seekers (Minimum Standards) Regulations, SL 420.06*.

The return of migrants in an irregular situation, including the detention of such migrants with a view to returning them, is regulated by *Council Directive 2008/115 on common standards and procedures for returning illegally staying third-country nationals* (RD). The provisions of this Directive were transposed into national legislation by the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12*.⁹

17. As regards a restriction of movement on grounds of public health, the authorities have been relying on the 1982 Prevention of Disease Ordinance containing a provision which enables the Superintendent of Public Health to restrict personal movements¹⁰ if there are reasonable grounds to believe that the person may have been exposed to infectious diseases and for the purposes of screening for such infectious diseases and to prevent their spread; it is ordered without an individual assessment.

In practice, since mid-2018 this restriction has formed the basis by which more than 90% of Malta's detained migrants have been held in reception and detention facilities; it lasts for many months without review, and the migrants concerned are confined for 23 to 24 hours per day in their accommodation units (see section 4a *detention procedures & legality*).

Indeed, immigration detention under these health provisions has been recently found to be illegal by Maltese Courts in six cases brought by detained asylum-seekers in 2019.¹¹ The cases were habeas corpus applications brought under Article 409A of the Criminal Code. Multiple concerns were raised about the legality of detention, including that the relevant provision does not authorise deprivation of liberty, only the restriction of movement. There is a maximum period of four weeks permissible in national law and only extendable to 10 weeks in exceptional cases; it applies even in the case of vulnerable applicants and children. The health restriction order is a single sentence – without specifying the type of infectious disease concerned and with no effective remedy provided against this form of detention. Apparently, there are no procedural guarantees in relation to this form of detention, save for the habeas corpus process under the Criminal Code, Article 409A.

⁸ Subsidiary Legislation of 217.19 containing the new Detention Service Regulations.

⁹ According to Malta's 2015 Reception Strategy: "those irregular migrants who do not apply for international protection, or whose application for international protection has been definitively rejected, may be detained pursuant to the *Immigration Act (Cap 217)* and the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12*. Asylum seekers who entered Malta regularly and whose application has been definitively rejected, provided that their stay is no longer regular, may also be detained in line with the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12* with a view to ensuring their return. An assessment of whether the continuity of detention is justified shall be made in accordance with SL 217.12 if the migrant is not returned. Any migrant in respect of whom detention is to be pursued shall be transferred to a Detention Centre upon release from the Initial Reception Facility; whilst those not detained or eventually released from detention shall be offered accommodation in an Open Centre." Relevant legislation provides that an asylum seeker shall in no case be detained for more than 9 months, upon which time he or she becomes entitled to access to the labour market in accordance with the re-cast Reception Conditions Directive; whereas detention in terms of the return procedure shall be of 6 months, which may be extended by a further 12 months in accordance with the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12*.

¹⁰ Article 13(1), "Where the Superintendent has reason to suspect that a person may spread disease he may, by order, restrict the movements of such person or suspend him from attending to his work for a period not exceeding four weeks, which period may be extended up to ten weeks for the purpose of finalising such microbiological tests as may be necessary." Prevention of Disease Ordinance, CAP. 36 of the Laws of Malta, 1982, <https://legislation.mt/eli/cap/36/eng/pdf>.

¹¹ This was found to be an unlawful basis of detention by the Maltese Court of Magistrates in six different cases. See Court of Magistrates, Court of Inquiry, (Malta), 8th October 2019, *Police vs Mohammed Abdallah Mohammed*.

2. Ill-treatment

18. The issue of ill-treatment lies at the core of the CPT's mandate and it was positive that the CPT's delegation generally received very few allegations of deliberate physical ill-treatment by police officers and/or detention facility staff of migrants when apprehended or detained.

Nevertheless, it did receive a few allegations concerning excessive use of force by Detention Service staff and private security staff at Hermes Block (Lyster Barracks) following recent riots and an escape attempt, which occurred on 23 August and 2 September 2020. At least three migrants alleged that the staff purposefully shook the perimeter fence that they were climbing in an attempt to escape, causing them to fall to the ground whereupon they were subjected to multiple baton blows. One of them suffered a fracture of the scaphoid bone in his right hand and had also sustained a laceration on his head. He spent four days in Mater Dei Hospital being treated for his injuries. Some of the migrants concerned were self-declared juveniles (and at the material time, were awaiting age assessment results).

Further, the CPT's delegation also received four separate allegations of unwarranted use of pepper spray by custodial staff against detained migrants at Hermes Block (Lyster Barracks) as a form of *de facto* punishment. For example, one incident involved a migrant being allegedly pepper sprayed by a Detention Service guard for looking out through the corridor's window bars and refusing to go back into his dormitory. The alleged incidents dated from March to June 2020.

19. The CPT considers that there can be no justification for applying baton blows to migrants who have already been brought under control. Equally, it considers that pepper spray is a potentially dangerous substance and should not be used in confined spaces and should never be deployed against any person who has already been brought under control. Indeed, the CPT underlines that staff working within immigration detention facilities should not be equipped with batons, handcuffs or pepper spray as standard equipment.¹²

The CPT recommends that the Maltese authorities take measures to ensure that no more force than is strictly necessary and proportionate should be used to bring those migrants who are being violent under control.

The alleged practices as described above of shaking the perimeter fence to cause those migrants attempting to scale the fence to fall, and thereafter beating the migrants with batons, could well be considered as amounting to ill-treatment; the CPT recommends that these allegations be investigated, and wishes to receive a copy of the investigation report in due course.

The CPT also recommends that Detention Service staff, including private security contractors, should not be equipped with batons, handcuffs or pepper spray as standard equipment, and that the above allegations of the inappropriate use of pepper spray on migrants should be investigated. It wishes to receive a copy of the investigation report in due course.

In addition, custodial staff, including private security contractors, should regularly be reminded that foreign nationals should be treated with respect and that any form of deliberate ill-treatment of detained persons is unacceptable and will be punished accordingly.

¹² CPT Immigration Detention Factsheet, CPT/Inf(2017)3.

20. The CPT's delegation also learned that during a riot and attempted escape on 18 September 2020, a private security guard at Safi Detention Centre had discharged an unauthorised firearm (personal shotgun used for hunting), which resulted in a detained migrant sustaining a gunshot wound to his ankle.¹³

The CPT notes positively that the private security guard was immediately arrested and has been arraigned before the court being charged with, *inter alia*, attempted homicide, and that in addition a magisterial inquiry has been opened into this incident. Nevertheless, this incident does raise serious questions over the recruitment and training of private security contractors, who comprised over one-third of the total detention custody staff, at the time of the delegation's visit (see Section 6, *Staff*).

21. The CPT's delegation also had an opportunity to examine the recent incident ending in the death of a young migrant¹⁴, on 2 September 2020, at Hermes Block (Lyster Barracks). In this incident, at approximately 05.30, around 20 detained migrants tried to escape from Hermes Block by dismantling an outer wall on the second floor, climbing down the building and attempting to climb the three-storey high wire perimeter fence.

The incident was captured on video footage by a Detention Services staff member; it showed at least two migrants falling back from the fence, and injuring themselves. From an analysis of the footage and interviews with investigating police, Mr A. is seen to fall to the ground on his side, then get up and walk unaided back to the accommodation block. Review of the police report and other information clearly shows that it was not until after 8.15 a.m. (i.e. 3 hours after the injury and, reportedly, despite repeated calls for help), at the time of morning shift head count, that the attention of staff was drawn to Mr A., following which the nurse attended him and an ambulance was called. Mr A. was declared dead soon after his arrival at hospital. A magisterial inquiry has been opened into this incident.

From the information available, the CPT cannot reassure itself that staff, including health-care staff, had reacted sufficiently promptly when crucial help was needed to attempt to save this young man's life from the effects of suspected internal bleeding over a period of at least three hours. **The Committee would like to be provided with a copy of the full death certificate and, in due course, a copy of the Magistrate's report to be submitted to the Attorney General.**

22. Lastly, the CPT noted the serious efforts of the public health team in undertaking the identification and screening for the Covid-19 virus at immigration facilities, including a programme of PCR (Polymerase Chain Reaction) swabbing of the migrants held on the first and second floors in the main accommodation block at Marsa IRC. Nevertheless, during the visit, the CPT's delegation found at least 25 persons who had previously been identified as Covid-19 positive and who had not been separated from other migrants, thus facilitating the spread of the virus throughout the closed and overcrowded environment of Floors 1 and 2 of the IRC (see Section 7(b) below for further details).

¹³ On this occasion, several detainees escaped from Warehouse 1 at Safi Detention Centre by dismantling an external wall during a riot, and 27 migrants were arrested for causing injuries to police officers (two of whom were hospitalised) and for causing property damage. The CPT's delegation spoke with the injured migrant concerned, while in police custody, as well as with the police investigating the incident.

