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P.L. 3192


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Raymond Scicluna
Skrivan tal-Kamra
The Monitoring Board for Detained Persons

Annual Report 2018

1. Introduction

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. Malta acceded to this Convention against Torture on 13 September, 1990, and ratified the Optional Protocol to the Convention (OPCAT) on 24 September, 2003.

The OPCAT concept is that prevention of inhuman and degrading treatment in detention can best be achieved by a system of independent, regular visits to places of detention. Such visits monitor the treatment of and conditions for detainees.

Article 1 of this Protocol provides for the setting up of a system of regular visits, undertaken by independent international and national bodies, to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Malta established two National Preventive Mechanisms to monitor places of detention, the Corradino Correctional Facility Monitoring Board (formerly known as The Board of Visitors of the Prisons) and the Monitoring Board for Detained Persons.

The Monitoring Board for Detained Persons (“MBDP” or “the Board”) was established in 2007, “to act as the body of persons responsible for a National Preventive Mechanism for the prevention of torture, as provided for in the Optional Protocol to the United Nations Convention” (Legal Notice 266 of 2007). The Regulations provide further that the Board shall “satisfy itself as to the treatment of detainees, the state of detention centres premises and the administration of the detention centres”.

In 2012, the Regulations establishing the Board were revised to include the monitoring of “proceedings relating to the involuntary return of illegally staying third country nationals in accordance with the provisions of the Immigration Act and of the Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations.

2. Composition of the Board

Throughout 2018, the Board was constituted as follows:
Chairperson: Dr Andy Ellul LL.D (until his resignation with effect from 15 February 2018)

Members: Chev. Alfred Abela  
Ms Angela Azzopardi  
Ms Yovanca Barbara

Member-Secretary: Mr Michael Buttigieg

Following the resignation of by Government Notice No. 353 and No. 1376 published on 27th March 2018, it was notified that the Monitoring Board for Detained Persons had been constituted as follows:

Chairperson: Dr Luciano Busuttil BA LLD

Members: Chev. Alfred Abela  
Ms Angela Azzopardi  
Ms Yovanca Barbara

Member-Secretary: Mr Michael Buttigieg

Regulation 15 of Legal Notice 266 of 2017 provides that the Board shall make an annual report to the Minister at the end of each year, concerning the state of the Detention Centres and their administration and, generally, about the carrying out of its functions. This Report provides information on the activities of the Board and its members, and on the conditions and the treatment of persons detained at the Safi Detention Centre in 2017.

The Monitoring Board’s conclusion is that the rights of persons restricted in their freedom in Malta were generally respected during their detention at the Safi Detention Centre.

3. Meetings of the Board

During the year under review the Board met fifteen (15) times and held three (3) other meetings with authorities, including a meeting with Minister Dr Michael Farrugia – Minister for Home Affairs and National Security.

Throughout the year, Board members visited the persons detained at the Safi Detention Centre forty-seven (47) times.

Annex 2 to this Report lists the dates of Board meetings, of visits to the persons detained at the Safi Centre and of other meetings.
Visits to persons detained at Mount Carmel Hospital were carried out whenever the Board was informed that medical specialists had referred a detainee for treatment at that hospital.

Except for scheduled meetings with the Head of Detention Services, all visits to the Safi Detention Centre were carried out without prior notice to the Authorities concerned. During these visits the Board met and interviewed most, if not all, the detainees at the Centre. Such interviews were carried out in private, except for instances when Board members requested members of the Detention Services to be present during an interview.

4. Persons Detained

In January 2018, there were 11 persons in detention. At the end of December 2017 the number of detained persons was 10.

During the year 2018, a total of 168 persons spent time at the Safi Detention Centre.

These migrants were nationals of thirty-nine (34) countries, as shown in Annex 1 to this Report.

At the end of the year there were four detainees that have spent between 446 and 240 days in the detention Centre, as follows:
5. **Contacts with the Ministry**

The members of the Board met Minister Dr Michael Farrugia and staff at the Ministry for Home Affairs and National Security on various occasions. Both the Minister Farrugia, responsible for Home Affairs and National Security, as well as the staff at the Ministry are fully aware of the Board's functions, and have always been responsive and supportive whenever the Board and any of its members asked for assistance.

6. **Meetings with the Head of Detention Service and other Senior Officers**

The Board members met the Head of Detention Services or the person responsible, several times. The members of the Board received full cooperation from Mr. Schembri, and the Detention Services staff, both when discussing complaints and Mr. Baldacchino and Mr. Joseph Muscat, other issues raised by detainees as well as when seeking to address other matters concerning the Detention Centre.

7. **Monitoring of Return Operations**

The Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016, reinforced the management of the external borders of the European Union and built on the work of Frontex to develop it further into an agency with a shared responsibility for the management of the external borders of the
Union, including the organisation, coordination and implementation of return operations. The broadening of competence of this European agency is accompanied by guarantees for the respect of fundamental rights, ensuring the right to international protection (non-refoulement) and the protection of vulnerable persons, children and unaccompanied minors. Particular mention is also made of the use of means of restraint during Return Operations according to the proportionality principle.

