

Malta Detention Profile

- » [Detention policy](#)
- » [Detention infrastructure](#)
- » [Facts and figures](#)

With a population of some 400,000, the island of Malta has the highest population density in Europe. Since joining the European Union (EU) in 2004, the country has seen a significant increase in the number of undocumented migrants arriving by boat from Africa (Frendo 2007, p.3). Authorities have struggled to cope with this influx, and observers are concerned that the country's heavily criticized detention centres are not prepared to house so many people. Criticism has also been levelled at the government's policy of mandatory detention of asylum seekers. Malta has sought "burden sharing" assistance from both the EU and the international community to improve the country's capacity to receive, house, and process irregular migrants and asylum seekers.

Detention Policy

Key norms. The 1970 *Immigration Act*, which has been amended several times, provides criteria for legal entry and residence in Malta, as well as for the administrative detention and removal of "prohibited migrants." Part IV of the act defines "prohibited migrants" as, *inter alia*, any person who does not have the right to enter or reside in Malta; has been refused entry to the country; is unable to support him or herself as well as dependants; suffers from a mental disorder; is convicted of crime punishable for a minimum of one year; is a prostitute; or is a dependent of a prohibited immigrant.

Article 10 of the *Immigration Act* provides that people who are detained after being refused entry into Malta are considered not to have formally entered the country. It states: "Where leave to land is refused to any person arriving in Malta on an aircraft, such person may be placed temporarily on land and detained in some place approved by the Minister ... until the departure of such aircraft is imminent. Where leave to land is refused to any person arriving in Malta by any other means, such person [may] be placed temporarily on shore and detained in some place approved by the Minister" (Art. 10, para.1-2). Persons detained under this act "shall be deemed to be in legal custody and not to have landed" (Art. 10, para. 3).

Approved places of detention "for the purposes of the *Immigration Act*" are listed in a subsidiary piece of legislation entitled "Places of Detention Designation Order" (1995, with subsequent amendments). (See "[Detention Infrastructure](#)" below for more information.)

Non-citizens considered to be unlawfully in the country are obliged to leave Malta immediately and voluntarily (Art.14, para 3). The Principal Immigration Officer and the Immigration Appeals Board can issue a "removal order" to any person considered a "prohibited immigrant," and such persons can be detained in custody until removed to their country of origin or any other state that permits his/her entry, including states that have concluded readmission agreements with Malta (Art. 14, para. 1-4).

Air and sea carriers who transport passengers not in possession of appropriate entry documents can be fined and are required to convey undocumented migrants to another destination stipulated in the law (Art. 15). Carriers must confine anyone refused entry to Malta on board their vessel (Art. 21).

The Minister for Justice and Home Affairs may issue a deportation order to "any person" (Art. 22, para.1) under conditions deemed "proper" by the Minister (para. 2). Such persons are required to leave Malta (para. 4) and "may be detained in such manner as may be directed by the Minister until he leaves Malta" (para. 6).

Anyone issued a removal or deportation order may be required to pay for any expenses incurred "in connection with the maintenance, medical treatment or expulsion of a prohibited immigrant or his dependants" (Art 14, para 6-7).

Appeals. Appeals against removal and deportation orders can be made to the Immigration Appeals Board (Art. 25A). Release may be granted where the length of detention is considered unreasonable and deportation is considered unlikely (Art. 25A, para. 8-10). The

Working Group on Arbitrary Detention (WGAD) raised concerns that the Appeals Board only rules on the “reasonableness” of the duration of detention, not its “legality,” and questioned its effectiveness as it “meets once a week for half a day and has to take all immigration related decisions, not just those concerning detention” (WGAD 2009 Annex). The UN body further claimed that Malta’s administrative detention regime is not in line with international human rights law, as immigrants are subject to mandatory detention “without genuine recourse to a court of law” (WGAD 2009).