¹⁴ According to AWAS, the age assessment results concluded that Mr A.'s actual date of birth was the 5th November 2001 (19 years old), although the police records stated that he was 17 years old.

23. The CPT considers that the situation found at Marsa IRC on Floors 1 and 2 shows an establishment in disarray, which has allowed a dangerous, and potential fatal, environment for detained migrants and its own staff to develop and is symptomatic of the institutional neglect referred to above.

By communication of 2 November 2020, the Maltese authorities underlined that this was an exceptional situation due to the then lack of space in the facility to isolate people.

Nevertheless, due to the risk of the development of severe symptoms from Covid-19 that might require the hospitalisation of a migrant, and even may be fatal, this situation of disarray, negligence and the dangerous environment created by knowingly locking Covid-19 positive migrants together with non-positive migrants for long periods of time, may well raise issues not only under Article 3 of the European Convention on Human Rights (ECHR) but also as regards Malta's positive obligation to protect life under Article 2 of the ECHR (see recommendations in Section 7(b) below on *Covid-19 pandemic management*).

3. Conditions of detention & regimes that may amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights

24. The CPT has long held that conditions of detention for migrants in an irregular situation should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities.

Immigration detention centres should provide accommodation, which is appropriately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Notably, these centres should have adequate light, ventilation and heating. Call bells should be installed in all detention areas where staff are not continuously present. All detained persons should: be provided with a bed or plinth, and a clean mattress and clean blankets; have ready access to toilet facilities, including at night; be provided, on a regular basis, with a basic sanitary kit¹⁵ free of charge; have access to a shower and to hot water; be offered the possibility to wear their own clothes during their stay if they are suitable and, if necessary, to have them washed and repaired; be provided with the necessary products and equipment to keep their accommodation clean; be provided with lockable space in which to keep personal belongings; have access to food and drinking water.

25. The CPT also considers that within the detention facility, detained persons should be restricted in their freedom of movement as little as possible. Detained migrants in an irregular situation should in principle have a regime that allows free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day (with the exception of Covid-19 quarantine restrictions)) and outdoor exercise areas should be appropriately equipped.

The longer the period for which persons are held, the more developed should be the activities which are offered to them. Purposeful activities, in an immigration detention context, can include, inter alia, language classes. Immigration detention centres should include access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, sports), a library and a prayer room. All multiple-occupancy rooms should be equipped with tables and chairs commensurate with the number of persons detained.

¹⁵ Including towels and a second full set of clothes, weather appropriate.

- a. facilities run by the Agency for the Welfare of Asylum Seekers (AWAS)¹⁶

Marsa IRC

26. Marsa IRC is an initial reception facility run by AWAS and designated as the first reception establishment whereby all migrants should initially be accommodated after arrival at the port, to be medically screened for infectious diseases and to undergo first assessments. In theory, it is an open centre. However, it is in fact mostly closed due to the medical clearances, which should officially be issued within seven days, taking several weeks or even months, with the result that migrants during that time are *de facto* deprived of their liberty.

Those considered to be vulnerable (mainly families, unaccompanied minors, women and pregnant women and persons with disabilities) are supposed to be transferred to the open centres (such as Hal Far Tented Village, with an occupancy of over 1,100). However, at the time of the visit, the open centres were full. Consequently, Marsa IRC was accommodating those awaiting transfer to an open centre, those awaiting medical clearance and those who had been tested positive for Covid-19 or who were suspected of having Covid-19.

27. The IRC, situated in the town of Marsa, and based in an old school, was operating at around its official capacity of 350 at the time of the CPT's visit, with newly-arrived migrants having being sent directly to China House (another reception centre) or straight to a Detention Centre (Safi or Lyster).

The Centre comprises a main accommodation block on two floors and a number of outbuildings including a library and activities room (used for accommodation, at the time of the visit). At the time of the visit, a number of families (127)¹⁷, including some with infants, and unaccompanied and separated minors (73), as well as adult males, were all accommodated together in large multiple-occupancy rooms. Upon the migrants' arrival the CPT was informed that personal hygiene and detergent products were provided, as well as nappies and powdered milk for infants.

Management was new, comprising two AWAS co-ordinators; the co-ordinator in charge on the first day of the delegation's visit was unsure of the current occupancy, capacity or demographic features of those held there.

28. The main building, contained five and seven multiple-occupancy rooms on the ground and first floors respectively, each with a long balcony running the length of the building and semi-open to the outside with the adjoining rooms along them.¹⁸ At the time of the visit, the migrants held in these rooms were quarantined for Covid-19 reasons (see Section 7(b) below). The entrance to each floor was locked, with staff staying outside the migrant accommodation area with interactions by staff limited to passing food and provisions through the entrance gate.

¹⁶ The Agency for the Welfare of Asylum Seekers (AWAS) implements, on behalf of the government, national legislation and policy concerning the welfare of refugees, persons enjoying international protection and asylum seekers.

¹⁷ Number of persons making up family units.

¹⁸ The balconies on the first and second floors were some 2 metres wide/deep, and enabled the migrants to walk freely between rooms and access some fresh air, while still locked on their units.

The rooms, of varying sizes, were accommodating 7 to 16 persons and offered reasonably sufficient personal living space; they generally had adequate access to natural light and sufficient artificial lighting, were well ventilated with windows and a veranda, and were equipped with bunk beds and personal lockers. Each floor had a sanitary facility, including showers (13 open showers, lacking showerheads and shower curtains, and apparently mixed sex) and toilets, accessible at night, and a wash trough for clothes to be laundered by hand.

There was an open-door regime night and day within the unit but no access out of the unit had been granted for at least three weeks at the time of the visit.

29. The library was accommodating 29 migrants who had all been on the same boat when they arrived in Malta. This meant that unrelated single male adults, unaccompanied children and families (including small children and infants) were all mixed together with no privacy for anyone. The room afforded each person a mere 2.5m² of living space with the whole floor taken up by the 29 beds that were laid side by side.

The room had adequate access to natural light and sufficient artificial lighting and there was a separate sanitary annexe including shower and toilet facilities. An unlockable cupboard was available for the 29 migrants held in this room – and two of the occupants had moved their beds outside, and slept in the open air, by the locked unit gate. Recent rains had flooded the floor of the room and the ceiling was still dripping water. Mattresses were dirty, and the migrants generally lived in the clothes in which they had arrived in on 3 August 2020. There were no personal lockable cupboards.

The migrants in this room had access to a small outside walkway leading to the locked gate but had not been offered any meaningful outdoor exercise since their arrival.

30. Several other outbuildings were each occupied by groups of migrants who had arrived on the same boat with families and single (unrelated) male migrants held together. These were similar-sized buildings, which were completely empty save for rows of bunk beds, affording some 30m² for 15 to 20 migrants, a few open cupboards per room and associated shower and toilet facilities. Conditions here were also dilapidated, with dirty exposed foam mattresses and vermin evident. These outbuildings each had an acceptably sized outside space to which the migrants had free access.

Further, there were also two containers, measuring 14m², with sufficient access to natural and artificial light and ventilation, each with 5 sets of bunk-beds (i.e. 10 beds) and a separate toilet and shower annexe, providing temporary accommodation to families in need of Covid-19 isolation. One of these containers was occupied by a family with a pregnant mother and her 3 young children.

Migrants who were waiting for a place in the open centres were accommodated in tents erected on the facility's exercise yard. These migrants were free to enter and leave the facility.

While the food, provided by an off-site caterer, was not the subject of complaints, many migrants interviewed by the delegation were concerned that the tap water was non-potable (and were not provided with bottled water as an alternative). **The CPT wishes to receive confirmation that the water is indeed potable and to be informed on what steps are taken to ensure that the migrants are informed that the water is potable.**

31. A regime of purposeful activities and education for migrants at Marsa IRC was effectively non-existent. The rooms where such a regime could even take place were being used for accommodation purposes. Further, within the buildings there were no television sets or any other form of activities for the migrants, whether adults or children. Moreover, many migrants were confined to their units for 24 hours a day without any access to outdoor exercise.

32. The CPT considers that the cumulative effect of detaining migrants in severely overcrowded conditions for prolonged periods with no access to outdoor exercise and a lack of any activities, most acutely felt by families with young children, may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights.

33. **The CPT recommends that the Maltese authorities act to improve the living conditions at Marsa IRC. Material conditions and accommodation should be adequately furnished, clean and in a good state of repair, and offer sufficient living space for each person (a minimum of 4m² per person). Call bells should be installed in all detention areas where staff are not continuously present.**

Further, steps should be taken to ensure that there are separate showering and toilet areas for men, women and children. Each migrant should be provided with lockable space in which to keep personal belongings.

In addition, the CPT recommends that all migrants be offered free access to outdoor exercise throughout the day, and outdoor exercise areas should provide sufficient space for the number of migrants therein detained, and be appropriately equipped with shelter and means of rest.