However, the basic institutional guarantee of the regulation is dual; it introduces the rule that every return operation must be carried out with the presence of a monitor at every phase of the operation, who shall submit a report to the executive director of FRONTEX fundamental rights officer and the competent national authorities of the Member-State (MS) involved, and requires FRONTEX to create a European Pool of Monitors of recognised experience, including expertise in issues of child protection. Member-States shall contribute to the pool by nominating monitors who will be required by FRONTEX to participate in European Return Operations.

During 2018, two members fully-trained Frontex monitor of Forced Return Operations of the Board participated as Monitor in a National return operation and two Pool Return Operations. The monitoring of all return operations included the pre departure, inflight and arrival and a report was delivered on return of each Pool return operation containing recommendations and advice to Fronted and all Pool return as detailed below:

24th May 2018 - Return Operation organised by the German Authorities from Frankfurt to Georgia. The Monitor, Mr. Michael Buttigieg, accompanied the Georgian Nationals to Tbilisi, where all the returnees disembarked

28th November 2018 – National Return Operation organised to Egypt. The Monitor, Mr. Alfred Abela, accompanied the Egyptian National to Cairo, where all the returnees disembarked;

13th December 2018 - Return Operation organised by the German Authorities from Dusseldorf to Albania and Kosovo. The Monitor, Mr. Michael Buttigieg, accompanied the Albanians Nationals to Tirana and Kosovo Nationals to Pristina, where all the returnees disembarked.

During the year our monitors were also ready to monitor two other National Forced Return operations to Egypt and Tunisia which were aborted just before the flight.
8. Other Meetings and Events

01 February: The Board met with Mr. Victor Zaharia, vice Chairperson for National Preventive Mechanisms (SPT);

27-28 February: Mr. Michael Buttigieg and Mr. Alfred Abela, Board Members participated workshop on Good Practices concerning Fundamental Rights Compliance in Forced-Return Operations hosted by the Ombudsman of Republic of Latvia;

13 April: Mr. Michael Buttigieg Board Member and Secretary together with Mr. Alfred Abela, Board Members met Mr. Steven Caruana Manager – OPCAT Implementation Section-Detention Inspections & External Territories-Commonwealth Ombudsman;

18 April: Mr. Alfred Abela participated in the 4th Project Steering Group (PSG) in Vienna;

17-18 April: Mr. Michael Buttigieg participated to European NPM Forum conference in Slovenia on the occasion of 10th anniversary of the Slovenian NPM;

23 May: The Board met with Dr Paulo Biondi-UNHCR-Senior Protection Associate ulis-Dr Fiona Cauhi-UNHCR-Protection Assistant for Malta

19-20 June: Mr. Michael Buttigieg participated to workshop on Annual Lessons Learned in Helsinki, Finland;

23-24 October: Mr. Michael Buttigieg and Mr. Alfred Abela, Board Members participated FReM II closing conference and 5th PSG meeting, Nuremberg, Germany;

01 November: The Board met with Immigration Police Section, the meeting was organised by the Mr John Testa – Principal- office of the Prime secretary- Ministry of Home Affairs and National Security;

13 November: Mr. Michael Buttigieg and Mr. Alfred Abela participated in EMN Annual Conference, Floriana Malta;

03-4 December: Mr. Michael Buttigieg participated to APT/ODIHR meeting on torture prevention and immigration detention, Milan, Italy

27 December: The members of the Board celebrated the New Year with the persons detained at the Safi Centre, offering fruits & mineral drinks
9. Correspondence and Contacts

The Board was in regular contact with representatives of various authorities and non-government organisations, in Malta and abroad, on issues concerning individual detained persons or on general issues regarding detention.

10. Complaints by Detained Persons

The Monitoring Board for Detained Persons Regulations provide that detainees shall be asked if they have any complaints to make with regard to their treatment in the detention centre. Any detainee wishing to make a complaint shall be heard in such part of the Centre as the Board may deem fit.

Board members met the vast majority of persons being detained at the Safi Centre throughout 2018, whether individually or in groups. The members of the Monitoring Board explained to the detained persons that they were not detention services staff, but independent persons responsible for ensuring compliance with the Convention against Torture and the laws of Malta regulating detention. The persons being detained were informed of the Board's functions at law, and they were invited to advise Board members of any conduct or matter which they considered unacceptable. The majority of complaints made by detained persons concerned the length of their detention, the quality of the food being provided at the Centre, the telephone system and inadequate clothing in the colder months.

The vast majority of complaints concerned the variety of the food offered to them, Board members were at times shown small aluminum containers containing pasta which had been thrown away unopened due to it being inedible. Also the presentation of food should be in individual covered treys

As to medical treatment, the Board is satisfied that the treatment available at the Centre and at the Medical Clinics is of the standard required. Whenever complaints were made regarding the quality of medical treatment, such as the late delivery of medication, these were invariably discussed with the nursing staff at the Centre and, if necessary, with the Head of the Detention Services, and resolved.

