

Analytical report on the implications of over-incarceration and overcrowding for the human rights of persons deprived of their liberty (resolution 24/12 of the Human Rights Council)

Alternatives to Detention, Best Practices and Other Relevant Experiences

According to the Probation Act Chapter 446 of the Laws of Malta, the current practices relating to alternatives to incarceration and other measures which alleviate overcrowding are the following:

- Probation Order: A Probation Order is issued by the Court and can be issued for a minimum period of one year and a maximum of three years. It is a community-based alternative aiming at serving the offender's rehabilitation, protecting society from harm, and preventing further recidivism.
- Suspended Sentence with Supervision Order which is found in the Criminal Code (Article 28G): This is a prison sentence which is suspended for a minimum of two and a maximum of four years. The Court may issue a Supervision Order applicable to this period.
- Provisional Supervision Order: the Court may deem it necessary to issue a provisional order of supervision of the accused by a Probation Officer at any point during the criminal proceedings.
- Combination Order: This is an amalgam of the Probation Order and the Community Service Order. The Probation element may be one to three years duration while the Community Service element is of 40 to 100 hours.
- Community Service Order (CSO): The offender is required to perform between 40 and 240 hours of work without pay. Compensation to the community is regarded as a priority when issuing a CSO as the offender tries to make up for the harm he has inflicted upon society in general. The offender is expected to carry out the number of hours as stipulated by the Court in his free time and care is taken in order that such work does not replace paid work. CSOs are only applicable in case of offenders who are over 16 years of age.

Parole has been introduced in Maltese law through the Restorative Justice Act (Cap 516) in 2012. Offenders under the age of 16 years may also be eligible for Parole. The parole system allows for the early release of inmates subject to eligibility and conditions and thus may contribute to lessening pressures on facilities due to overcrowding.

The Restorative Justice Act (Cap 516) also provides for remission which may be awarded to prisoners serving a prison term of more than one month. Remission earned cannot exceed one third of the total of the term of a sentence of imprisonment.

Other best practices include:

- Opportunities for training are provided to prison inmates in order to address the revolving door syndrome. Educational facilities are provided within the correctional facility in addition to out-of-prison education opportunities.
- In relation to the age of criminal responsibility referred to in OP 21 we would like to underline that following the promulgation of Act III of 2014 a minor under fourteen years of age is exempt from criminal responsibility. Moreover minors under sixteen years of age are also exempt from criminal responsibility for any act or omission done without any mischievous discretion.