The CPT also recommends that families with children and unaccompanied and separated minors, including those who are awaiting age assessment results, and women, should be accommodated separately from unrelated men, from the outset of their deprivation of liberty until their transfer is effected to an open centre (see also *Vulnerable Persons* Section 5).

b. facilities run by the Detention Service

34. *Safi Detention Centre* and *Hermes Block (Lyster Barracks)* are detention facilities run by the Detention Service, located on an operational bases of the Armed Forces of Malta (AFM). *China House* is an additional detention facility run by the Detention Service, with assistance from Malta Red Cross.

Malta's 2015 Reception Strategy outlines that once a migrant has been assessed as not vulnerable and subject to a detention order, he/she can be held in a closed detention facility. At the time of the delegation's visit, Safi Detention Centre was holding 977 migrants, and Hermes Block of Lyster Army Barracks was accommodating 450 migrants. After a three-day riot from 14-16 September, which rendered certain zones of Hermes Block uninhabitable, numbers were reduced to around 200 with 77 migrants having been transferred to Safi Detention Centre, Block C and 150 to China House.

The layout of each of these detention establishments has been described in detail in the reports of the CPT's 2011 and 2015 visits.¹⁹

Safi Detention Centre, Safi AFM Barracks

35. *Safi Detention Centre* consisted of two Warehouses, nos. 1 and 2 (each housing some 350 migrants); Safi B-Block Upper and Lower Zones holding some 200 migrants; Safi C-Block, a new building partially still under construction, was holding the 77 migrants transferred from Hermes Block following the riot in September; and an Isolation / "Museum" Block, holding 18 migrants at the time of the visit.

36. The material conditions of each of Safi Detention Centre's Blocks were poor, apart from those in the *Isolation block/ "Museum Block"*.

The large dormitories in both *Warehouses 1 and 2* were crammed with rows of bunk beds and a similar situation pertained in *B-Block* where the dormitories, measuring some 30m², were accommodating 22 persons and the 11 sets of bunk beds took up most of the floor space. Every dormitory was equipped with one television set.

The shower facilities in both Warehouses and B-Block were filthy and the showers not always functioning, showerheads were missing and the sanitary area constantly flooding. Mould was present on the walls and ceilings. In Warehouse One, many migrants underlined that only one of the 10 toilets was working at the time of the delegation's visit and that they often used their lunchboxes to wash themselves from the wash basin's tap due to the dysfunctional showers. Further, as nearly all migrants only possessed one set of clothes (generally the ones that they had arrived in), when they washed these, they had to borrow clothes from other migrants where possible until their clothes dried.

Safi C-Block comprised one large dormitory, with adequate access to natural light and sufficient artificial lighting and ventilation, but as with the other blocks it was crammed with rows of bunk beds (for 80 migrants) only, there being no other furniture therein. It had a shower facility, in which there were 6 working showers (but no hot water) and 6 toilets and a large wash basin for migrants to launder their clothes.

The *Isolation Block / "Museum" Block* was a separate unit situated adjacent to B-Block, with a capacity of 14 beds but which was accommodating 18 persons at the time of the visit. The Block consisted of three rooms that each measured only 6m² and yet were furnished with two beds, and one dormitory of 20m² with eight beds. The facilities in this Block, were reasonably well maintained and clean, and the rooms and dormitory had adequate access to natural light and sufficient artificial lighting and ventilation. There was a television in the dormitory and the migrants had ready access to a small outside exercise yard (although lacking in shade and a means of rest). **The CPT wishes to be informed where the four extra persons in the Isolator Block slept at night.**

¹⁹ Visit Reports: CPT/inf(2013)12, Visit from 26 to 30 September 2011; CPT/inf(2016)25, Visit from 3 to 10 September 2015.

37. The regime of activities afforded to migrants was non-existent. Access to the outside exercise yards was sporadic for the 700 migrants detained in both Warehouses 1 and 2, and following the riot on 18 September 2020, access to the yard for the 350 migrants in Warehouse 1 was suspended. Equally, many migrants from B-Block, with whom the delegation spoke, alleged that they too had had no access to the outside exercise yards for several weeks, and in some cases, months. Exercise yards, when the migrants had access to them, provided no shade or means of rest. In Block C the exercise yard was still under construction, which meant that the 77 migrants held there were confined to their dormitory for 24 hours a day.

Hermes Block (Lyster Barracks)

38. The riot in mid-September 2020 referred to above had caused significant material damage to Hermes Block²⁰ and at the time of the delegation's visit, of the 6 Zones/Units and the Isolator Block, only Zone D was still habitable. It was accommodating 190 migrants (100 on the second floor and 90 on the first floor).

The material conditions in Zone D were dilapidated, with a lack of upkeep and walls covered in graffiti and mould, and there were worn, filthy mattresses. The dormitories were severely crowded with 20 to 30 persons held in 40m² (i.e. between 1.5 and 2m² of living space per person).

39. The situation was rendered more complex by the fact that some of the migrants who had been previously identified as Covid-19 positive, had broken into other Units and mingled with non Covid-19 positive migrants. Therefore, all migrants had to be treated as having had contact with Covid-19 positive cases. As such, whenever staff entered the block, they only did so in full Personal Protection Equipment (J-Suit / hazmats).

The administration and staff had moved into a temporary pre-fabricated container, located outside the perimeter of Hermes Block. Between the outer perimeter fence and Hermes Block itself was the exercise yard and a strip of land, which was ankle deep in litter with piles of burnt mattresses, bedframes, sticks and debris in the corners. Migrants with whom the delegation spoke stated that staff rarely went into the locked Units on the two floors, but stayed outside and passed food through the gates to the Units. Most of the time, in order to communicate with staff, the migrants had to shout out of the windows.

40. The regime in Hermes Block was particularly poor and migrants had essentially been locked down on their units for 24 hours per day since March 2020 with nothing to do except watch the one television located in each dormitory. Further, since the various escape attempts and riots, no access to the outside exercise yard was permitted.

41. In short, the migrants deprived of their liberty at both Safi and Lyster were locked into overcrowded units, with nothing to do and minimal contact with staff and the outside world, for prolonged periods without knowing when their situation might improve: essentially out of sight and forgotten.

²⁰ On 2 September 2020, several migrants had dismantled the wall of the block and had tried to climb the outer perimeter fences. Various zones had also been taken out of action and the hole in the wall was still visible at the time of the delegation's visit.

The CPT considers that such living conditions may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights.

Hal Far Reception Centre, “China House”

42. Due to the large number of migrant arrivals and the Covid-19 pandemic, an additional establishment was added to the Detention Services’ facilities in March 2020, namely Hal Far Reception Centre (known as “China House”). The purpose of this establishment was to take many non-vulnerable migrants from Marsa IRC and to create additional capacity to ensure migrants arriving in Malta could be quarantined while being medically screened and assessed. According to staff, the average stay at China House was four months before they were transferred either to a closed detention centre, Marsa IRC or an open centre.

43. The Facility comprises three zones (A, B and C) in a two-storey building. At the time of the delegation’s visit, Zone A had a capacity of 75 and was accommodating 50 persons, and Zone C had a capacity of 130 and was accommodating 100 persons (all of whom had been transferred from Hermes Block, Lyster, after the riot from 14-16 September 2020). Zone B was designated as a Covid-19 quarantine zone and held 38 persons, who had recently tested positive for the coronavirus.

The dormitories in Zones A and C measured 21m² each and were equipped with six sets of bunk beds (i.e. 12 beds); dormitories of such a size should not accommodate more than five persons. Not all of the rooms had access to adequate natural light and sufficient artificial lighting and ventilation. Some of the bathrooms had no doors and, at the time of the delegation’s visit, some of the showers and wash basins were blocked in Zones C and B and flooded the bathroom floors when used, which had allegedly caused some migrants to slip and injure themselves.

44. There was no regime of activities in China House. Many of the detained migrants underlined that they had no access any purposeful activities, no television, no access to the telephone, and were not offered access to the single exercise yard. Migrants spent 24 hours per day locked on their units with nothing to structure their days for months on end.

Such living conditions may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights.

45. By communication of 2 November 2020, the Maltese authorities stated that urgent maintenance works are being carried out on the existing toilets and showers at Safi Warehouses and B-Block. A detailed survey of both buildings was being conducted with the aim to improve the overall living and sanitary conditions of both blocks. Works on the plant room and the upper floors of Hermes Block have started in October 2020 and refurbishment of lower floors will commence thereafter.