From time to time, members of the Board visited the stores at the Safi Detention Centre to verify that the supply of warm garments and blankets at the Centre was adequate.
11. Administration of Detention Centres

As noted in previous Annual Reports, the members of the Board can confirm that, throughout the year 2018, the positive attitude of detention staff towards detained persons was evident.

The lack of an alarm system in the area housing detained persons, and reported in previous Board reports, has yet to be addressed. To date, the only manner in which detained persons and members of the Board visiting the Centre can alert the detention personnel on duty, is by shouting and banging on the iron doors.

12. Recommendations

Compared to previous years when detention centres accommodated hundreds of persons at a time, the years 2016, 2017 and 2018 were relatively calm in view of the low number of detainees. Such periods of low activity should be utilized for the continuation of specialized training of the detention staff and the ongoing maintenance of detention facilities. During such periods it is easier to carry out upgrading works. Since the building was built as barracks almost half a century ago requires a good refurbishment program. With this consideration in mind the Board once again suggests that an Architect should be appointed to inspect and report on the urgent works that need to be carried out to safeguard the safety requirements of detained persons.

Even though custody officers are caring and treat the detainees with care and respect, the Board is of the opinion that continuous training of personnel needs to be more comprehensive. This training needs to include basic communication and customer care skills, security and health issues, besides training in disciplinary methods. Members of the Detention Service need to be given the support necessary to fulfil their duties in terms of human rights legislation and internationally recognised standards.

The Regulations provide that the Board shall have, among others, the following functions:

(a) to satisfy itself as to the . . . state of detention centres premises and the administration of the detention centres;

(b) to advise the Minister on any matter relating to the care of detainees, as well as to the organisation and improvement of the detention centres and the Detention Service, which the Minister may refer to it or any ancillary matter on which the Board deems it opportune to tender its advice to the Minister; and

(c) to advise the Minister on matters relating to work and activity to be performed by detainees.
In previous Reports, the Board has already recommended various measures aimed at improving the quality of life of detained persons and the detention services, and most of these are being reproduced below:

Detainees should be informed of interview outcomes individually and privately, and the appeal procedure should be explained to them. The results of such interviews regarding asylum should be given in a humane manner;

a. A case worker or a social worker should be assigned, helping the detainees to discuss their difficulties and concerns during the time of detention;

b. In order to facilitate the communication between the detainees and staff, board members, staff and NGO's it is highly recommended that a list of contracted translators is provided at the Detention Centre. As at to-date we are finding it extremely difficult to communicate with one Chinese detainee who is currently being detained alone since she is only female there. This detainee does not understand English and both staff and Board members fail u understand the Chinese language.

c. The Board recommends the provision of better telephone arrangements to enable detainees to contact their family members or friends abroad even by using personal mobile;

d. The Board has repeatedly recommended the setting up of a computer room, equipped with a number of computers and monitored by detention staff. Such use of computers are used in other countries detention centers. There are clear benefits in providing an opportunity for detainees to further their education during the period of detention, and to have other means of entertainment besides television;

e. Although during the year the quality food were improved Complaints regarding food and water are still on the list.

f. Being deprived of one's freedom of movement is a very severe measure. The situation can be alleviated in part by installing cubicles or other separators between beds, thereby respecting the dignity and privacy of detainees. At times, detainees resort to the use of a blanket to segregate their bed area from that of others. Such arrangements make the place look very shabby, and leaves detainees with only one blanket to cover themselves at night; we recommends that proper curtains to cover individual beds thus give more privacy to the detainee.

g. The Centre should have a designated area with facilities for sports and training, including suitable equipment; this is more a fact when considering that some detainees have been there for almost a year now.
h. The Centre should designate a suitable area as a multi-faith prayer and meditation space which should be equipped accordingly.

i. Detainees should have the possibility to be included in schemes like the ones that detainees at CCF avail themselves of, which allow them to perform particularly selected duties which can be beneficial to them from a financial point of view but most of all from a mental health point of view.

13. Concluding Remarks

As noted in Annual Reports for past years, the members of the Monitoring Board continue to see an improvement in the atmosphere at the Centre and in the attitude of staff. This is partly attributable, no doubt, to the relatively small number of persons detained at any point in time. But the Board believes that such an improvement is primarily due to the positive approach of the majority of the staff at Detention Services. With more people in charge showing motivation to care for the detainees, detention can become more serene and less stressful. Overall, the detainees appear calm and quite relaxed with the officers in charge. When interviewed, they rarely or practically never complain about ill-treatment.

Dr. Luciano Busuttil
Chairperson,
Monitoring Board for Detained Persons

March 2019

Annex 1 to Annual Report – nationality of persons detained at the Safi Centre in 2018

Annex 2 to Annual Report 2018 – dates of visits to the detention Centre, board meetings and other meetings
### Annex 1 – Nationality of persons detained at the Safi Centre in 2018

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Annex 2

A. Board meetings were held on:

17 January 2018
01 February 2018
15 February 2018
07 March 2018
21 March 2018
02 May 2018
23 May 2018
12 June 2018
21 June 2018
04 July 2018
26 July 2018
27 September 2018
16 October 2018
06 November 2018
29 November 2018
27 December 2018

Board members visited the persons detained at the Safi Centre on

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