



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

"Dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights"

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## ICJ Intervention on the adoption of the outcome document of the Universal Periodic Review of Malta

23 September 2009

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Mr. President,  
Distinguished Deputy Attorney General,

The International Commission of Jurists (ICJ) welcomes the constructive dialogue in the Working Group of the Universal Periodic Review (UPR) of Malta, and in particular the many recommendations of the Working Group regarding administrative detention of migrants and asylum seekers, and access to justice and procedural safeguards for detained migrants including free legal assistance. While welcoming the timely response of Malta to the Working Group's recommendations, the ICJ regrets that Malta rejected the Working Group's recommendation 40 on the legal consequences of the use of the term "prohibited migrants", in particular administrative detention. Asylum and migration are amongst the most important issues for the protection of human rights in Malta, and deserve the serious attention of the Maltese Government. Moreover, the importance of addressing the situation of migrants in detention has been emphasised by the Human Rights Council in its Resolution 11/9.

The ICJ recalls that while Malta, due to its geographical position, is facing a large-scale arrival of migrants, the annual rate of which is as high as 45 per cent of its annual birth rate, the government must respect its international obligations in its migration policy, in particular those arising from international human rights law and international refugee law. The ICJ remains concerned at the automatic resort to administrative detention of asylum seekers and migrants and at the excessive and disproportionate length of such detention, which can amount to arbitrary detention even if entry was in contravention of domestic law (*A v. Australia* (560/93)). The ICJ calls on the Human Rights Council to recommend that Malta revise its legislation and policy on administrative detention of migrants and asylum seekers in accordance with the principle of proportionality. It should ensure that such detention is resorted to only where it is necessary in the particular circumstances of a case, and that it is subject to a clear maximum duration established in primary legislation, and to regular judicial review. The Human Rights Council should also recommend that measures alternative to detention be provided for in primary legislation.

The ICJ urges the Council to recommend to Malta that procedural safeguards be effectively guaranteed both to asylum-seekers and to all other migrants. In particular, the Council should recommend that Malta provide free legal assistance, where necessary, to those subject to administrative detention and/or alternative administrative measures, regardless of their status as asylum-seekers and of appeal or review proceedings.

The ICJ expresses its concerns at the conditions in Malta's detention centres, which are often overcrowded, lack proper hygiene and adequate health care. The Human Rights Council should recommend that the Government take measures to improve conditions in detention centres in accordance with articles 7 and 10 of the ICCPR, and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.