46. The CPT notes positively that some refurbishment works are now being undertaken. Nevertheless, in the light of the above findings, **the CPT calls on the Maltese authorities to take broader action to:**

- **transfer vulnerable persons (including families with children, pregnant women, etc.) to suitable open reception facilities, where they can receive appropriate care for their specific needs;**
- **not to detain women and children; if exceptionally, they are detained for very short periods (hours) they should not be held in the same room as unrelated men.**

Further, the CPT calls upon the Maltese authorities to renovate Safi Detention Centre's Warehouses and B-Block, Hermes Block (Lyster Barracks) and China House to ensure that:

- **they provide an appropriate environment which is not carceral;**
- **the official occupancy rates are revised so as to offer a minimum of 4 m² of living space per detained person in the multiple-occupancy accommodation; preferably the rooms should be divided up into smaller living units;**
- **the building infrastructure is regularly maintained and litter and debris cleared (notably at Hermes Block, Lyster Barracks and Warehouse One, Safi detention Centre);**
- **all dormitories have adequate access to natural light and sufficient artificial lighting, ventilation and heating/cooling;**
- **all detained persons are offered a clean bed, mattress, blanket and bedding;**
- **all dormitories are equipped with tables and chairs and all detained persons provided with personal lockable space;**
- **all dormitories and sanitary annexes are regularly maintained and disinfected and have properly functioning toilets and showers designed to afford a degree of privacy, and properly maintained wash-basins;**
- **all detained persons have access to hot water to wash and are provided with a towel; and**
- **at least one additional set of clothing is provided to detained migrants, and especially for the winter months, warmer clothing and adequate footwear.**

In addition, the CPT calls upon the Maltese authorities to ensure that:

- **unrestricted access to outdoor exercise is granted throughout the day;**
- **outdoor exercise areas are appropriately equipped (benches, shelters, etc.);**
- **a programme of activities (educational, recreational and vocational) is developed;**
- **at least one common association room, equipped with books, television and games, and one multi-faith room are set up in each detention block; and**
- **the facilities are adequately staffed by a range of professionals who are equipped with the necessary range of skills to work with migrants.**

4. Safeguards against ill-treatment

a. detention procedures & legality

47. As mentioned above, 1,188 persons were being detained on public health grounds at the time of the delegation's visit. Some of these migrants appeared to possess no formal written order on their detention while others had in their possession a single piece of paper given to them by public health officials soon after their arrival in Malta, comprising a single paragraph written in English that he/she was being restricted in his/her movement to ensure screening for, and prevention of the spread of, an (unspecified) infectious disease. The papers seen by the CPT's delegation were often not fully annotated.

Understandably, migrants expressed increasing frustration at the lack of information, both as to how long the detention would last and as regards their immigration status. The frustration was compounded by the fact that a large number of the migrants had tested negative for tuberculosis and Covid-19.

At the same time, this measure could not be considered as merely a restriction of movement, but rather *de-facto* detention as they were locked up for 23 to 24 hours per day in their accommodation units. Further, the periods of "restriction" had in many cases clearly exceeded the maximum time limits under national law (4 weeks, extendable to 10 weeks in exceptional cases). The delegation met many migrants whose detention was apparently unlawful insofar as they had been in detention since January or February 2020, during which time no review of their detention on public health grounds had been carried out. Moreover, the *de facto* detention could only be challenged through a lawyer filing a *habeas corpus* case before a criminal court; only a few such cases have been filed by NGOs.

48. There were no registers of the detention orders or copies of the detention orders kept at the Detention Services or IRC establishments, and management did not appear to know who was being held on which grounds. This incredible state of affairs meant that the management could not ensure any oversight of the safeguards related to detention. Indeed, the management took it on trust from the Immigration Police and Ministry of Health that all migrants were being detained lawfully. The Detention Service told the delegation that they were informed on an *ad hoc* basis when individual migrants were to arrive, be transferred, deported or released.

49. The CPT underlines that deprivation of liberty for immigration purposes should be a measure of last resort, after a careful and individual examination of each case, and that its continued need should be subject to periodic review. Every instance of deprivation of liberty should be covered by a proper individual detention order, readily available in the establishment where the person concerned is being held; and the detention order should be drawn up at the outset of the deprivation of liberty.

Equally, in line with the European Court of Human Rights' jurisprudence, the CPT has long held that detained migrants in an irregular situation should benefit from an effective legal remedy enabling them to have the lawfulness of their deprivation of liberty decided speedily by a judicial body. This judicial review should entail an oral hearing with legal assistance, provided free of charge for persons without sufficient means, and interpretation services being provided as required. Moreover, detained migrants in an irregular situation should be expressly informed of this legal remedy. Lastly, the need for continued detention should also be reviewed periodically by an independent authority.

In Malta, the CPT found that this was not the case for many of the migrants being deprived of their liberty, especially those held under public health grounds. Equally, there was a clear lack of systematic and effective periodic review for migrants held for long durations (over 12 to 18 months) under RD detention orders.

50. The CPT recommends that the Maltese authorities urgently review the legal basis for detention on public health grounds as its current application may well amount to hundreds of migrants being *de facto* deprived of their liberty on unlawful grounds.

The CPT recommends that the Maltese authorities ensure that any detention on public health grounds is exceptional, individualised, specific, time-limited and regulated by the same safeguards as detention under immigration detention orders (i.e. RCD and RD orders).

Further, registers and copies of every detention order should be kept in the establishments where persons are being deprived of their liberty, and periodic reviews of *all* types of detention should be systematically undertaken in a timely fashion, in accordance with Maltese law, along with adequate oversight that this operates on time, and in practice.

b. information provided on rights and immigration status

51. Management in the Reception and Detention Centres visited informed the CPT that migrants were fully informed of their immigration status immediately upon arrival. However, managerial staff were unclear as to who precisely informed them or what the content was of this information and in which languages it was imparted. Save for a couple of exceptional cases, no leaflet or information was given to migrants while in detention.

In practice, the vast majority of the migrants interviewed were completely unaware of whether they were detained on public health grounds, international protection or asylum procedures, or whether they were facing removal orders. Many migrants could not read English, and yet the detention orders, if they had them in their possession at all, were only in English. Formal interpretation services were not regularly used and it appeared that, if necessary, detainees with the requisite language skills would be asked to assist with certain meetings and discussions with staff. Consequently, the majority of migrants lived for many months – and some as long as a year or even longer – in a state of confusion over their situation, which manifested itself over time in deep frustration. This situation was essentially the same both in Marsa IRC and in the Detention Centres.

52. The CPT considers that migrants in an irregular situation who are detained should be expressly informed, without delay and in a language they can understand, of their rights and the procedure applicable to them. To this end, all immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned. The persons concerned should confirm in writing that they have been informed of their rights, in a language they can understand. Foreign nationals should receive, as required, the assistance of qualified interpreters and the use of fellow detainees as interpreters should, in principle, be avoided. Further, house rules for all facilities should be provided to detainees, and copies of these rules should be made available in a range of languages.

The CPT recommends that the Maltese authorities take the necessary steps to ensure that migrants are informed, without delay and in a language they understand, of their rights and the procedure in oral and written formats, both on arrival in Malta and on arrival at an immigration reception or detention facility. Access to qualified interpretation services should be made available, where required.

Further, regular updates should be provided to migrants deprived of their liberty on the status of their stay, on a case by case basis, by immigration and public health officials at the immigration reception and detention establishments.

- c. safeguards: access to lawyers, doctors, consular assistance and means of communication

53. Maltese law²¹ contains a range of safeguards designed to protect detained migrants from harm and to prevent ill-treatment. However, during the visit, the CPT's delegation found that many of these safeguards were not operating properly in practice.

To begin with, meaningful access to *communication with the outside world* was problematic. At the detention centres of Hermes (Lyster Barracks), Safi and China House, mobile phones had been systematically confiscated upon arrival in Malta. For some migrants, telephone cards had been provided, however, the cards were insufficient for regular communication. For others, no cards had allegedly been provided and they had spent many months (some reportedly six months) without being able to contact their families to inform them of their detention and their whereabouts. Other detained migrants interviewed by the delegation underlined that other than a single phone call upon arrival, they had only been given one 5 EUR phone card every two to three months, which could permit, on average, a few minutes' call to their country of origin. Moreover, many migrants underlined that even if they had access to a phone card, effective communication was still hampered by the fact that they did not know and could not access the telephone numbers needed, which were stored on their mobile phones.

At Marsa IRC, migrants deprived of their liberty either on public health orders or awaiting medical clearance (including some who had been held since early January 2020) stated that they had not been afforded a phone call upon their arrival at the centre to inform their family of their whereabouts. Equally, in Safi Detention Centre's new C Block, no public phone existed, rendering the 80 migrants locked inside a large dormitory for 24 hours a day, *de facto* incommunicado.

54. The migrants met by the CPT's delegation also stated that they were provided with no *information on the contact details* of NGOs, consular assistance, lawyers or the UNHCR, and an examination of the Unit logbooks showed that visits were extremely rare. For example, at Safi Detention Centre, there had only been one visit recorded from a lawyer to Warehouse 2 (which housed over 360 migrants in mass dormitories held under long-term RD detention orders), between early June and September 2020 and none during the period from March to June when the Centre had been closed to visits. Further, between May and September 2020, there had only been a total of 15 visits from any external person or institution to Warehouse Block 2 (360 migrants), including the immigration authorities.