Length of detention. The European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) and Médecins Sans Frontière (MSF) have separately reported that the maximum length of detention in Malta is 18 months (LIBE 2006, p.2; MSF 2009, p.5). However, the WGAD reported in 2009 that the law does not specify any maximum length of administrative detention. Rather, only government practice “sets a maximum period of one year of detention for asylum seekers whose application is still pending. Rejected asylum seekers and all immigrants in an irregular situation are generally released only after 18 months of detention if return to their home countries or to third countries has not been carried out. Again, this maximum period is not stipulated by law and the Working Group has been informed that it is at times exceeded in contravention of official Government policy” (WGAD 2009 Annex).

Vulnerable persons and asylum seekers. Maltese policy allows for the fast-track release of vulnerable groups, including families with children, the elderly, unaccompanied minors, pregnant and breast-feeding women, people suffering from disabilities and serious physical or mental illness (WGAD 2009; MSF 2009). Various international and non-governmental organisations are concerned that vulnerable groups are detained upon arrival in Malta until they undergo a vulnerability assessment by the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) (MSF 2009, p.25; WGAD 2009; LIBE 2006, p.2). The WGAD claims that the initial mandatory detention of vulnerable undocumented non-citizens is contrary to international human rights law and the **EU Return Directive**, both of which dictate that detention in such cases should only be used as a last resort (WGAD 2009). MSF claims that insufficient information is provided to vulnerable persons on how they can appeal their detention, and urgent cases are not prioritised (MSF 2009, p.25).

Malta is a signatory to the 1951 **Refugee Convention**, and in 2001 the government passed the Refugees Act to “make provisions relating to and establishing procedures with regard to refugees and asylum seekers” (Refugees Act 2001). However, concerns have been raised about the detention of asylum seekers, who can be kept in detention for more than six months while waiting to be interviewed (WGAD 2009 Annex). The International Commission of Jurists expressed concern that the administrative detention of asylum seekers and migrants was automatic, excessive and disproportionate in length and duration (UN Press Release 2009).

The government of Malta defends the lengthy processing period of vulnerable groups and asylum seekers, highlighting the lack of cooperation shown on the part of detainees who frequently provide false information to officials and miss scheduled appointments that could expedite the process (Government of Malta 2008, p.10).

Undocumented non-citizens granted “vulnerable persons” status or humanitarian protection, as well as asylum seekers who have been detained for more than 12 months, are moved to non-secure reception centres that fall under the responsibility of the Ministry of Social Affairs and the Family (Micallef 2009a; LIBE 2006). These centres, which are run by private contractors, have been described by a government minister as “ghettos” (LIBE 2006).

Malta informed the WGAD in 2009 that only 2,000 (out of some 12,000 undocumented non-citizens) had been repatriated since March 2002, leading the WGAD to conclude that “automatic and mandatory” detention is a deterrence mechanism rather than simply a means to facilitate removal (WGAD 2009).

The EU, Italy, and Frontex. When Malta joined the EU in 2004 it became Europe’s southernmost country and a key interface for migrants travelling from North Africa to mainland Europe. Since then, the government has frequently referred to the “emergency scale” of undocumented arrivals, and the “national crisis” of administrative detention (LIBE 2006, p.3; Government of Malta 2008, p.5). In October 2008, the Interior Minister said: “Since 2002, almost 11,000 irregular migrants and asylum seekers have reached our shores, most of them having never intended Malta to be their final destination. ... [A] small and overpopulated island like Malta has a limited absorptive capacity and is not in a position to provide enough jobs, shelter and social services for the large numbers of migrants arriving on our shores every month” (Borg 2008).

Each year hundreds of migrants perish in the Mediterranean en route to Europe from North Africa (LIBE 2006, p.3). Observers claim that a lack of coordination between Italy and Malta over the response, rescue and reception of migrants stranded at sea aggravates the rising deaths (Amnesty International 2009; UN News Service 2009). Antonio Guterres, the UN High Commissioner for Refugees, has called for a convention between **Italy**, Malta, and **Libya** to address the increasing rates of irregular migration across the Mediterranean and to ensure that people are not sent back to places “where their lives or freedom would be jeopardized” (UN News Service 2009c).