²¹ Including the Detention Centre Regulations.

Indeed, few of the migrants with whom the CPT's delegation spoke had benefitted from any *access to a lawyer* or legal NGO, while NGOs confirmed that they had been afforded only very limited contact with detained migrants.

55. The CPT considers that detained migrants and asylum seekers should, from the very outset of their deprivation of liberty, enjoy three basic rights, in the same way as other categories of detained persons. These rights include access to a lawyer and to a medical doctor (see *Health care* section), and the right to be able to inform a relative or third party of one's choice, about the detention measure. In addition, because of the nature of their deprivation of liberty, detained migrants should have access to consular assistance if they so desire.

The right of access to a lawyer should include the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. This implies that when migrants in an irregular situation are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to free legal aid.

Equally, meaningful contact with the outside world and notifying a relative or third party of one's choice about the detention measure and the opportunity for regular consultation are crucial for detained migrants not to be held incommunicado, and for many of the safeguards to operate effectively. As such, detained migrants should have ready and regular access to the telephone. The CPT considers that this is greatly facilitated if migrants in an irregular situation are allowed to keep their mobile phones during detention, or at least have regular access to them.

In short, migrants deprived of their liberty need ready and regular access to means of communication to remain in contact with the outside world.

56. At the end of the visit, the CPT's delegation made an immediate observation under Article 8, paragraph 5, of the Convention governing the Committee, and requested that migrants deprived of their liberty are offered the possibility to regularly communicate with the outside world and that the Maltese authorities should take measures to increase the provision of phone cards and access to the telephone. In addition, the CPT considers that all migrants should be offered a free phone call upon their arrival at Marsa IRC and also when they are transferred to other places of deprivation of liberty.

By communication of 2 November 2020, the Maltese authorities responded that telephone lines and TV systems were being installed in Block-C at Safi. The only other centre without access to a telephone is HIRC ("China House"). Until such time as fixed telephone sets are put in place, the local telephone company offered the Detention Service a considerable number of sim cards with 10 EUR credit on them. Existent telephones in other areas can receive unlimited calls. Action has been taken to ensure that a phone card will be provided to each migrant on a monthly basis.

The CPT notes positively these developments. Nonetheless, the CPT recommends that access to the telephone be increased through both the ongoing increased provision of phone cards and, preferably, by permitting migrants to keep, or at least have regular access to, their own mobile phones. In addition, it recommends that several pay phones be installed in Safi Detention Centre, C Block and China House (where no phones exist), and that phone cards be provided, at all reception and detention facilities, every month ongoing, and confirmation provided to the CPT that this is indeed the case.

Further, it recommends that the Maltese authorities ensure that all immigration detainees are provided with access to Voice over Internet Protocol facilities and basic internet to facilitate virtual visits.²²

As prescribed in Malta's own 2015 Reception Strategy and relevant legislation, **the CPT recommends that all migrants should be offered access to a lawyer and, if necessary, legal aid as from the outset of their deprivation of liberty (including, *inter alia*, the possibility for detained migrants to have their detention procedures and legality reviewed).**

Further, the CPT recommends that the Maltese authorities establish a system of duty lawyers to ensure the right of access to a lawyer for immigration detainees is rendered more effective in practice. Ideally an "in-person duty lawyer scheme", where lawyers and or legal NGOs come to the immigration detention centres on a rotational basis, or at the very least are available by telephone at set times. This is all the more necessary given the number of migrants who do not have sufficient financial means to pay for a lawyer, and who are unaware how to instruct a lawyer in a foreign country, as well as lacking regular access to communication means (including telephone). In addition, support is required to ensure that the large numbers of migrants held in detention who do not speak either Maltese or English are able to exercise their rights.

The CPT also recommends that the right of access to a lawyer be subject to external oversight, ideally incorporating the involvement of legal non-governmental organisations and the Malta Chamber of Advocates.

5. Vulnerable persons and children in detention

57. Maltese law specifies that vulnerable persons, including children, families and unaccompanied minors, shall not be detained and instead shall be transferred to an open centre after the initial identification and assessment process. However, the delegation was informed by the authorities, by AWAS and Detention Service staff, as well as by other stakeholders, that, due to the steady rise in the number of migrants arriving in Malta, there was a scarcity of space in the open centres, with the result that many persons who would have normally qualified for an open centre, had to remain in detention.

58. As a consequence, the CPT's delegation found that, in practice, many children, including those awaiting age-assessment results, are being deprived of their liberty both in Marsa IRC (73) and in Safi and Hermes Block, Lyster (some 50). In Safi Detention Centre, there were at least 26 confirmed minors still being held in detention. Out of the 27 migrants arrested for rioting and trying to escape from Safi Detention Centre on 18 September 2020, 8 of them were young people awaiting age assessment results. Further, several migrants with whom the delegation spoke in Safi Warehouses were confirmed minors, who had been waiting for at least two months for space to free up in the Open Centres.

²²

CPT/Inf 2020(13) the CPT's Statement of Principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic, paragraph 7, published 20 March 2020.

Due to space constrictions, children were held in the same cramped space together with related and non-related adults. In Marsa IRC, children of all ages – including infants – were locked on all of the units in very poor conditions together with unrelated single male adults. This situation was compounded by the fact that the children had no access to purposeful activities, education or even the exercise yard to play games or football (the yard was housing contingency tented accommodation). Young children had nothing to do all day and insufficient inside and outside space in which to play.

In addition, there was a notable absence of psycho-social support or tailored programmes in the detention centres for children and other vulnerable groups.

59. The CPT considers that these establishments are not designed to cater for children, and not only are they inadequate in terms of material conditions, they also completely lack an adequate regime and any specific care provision to cater to the best interests of the child.

The CPT wishes to recall its position that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child. When, exceptionally, children are held with their parents in a detention centre, the deprivation of liberty should be for the shortest possible period of time. Mother (or any other primary carer) and child should be accommodated together in a facility catering for their specific needs.

Moreover, the CPT considers that unaccompanied minors should not be deprived of their liberty. They should however be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a guardian or legal representative who keeps them informed of their legal situation and effectively protects their interests. Review mechanisms should also be introduced to monitor the ongoing quality of the guardianship.

60. Moreover, at Marsa IRC, there were also other vulnerable groups, including breast-feeding mothers and four pregnant women, who were being deprived of their liberty along with their other young children. At the time of the delegation's visit, many of these pregnant women and mothers with infants were being held in the same space as unrelated male adults, with no privacy, and also had not seen a midwife or doctor for their pregnancies. They were not able to progress to Open Centres as quickly as they should have done, due to lack of space, and instead were held at Marsa IRC for many months (for periods ranging from 3 to 7 months).

61. The CPT considers that holding vulnerable persons, including children, pregnant women and breast-feeding mothers, in such living conditions may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights.

62. At the end of the visit, the CPT delegation invoked Article 8, paragraph 5, of the Convention establishing the CPT and requested the Maltese authorities to take measures by 2 November 2020 to ensure that unaccompanied and separated minors (including those young persons awaiting age assessment results), in Hermes Block, Lyster Barracks, China House and Safi Detention Centre, are accommodated separately from unrelated adults.

By communication of 2 November 2020, the Maltese authorities responded that persons claiming to be minors were now grouped together in the newly-built dormitory in Safi – C-Block. Migrants awaiting the age assessment test have been given an appointment and the backlog was being cleared in a timely manner. The Detention Service would henceforth accommodate migrants based on their ages as declared upon arrival.

63. The CPT recommends that the Maltese authorities fundamentally revise their policy regarding the detention of unaccompanied children for reception and identification purposes and public health detention in places of deprivation of liberty – be it in IRCs or detention centres – in line with the principle of the best interests of the child. As a matter of priority, an end should be put to holding unaccompanied children in these establishments. Further, the CPT wishes to underline that Safi C-Block is still an inappropriate location for holding young persons and it recommends that instead they should be transferred without delay to an (semi-) open establishment specialised for juveniles (e.g. a social welfare/educational institution for juveniles).

Equally, the CPT recommends that the Maltese authorities take measures to ensure that children should only be accommodated in centres designed to cater to their specific needs with appropriately trained staff. In order to limit the risk of exploitation, special arrangements should be made for living quarters that are suitable for children, for example, by separating them from adults, unless it is considered in the child’s best interests not to do so.

All children should be offered a range of constructive activities (with particular emphasis on enabling a child to continue his/her education) as well as daily access to outdoor exercise under an open regime.

All pregnant women and breast-feeding mothers with infants and young children should, in principle, not be deprived of their liberty and instead should be transferred to open (or at least semi-open) facilities, which can afford them privacy in their accommodation, as well as adequate support and follow-up by specialist health-care and psycho-social support staff.

6. Staff

64. The Detention Service (DS) is composed of some 123 members of staff,²³ including 110 DS officers to provide for the custody of around 1,500 migrants held in detention. This staff complement has been considered insufficient by the Maltese authorities, and the intention is to augment this number by another 180 DS recruits.

During the Covid-19 pandemic, many staff were required to stay in quarantine for 14 days, and to cover these absences, the DS had contracted with private security contractors (many from the Balkans who possess few English or Maltese language skills), to help with the custody of detained migrants. At any one shift, 10 staff cover each establishment (Safi, Lyster and China House). In practice, because of Covid-19 quarantines, the ratio was 6 (DSOs):4 (private security staff).

²³ Including: the Head / Director, Assistant Director, Operations Manager, one civilian (Asst. Principal HR), eight Officers in Charge, one Welfare Officer and 110 Detention Service Officers (DSOs).

Pursuant to the letter from the Maltese authorities, dated 2 November 2020, the CPT takes note of the investment in the human resources of the Detention Service whereby, as of 2 November 2020, 108 new officials are currently undergoing an induction training programme to join the existing workforce.

The CPT welcomes this development and would like to be informed on the continued progress in recruiting additional DS staff and what are the number of staff in post as of 31 December 2020.

65. The CPT findings confirm that staff were too few in number to cope with the steadily rising detained migrant population and the challenges such numbers were posing. There is a reliance on private security contractors who were not properly trained or suitably qualified to work with migrants. The delegation observed that both the DS and private security staff were rather remote, not interacting with detained migrants, and stayed outside the locked units for the vast majority of their shift time. Further, due to a lack of many such staff speaking English or other relevant languages, communication between the staff and the migrants was hampered. **The CPT would like to be informed of the training and standards provided to both DS staff and private security contractors, as well as the number of private security staff in post on 31 December 2020 and the perspectives for 2021.**

66. The CPT considers that custodial staff in detention centres for immigration detainees should be carefully selected and receive appropriate training. Staff should possess well-developed qualities in the fields of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detainees. Further, at least some of them should have relevant language skills. They should also be taught to recognise possible symptoms of stress reaction displayed by detained persons and to take appropriate action. In a number of countries, authorities have recruited cultural mediators to assist migrants in understanding their situation and facilitate communication and cooperation between migrants and the authorities.

The CPT recommends that the Maltese authorities ensure the continued recruitment of the envisaged 180 new staff members both to reduce the reliance on private security contractors and also to assist the overstretched existing DS staff.

Should the need arise to bolster the staffing complement, **the CPT recommends that all custodial staff in detention centres for immigration detainees receive appropriate and ongoing refresher training. Consideration should also be given to recruiting cultural mediators.**

7. Health-care services & management of the Covid-19 pandemic

a. overall health-care provision

67. The CPT welcomed the creation of the Welfare Officer role within the Detention Service and its vision for the creation of a dedicated integrated health-care service for detained persons. **The Maltese authorities now need to invest in establishing such a service.**

As described above, in response to Covid-19, Zone B of China House has been set up aside to accommodate residents who have tested positive for the virus and must remain in isolation until they are no longer infectious. Further, the CPT takes note that a new medical facility has recently been constructed at Safi adjacent to the closed facility and that it is expected to become operational soon, with the purpose of serving as a hub for health needs of the migrants while providing for the needs of those who require immediate medical assistance.

68. Nevertheless, at the time of the visit, the delegation found that in practice there had been hardly any change in the provision of health care to detained foreign nationals at Safi Detention Centre²⁴ and Hermes Block, Lyster Barracks²⁵ since its 2015 and 2011 visits;²⁶ indeed, many aspects had, in fact, deteriorated since then. The overall situation of health-care services was in a similar state at Marsa IRC.²⁷ However, it was notable that the health-care services at China House were better organised, notably due to the active engagement and support of Malta's Red Cross.

In short, in Safi Detention Centre, Hermes Block (Lyster Barracks) and Marsa IRC, the only positive aspect was a 24/7 nurse presence. There was one general practitioner (GP) who was responsible for the health-care needs of all migrants in detention (Safi, Lyster and China House); the GP organised daily clinics on a weekly rota in the different centres. However, there was no GP presence at Marsa IRC and it was left to the nurses to decide if a migrant required to see a doctor, in which case they arranged for the migrant to be transferred to the Floriana Health Centre or Mater Dei Hospital for further review.

China House²⁸ also benefitted from 24/7 nurse presence, permanent onsite presence of the Red Cross and the services of a dedicated separate GP who visited every day, including at weekends.

Access to specialist care (including dental, gynaecological and paediatric) was very restricted at all the centres. For specialist consultations, migrants were taken to an external hospital or to relevant specialists, but many complained of long delays in this respect (for example, several months waiting to be seen by a dentist).

²⁴ Health-care staffing at Safi Detention Centre (occupancy of 977 persons) comprised, during the day, seven days per week, two nurses on duty at the Warehouses and two nurses covering Blocks B and C, and one nurse on duty at night. A GP visited B-Block twice per week (Monday and Thursday) and the Warehouses twice per week (Tuesday and half of Friday). There was no provision for psychological services onsite. For specialist consultations, migrants were taken to an external hospital or to relevant specialists (dentist, etc.).

²⁵ Healthcare staffing at Hermes Block, Lyster Barracks comprised, during the day, seven days per week two nurses on duty and one nurse at night. A GP visited Hermes Block twice per week (Wednesdays and half of Friday). There was no provision for psychological services onsite. For specialist consultations, migrants were taken to an external hospital or to relevant specialist (dentist, etc.).

²⁶ See CPT/inf(2013)12, Visit from 26 to 30 September 2011; CPT/inf(2016)25, Visit from 3 to 10 September 2015.

²⁷ Health-care staffing comprised two nurses on duty 24 hours a day, seven days per week, on two shifts. They were employed by a Medicare agency, from a pool of around 20-30 nurses who provided services to Marsa IRC and administered medication in a supervised fashion three times a day. There was onsite provision for psychological services, but access to these was restricted since March 2020 due to the Covid-19 pandemic and restrictions had not been lifted at the time of the delegation's visit (September 2020).

²⁸ Health-care staffing at China House comprised: during the day, one nurse and four assistants / first responders from the Red Cross, and at night, one nurse and two assistants / first responders; a GP visited the Centre every day, including weekends, but focussed mainly on the coronavirus situation. For specialist consultations, migrants were taken to external hospital or to relevant specialists (dentist, etc.).

69. With the exception of China House,²⁹ at all of the Centres, the medical equipment was very scant (essentially limited to a stethoscope, a blood pressure monitoring machine, a device to measure blood oxygen saturation levels and a thermometer), and there was no emergency medical equipment available such as oxygen, defibrillator, ECG machine or nebuliser. That said, all of the Centres had a range of medications to hand, all of which were in date. In addition, a mobile chest x-ray facility visited Marsa IRC regularly to undertake x-ray screening for tuberculosis (TB), and immunisations (including MMR, diphtheria, tetanus and polio) were given to detainees when required. By communication 2 November 2020, the Maltese authorities underlined that a new medical clinic was being established at Safi, along with new medical equipment, which would be operational by 2021. **The CPT welcomes this development and requests to be provided with confirmation that this has been set up, in due course.**

70. Further, as regards initial medical screening of migrants upon arrival at the centres, although the CPT's delegation was informed that medical screening upon arrival at the IRC was undertaken by a doctor from the Red Cross onsite, the delegation found no evidence that this was occurring on a systematic basis, if at all. In addition, there were no medical records available to demonstrate what the screening comprised. Reportedly an initial medical screening took place upon arrival at the port which was undertaken by public health authorities and which included a physical examination and a checklist screening for coronavirus, chicken pox and scabies, but no individual records were passed to the reception and detention centres, and none were available for review.

At all the centres, individual medical files had been opened for each detained migrant, however, these were mostly empty; in short, no proper individual comprehensive medical records were being systematically kept.

71. The CPT's delegation also found that there was poor access to psychiatric care, limited in fact to emergencies and that there was also a lack of follow up by the IRC and Detention Centres' health-care services of treatment plans when a migrant returned from hospital care, or any meaningful review of those with complex health problems or vulnerabilities.

By way of illustration, the CPT's delegation spoke with a 24-year-old Sudanese man, who had arrived in Malta earlier in the year and had been transferred to hospital in London for complex brain surgery and then eventually returned to *Marsa IRC*, and who was totally dependent on the assistance of fellow detainees in order to wash and dress. This migrant was unable to speak and could communicate only by writing. He displayed obvious signs of depression. Since his transfer back to Marsa no psychiatric care or indeed follow-up care post-surgery had been provided on a regular basis. Worse, he was locked on the second floor, along with many Covid-positive migrants for 24 hours per day, albeit in a separate room, with no access to the outside (even if he had been able to manage the stairs to go outside). The CPT's delegation made an immediate observation on this matter to the Maltese authorities to underline that the circumstances in which this person was accommodated were wholly unsuitable in order to meet his most basic needs and that he should be transferred from Marsa with appropriate arrangements made for his care in the community including psychiatric review.