In October 2005, Frontex—the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union—became operational. Its aim is to coordinate joint EU member state operations to intercept irregular boat migrants crossing the Mediterranean from Africa to Europe (Frontex 2007, p.6). While the program has been credited with reducing boat arrivals to the Canary Islands (HRW 2009, p.40), observers claim that the organisation has made only minor grounds in tackling irregular migration to Malta (Camilleri 2009). In March 2008, Malta lauded the Italy/Libya agreement to undertake joint patrols off the Libyan coast and announced a forthcoming conclusion of a Search and Rescue Agreement (SRA) between Malta and Libya (Government of Malta 2008, p.5). Malta hosts the Frontex Nautilus IV operation that patrols the sea strait between Sicily, Malta and Libya (Camilleri 2009).

The government has repeatedly called on the EU to implement a policy of “burden sharing” to assist Europe’s border countries bear the brunt of undocumented migration (Borg 2008; Government of Malta 2008; LIBE 2006, p.3). In September 2009 EU Justice Commissioner Jacques Barrot announced a pilot project that would, beginning in January 2010, relocate migrants granted refugee and humanitarian protection in Malta to other EU member states that opt in to the project on a voluntary basis (Camilleri 2009). The announcement came six months after Barrot visited Malta’s Hal Far immigration detention facility and pledged financial aid to improve conditions (Darmanin 2009).

In October 2009, the leaders at the EU Summit in Brussels agreed to study the possibility of having Frontex finance chartered flights to return irregular migrants back to their home countries. According to news reports, “The idea of charter flights came originally from the **French**, with support from Italy” (AFP 2009). The proposed measures also included “Working with Libya to manage migration, including by sea” (Europolitics 2009), and a proposal for Frontex to “manage reception centres in North African countries together with the UNHCR so immigrants wanting to start a new life in Europe would be able to apply for asylum there” (Camilleri 2009).

Detention Infrastructure

Upon arrival to Malta, irregular migrants and asylum seekers are sent to one of three dedicated immigration detention facilities: the Lyster Barracks Closed Centre, the Safi Closed Centre, and the Ta’kandja Closed Centre (Micallef 2009a; MSF 2009). When additional space is needed, migrants can also be detained in correctional facilities and police headquarters. A government source informed the **Global Detention Project** that as of November 2009 these facilities were not being used for such purposes (Micallef 2009b).

Approved places of detention “for the purposes of the Immigration Act” are listed in the Places of Detention Designation Order (1995 with subsequent amendments). In addition to those mentioned above, approved places include: quarters at the Special Assignment Group Complex; approved place of Police Custody at the Victoria Police Station, Gozo; lock up in the building housing the courts of Justice at Valletta; lock up at the Police Headquarters at Floriana; approved place of Police Custody at the Malta International Airport; approved place of Police Custody at the Seaport, Valletta; the approved place of the Police Complex at Fort Mosta, Mosta; and the Hal-Far Immigration Reception Centre.

The day-to-day management of the country’s three dedicated immigration detention facilities is carried out by the Detention Service, a government body that falls under the authority of the Ministry of Justice and Home Affairs (Micallef 2009a; MSF 2009). The Ministry for Justice and Home Affairs informed the Global Detention Project in November 2009 that the “Detention Service is made up of personnel seconded from the Police Force and from the Armed Forces of Malta, as well as civilians.” Its role is to maintain security at the secure centres and to provide adequate accommodation; the necessary toilet and shower facilities; food; clothing; a hygienic and safe environment; access to medical care; access to the Commissioner for Refugees for asylum processing; access to non-governmental organisations; and access to means of contacting home or country representatives (Micallef 2009b).