²⁹ China House was relatively well equipped, including with emergency equipment (oxygen, defibrillator, etc.).

By communication of 2 November 2020, the Maltese authorities informed the Committee that after the quarantine period ended, AWAS relocated the man's residence within the Marsa IRC to an individual room on the ground floor, with a toilet and shower. Moreover, the authorities underlined that he is now allowed to go in and out of the centre. An alternative accommodation is being sought for him and arrangements are being made with other government agencies so that he will benefit from (i) an independent living scheme, and (ii) a welfare package offered to persons with disabilities. AWAS will continue to provide financial assistance to him until such time that he will start to benefit from the said package.

The CPT would like to be informed when such arrangements have been made for his care in the community, including a psychiatric review.

72. The Committee recommends that the Maltese authorities take urgent steps to address the aforementioned serious deficiencies in the health-care services at Marsa IRC, Safi Detention Centre, Hermes Block (Lyster Barracks) and China House. In particular:

- **Marsa IRC, Safi Detention Centre, Hermes Block (Lyster Barracks) must be provided with adequate equipment (including life-saving equipment such as defibrillators, oxygen and nebulisers) in working order;**
- **detained foreign nationals must be given reasonably rapid and free-of-charge access to outside specialists when medically necessary, including to dental care;**
- **more robust and effective psychiatric care and services must be provided at Marsa IRC, China House and Safi and Lyster Detention centres;**
- **health-care services of detention centres must systematically follow up external treatment plans when a migrant returns from hospital care, and meaningful reviews of those with complex health problems or vulnerabilities must be carried out;**
- **qualified interpretation must be provided in cases when detained foreigners and health-care staff cannot communicate with each other;**
- **the quality of medical documentation must be improved at all reception and detention centres; in particular, a single and comprehensive individual medical record must be created for every detained foreign national; and**
- **the quality of medical screening upon arrival at each reception and detention centre must be improved (including the screening for tuberculosis, other transmissible diseases and mental disorders including signs of PTSD) and the medical records transferred and kept in the relevant centre.**

73. The existence of a therapeutic unit at Marsa IRC, which employed psychologists and social workers, is positive. However, staff working there were frustrated at not having ready access to the migrants, because of the restricted access rules in operation in Marsa IRC since March 2020. The restrictions had resulted in delays to the vulnerability assessments, which in turn had delayed vulnerable persons from leaving Marsa IRC to Open Centres.

The CPT must stress the need for particular attention to be paid to the mental health and psychological state of foreign nationals in custody, some of whom are asylum seekers and may have experienced traumatic situations – including torture or other forms of ill-treatment – in other countries.

By communication of 2 November 2020 from the Maltese authorities stated that they have invested in human resources, including professionals in the field of social work and that the number of professionals working with AWAS has been increased from 89 in January 2019 to 211 in October 2020. The increase in the number of employees is made up of support workers, reception facility officers, psychological officers, counsellors and psychologists.

The CPT notes positively this development; nonetheless, it **recommends that the Maltese authorities continue to strive to improve the level of, and access to, psychological assistance to foreign nationals detained in Marsa IRC, as well as China House, Safi and Lyster Detention Centres, along with the provision of professional interpretation, if required.**

b. **Covid-19 pandemic:** management, treatment and prevention measures

74. The CPT acknowledges the significant challenges associated with the relatively high numbers of Covid-19 positive migrants and suspected cases in Malta's immigration detention facilities. In China House, around 18% of the population had tested positive, with most of the remainder of the establishment's population being treated as suspected positive following the recent riot at Lyster (see paragraph 46 above). At Marsa IRC, one-third of all migrants (66) held on the first floor had tested positive for coronavirus.

The CPT notes the serious efforts of the public health team in undertaking the identification and screening for the virus at the first point of entry to Malta (the port) and thereafter on a regular basis at each immigration facility, as well as the measures being taken to limit the spread of the virus by the use of quarantine, some isolation and repeat testing of migrants and staff. According to the authorities, in the case of someone testing positive for Covid-19, the person is isolated and followed daily by a doctor. The delegation found that this was not in fact what happened in practice (see below). Any deterioration in the person's symptoms will result in hospitalisation. Otherwise, if the test result is negative after two weeks the person is no longer required to quarantine. All persons who have been in contact with a positive case are put in quarantine and tested at the beginning and at the end of the fourteen days.

75. A programme of PCR (Polymerase Chain Reaction) swabbing of those held on the first and second floors in the main accommodation block at Marsa IRC had been undertaken on 1 September 2020. Nevertheless, despite this and as mentioned above (section 2 *Ill-treatment*), during the visit, the CPT's delegation found at least 25 persons who had previously been identified as Covid-19 positive and who had not been separated from other migrants, thus facilitating the spread of the virus throughout the closed and overcrowded environment of Floors 1 and 2 of the IRC.

On Floor 1 of Marsa IRC's main building, 23 persons out of the 66 persons had tested positive for the virus on 1 September. However, no attempts were made to isolate them from the other 43 persons on the first floor – with whom they mixed freely on their locked unit. On 18 September, all persons on the first floor agreed to be re-swabbed. Four new cases of Coronavirus had been identified and one of the persons who had previously tested positive, tested positive for a second time. The Unit remained on 24/7 hour lock-down at the time of the delegation's visit.

Further, on 3 September 2020, eight persons on the second floor at Marsa IRC had swabbed positive for coronavirus. Of those, seven were taken and placed in Isolation Unit 1 (three persons), and Isolation Unit 2 (four persons). One person (in room 17, second floor), however, was not isolated and upon enquiry by the delegation as to the current whereabouts of this person, the duty co-ordinator initially stated that she did not know and that this migrant had possibly escaped. On further enquiry, however, staff were able to confirm that the migrant was indeed still in room 17 (i.e. still mingling freely with non-Covid-19 positive migrants).

76. The situation on Floors 1 and 2 of Marsa shows an establishment in disarray, which has allowed a dangerous, and potential fatal, environment for detained migrants and its own staff to develop and is symptomatic of the institutional neglect referred to above.

The CPT considers that due to the risk of the development of severe symptoms from Covid-19 that might require the hospitalisation of a migrant, and even may be fatal, this situation of disarray, negligence and the dangerous environment created by knowingly locking Covid-19 positive migrants together with non-positive migrants for long periods of time, may well raise issues not only under Article 3 of the ECHR, but also as regards Malta's positive obligation to protect life under Article 2 of the ECHR (see Section 2 *Ill-treatment*).

The CPT acknowledges that the Covid-19 pandemic has placed additional challenges and strain on the asylum and reception system. However, certain bare minimum and inviolable rights for detained migrants must be afforded, as outlined in the CPT's Statement of Principles of 20 March 2020.³⁰ Notably, these rights include access to adequate hygiene, daily access to outside exercise of at least one hour, regular access to communication with the outside world and meaningful human contact every day, among other things.

At the end of the visit, the CPT's delegation invoked Article 8, paragraph 5, of the Convention establishing the CPT and made two immediate observations, requesting by 2 November 2020, that the Maltese authorities inform the CPT of the measures taken to ensure that every person who tests positive for SARS Cov-2 is isolated immediately and not left to mix with other non-positive migrants; and, as a minimum during the Covid-19 pandemic, that all detained migrants are provided with at least one hour of access to outside exercise per day.

77. By communication of 2 November 2020, the Maltese authorities responded stating that the situation at Marsa IRC was the result of an emergency situation arising out of lack of space. Preventive measures have been taken throughout the whole period and the migrants' state of health was constantly monitored by doctors and other medical personnel from the Malta Red Cross. On 2nd October 2020, Floors 1 and 2 of the Marsa IRC were declared COVID-free by the health authorities. Currently there are no active cases of COVID-19 at the Marsa IRC and AWAS is currently transferring migrants at the centre, as per established procedure, to the different open centres.

³⁰ CPT/Inf (2020)13; <https://rm.coe.int/16809cfa4b>.

78. The CPT notes positively the evolved situation at Marsa IRC, that said, in line with its Statement of Principles of 20 March 2020,³¹, and given that close personal contact encourages the spread of the virus, **the CPT recommends that the Maltese authorities make concerted efforts to resort to alternative measures to deprivation of liberty. Specifically, the CPT recommends that more places be made available in the Open Centres, notably for the vulnerable categories of migrants currently awaiting such places at Marsa IRC, which in turn would free up space for those migrants who need to be confined due to testing positive for Covid-19.**

Further, in light of the ongoing and evolving nature of the Covid-19 pandemic worldwide, **the CPT recommends that, ongoing, the Maltese authorities should take measures to ensure better management and oversight of isolation and quarantine practices for Covid-19 positive migrants are operated at Marsa IRC by public health officials and AWAS.**

More generally, the CPT recommends that the Maltese authorities develop a specific and comprehensive strategy which addresses their obligations in response to the Covid-19 pandemic in immigration facilities. Such a strategy should, *inter alia*, include awareness raising on Covid-19 infection prevention in such establishments and the methods that will be used by the State to guarantee that persons held or working in every establishment are provided with sufficient quantities of appropriate PPE (or additional funds to obtain it). Further, it should describe how it will be ensured that rapid, easily accessible and free PCR testing ongoing is available for every detained migrant or staff member of such establishments, should they develop symptoms suggestive of Covid-19 or be exposed to others suspected of having Covid-19.

Lastly, the CPT reiterates that the Maltese authorities should ensure that Covid-19 positive detained migrants and/or those migrants suspected of having Covid-19, even in quarantine and/or isolation, should have the right to at least one hour of access to outside exercise.

8. Other issues

a. documentation and reporting procedures

79. The CPT's delegation found that the documentation processes, including the recording of incidents, use of force and/or means of restraint were not uniform in the establishments visited.

The incident reports at Marsa IRC were reasonably well maintained and included follow-up actions. Incident reporting had been virtually non-existent at Safi Detention Centre and Hermes Block (Lyster Barracks), but at the time of the delegation's visit, it was slowly developing and efforts, while as yet under-developed, were underway to start recording procedures. This, in part, had been hampered by the lack of staff and the consequences of Covid-19 staff quarantine. The recording of incidents or any other documentation processes or registers were non-existent at China House.

³¹ Ibid.

The CPT recommends that the Maltese authorities ensure that AWAS and DS management of reception and detention centres properly establish systematic and thorough documentation processes, including the complete and up-to-date reporting of all incidents that have occurred on their premises. Such registers should be subject to scrutiny by internal and external inspection bodies.

b. complaints & monitoring procedures

80. Independent monitoring of detention facilities for migrants in an irregular situation is an important element in the prevention of ill-treatment and, more generally, in ensuring satisfactory conditions of detention. To be fully effective, monitoring visits should be both frequent and unannounced. Equally, the CPT considers that effective complaints procedures are basic safeguards against ill-treatment in immigration detention. As regards complaints procedures, immigration detainees should have avenues open to them, both internally and externally, and be entitled to confidential access to an appropriate complaints authority.

81. In Malta, the body empowered with the independent preventive monitoring of immigration detention within the framework of Malta's National Preventive Mechanism (NPM)³² is the Monitoring Board for Detained Persons. This Board undertakes visits; however, according to the Board itself, it is only empowered by its establishing legislation to monitor Safi Detention Centre, and not other places where migrants may be deprived of their liberty *de jure* and/or *de facto*, such as China House, Hermes Block (Lyster Barracks) or Marsa IRC.

82. Given the severity of the CPT's findings during this visit, the CPT can only stress that the body empowered with monitoring such conditions should have access to every place of deprivation of liberty,³³ all the more so given that this Board forms part of Malta's NPM and is entrusted with monitoring immigration detention, as specified under Malta's OPCAT obligations.

The CPT recommends that the mandate of the Board of Visitors be amended by the relevant legislation in order to ensure that an independent monitoring body can access all places where migrants may be deprived of their liberty and be able to publish reports on its findings, to fully satisfy Malta's international obligations under OPCAT.

83. The Monitoring Board for Detained Persons also acts as the independent complaints mechanism for Safi Detention Centre. It considered that most complaints that they received involved trivial concerns, such as food, and that other issues of overcrowding were not problematic. The Board also did not publish its visit reports, but instead dealt with detainee complaints orally with the Director and summarised its findings in annual general reports. Given the seriousness of the situation found at Safi Detention Centre, such an approach does not make for an effective complaints mechanism.

³² In compliance with Malta's obligations under article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted: 18 December 2002 and in force: 22 June 2006.

³³ Article 4(2), OPCAT.

There was no complaints system in place at Marsa IRC, Hermes Block (Lyster Barracks) or China House, and only a rudimentary mechanism in operation in Safi Detention Centre. Equally, the detained migrants with whom the delegation spoke were unaware of any external complaints system in operation.

The CPT recommends that immigration detainees have avenues open to them, both internally and externally, and be entitled to confidential access to an appropriate complaints authority, and be informed of these possibilities from the outset of their deprivation of liberty.

B. Concluding remarks

84. The CPT wishes to emphasise that it acknowledges the significant challenges the Maltese authorities are facing in dealing with large numbers of refugees, asylum seekers and migrants in an irregular situation entering the country. It has repeatedly stressed that addressing this phenomenon requires a coordinated European approach as well as support by the European Union and its member States.

At the same time, it wishes to reiterate that this situation cannot absolve the Maltese authorities of their international human rights obligations as regards the treatment of foreign nationals deprived of their liberty. The State must exercise its duty of care to all persons deprived of their liberty and treat them with humanity and with dignity.

85. The CPT has repeatedly underlined at least since its 2004 visit to Malta the need to address the structural deficiencies in Malta's immigration detention policy, and has attempted to exercise its preventive function by recommending practical measures to ensure that all migrants in an irregular situation deprived of their liberty are held in decent humane conditions. The 2015 Reception Strategy represented a positive review of the way in which immigration detention should be approached.

86. In 2020, however, the CPT's delegation witnessed an immigration system that was struggling to cope; a system that purely "contained" migrants who had essentially been forgotten, within poor conditions of detention and regimes, which verged on institutional mass neglect by the authorities.

Various of the Committee's previous recommendations to improve the living conditions of detained migrants have not been acted upon. For example, the carceral design of detention centres such Hermes Block and the Warehouses at Safi Detention Centre are totally inappropriate – large rooms crammed with beds, no privacy, and communication with staff via locked doors.

Other deficiencies noticeable in most, if not all, places in which migrants in an irregular situation are detained include a lack of maintenance of the building (especially the sanitary facilities), insufficient personal hygiene products and cleaning materials, inability to obtain a change of clothes, lack of information provided to detained persons, no access to daily outdoor exercise or any contacts with the outside world. The situation was further aggravated by the extreme overcrowding prevalent in the facilities visited during the 2020 visit.

87. The Covid-19 pandemic has served only to push a strained immigration reception and detention system to the point of breaking. Most migrants appeared to have no lawful basis for their detention and were held in severely overcrowded facilities under extremely poor living conditions, offered no purposeful activities, and with an absence of regular and clear information being imparted to them. Moreover, the lack of information was exacerbated by the restricted contacts with the outside world (limited access to telephone communication and no NGOs or external organisations visiting the places of detention since March 2020). The long lock-down and quarantine of migrants of all ages, along with poor conditions, have resulted in mass neglect and instilled a deep frustration in migrants, at times exploding into violent riots.

88. In addition, vulnerable migrants were not getting the care and support they required. To begin with, the CPT considers that young children and their parents as well as unaccompanied/separated minors should not be detained. Moreover, they were being detained in very poor conditions and were being held together with unrelated adult men. Clear protection policies and protocols for looking after vulnerable migrants need to be put in place.

89. The CPT also wishes to reiterate the importance that the Maltese authorities must attach to ensuring that the staff recruited to the Detention Service (DS) are not merely “guards” to ensure that the migrants are securely locked away but have the appropriate profile and training to interact and support the persons under their care. Further, the DS and reception centre managers must have a clear grip on what is happening within their centres and ensure that the requisite policies are being adhered to and all registers are being properly completed. Much more investment is needed in the staff working with migrants as well as increasing their numbers. Also, much greater oversight is required whenever resort is had to private contractors to ensure that they adhere to the same ethos and high standards that should govern the personnel of the DS and Reception centres.

90. Overall, there is an urgent need for Malta to reconsider its immigration detention policy, to one better steered by its duty of care to treat all persons deprived of their liberty with dignity. Equally, the length, and legal basis, of all three grounds governing the detention of migrants in Malta need review and reform, most notably the system of public health restriction of movement and detention.

91. The problem of migration into Malta is not new and will almost certainly continue given the push factors that exist in those countries from which the vast majority of migrants come. Therefore, Malta together with the support of the European Union and other member states³⁴ must put in place an immigration detention system which abides by European values and norms. No persons held in immigration detention in Europe should ever be subjected to treatment or conditions which amount to inhuman and degrading treatment according to Article 3 of the European Convention on Human Rights.

The CPT has always taken the approach of working constructively with the Maltese authorities to prevent migrants being exposed to inhuman and degrading treatment. It wishes to pursue such a path going forward in line with Article 3 of the Convention governing the CPT.

The Maltese authorities must now take decisive steps to address the very serious issues outlined in this report and reform their immigration detention system accordingly. In doing so, they should seek the support of the European Union and the Council of Europe, as appropriate.

³⁴ See the principles in the European Union’s new Pact on Migration and Asylum, September 2020.