Malta’s detention capacity continually fluctuates, according to a government source, as officials work to accommodate increasing numbers of arrivals (Micallef 2009a). However, a rough estimate of the combined capacity of the country’s three dedicated facilities can be gleaned from statistics about the total population of these centres on a given day. On 31 December 2008, the three centres reportedly had a combined population of nearly 1,900 (Ta’kandja, 70; Safi, 1,080; Lyster, 714) (Micallef 2009a).

Irregular migrants who are found to be suffering from mental illness are sent to the Mount Carmel Psychiatric Hospital (Micallef 2009a). Malta also operates a number of non-secure reception centres that cater to providing accommodation for “vulnerable” migrants and those granted refugee or humanitarian protection. According to Micallef, these centres act as a transit for migrants who have come from official detention, and who are free to move into society (Micallef 2009a). The centres are reportedly run by either the Ministry for the

Family and Social Solidarity or civil society organisations. As of December 2007 there were 2,000 persons residing in them (ECRI 2007, p.15). These centres, which are run by private contractors, have been described by a government minister as “ghettos” (LIBE 2006).

Non-governmental and international observers have criticised conditions at administrative detention centres in Malta (WGAD 2009 Annex; MSF 2009; LIBE 2006). The WGAD, in 2009, found the Safi and Lyster Barracks detention centres conditions to be “appalling to the extent that the health, including the mental health, of the detainees is affected,” which “affects their ability to properly understand their rights and to follow the legal proceedings related them” (WGAD 2009 Annex). The WGAD has also expressed concern about the detention of families, including pregnant and nursing mothers and unaccompanied minors (WGAD 2009 Annex). In 2006, the LIBE committee recommended closure of the facilities, stating that the situation “is unacceptable for a civilised country and untenable in Europe, which claims to be the home of human rights” (LIBE 2006, p.9).

In August 2008 Médecins Sans Frontières (MSF) established a Memorandum of Understanding with the Ministry for Justice and the Ministry for Social Policy to provide health care to undocumented migrants and asylum seekers in Malta’s three immigration detention facilities. However, MSF reportedly pulled out of the Hal Far facility “in protest of the lack of basic sanitary standards, amongst other shortcomings” (Darmanin 2009).

A 2009 MSF report on detention conditions found that facilities are severely overcrowded, have poor hygiene, offer inappropriate shelter (particularly the Lyster Barracks, where some detainees sleep in tents and containers), provide limited outdoor access, have no heating in winter and poor ventilation in summer, and provide lack of access to basic health care. Conditions fall “far below the EC Directive laying down minimum standards for the reception of asylum seekers” (MSF 2009, p.8), and that “without structural changes, and given the increasing number of new arrivals in 2009, the situation is likely to deteriorate further” (MSF 2009, p.3).

Facts & Figures

Malta operates three dedicated migrant detention facilities—the Closed Centres at Lyster Barracks, Safi Barracks and Ta’ Kandja (Micallef 2009a). At the end of 2008, the Ministry of Justice and Home Affairs reported a total of 1,864 people being detained in immigration detention facilities (1,080 at Safi Barracks, 714 at Lyster Barracks, and 70 at the Ta’ Kandja facility) (Micallef 2009b).

The number of undocumented migrants landing in Malta has significantly increased in recent years, with 502 people arriving in 2003, 1,822 in 2005, and 2,704 in 2008. In the first two months of 2009, more than 700 undocumented arrivals entered Malta. Of the 2,704 arrivals in 2008, 2,298 were males, and 365 females. There were also 32 children and 9 infants (MSF 2009, p.5). The Minister for Interior told the LIBE committee that in the summer of 2005 at least 400, and probably between 600 and 700, migrants perished at sea trying to reach the country (LIBE 2006, p.3).

According to MSF, almost 50 percent of the migrants and asylum seekers detained in Malta originate from Somalia, where they escaped conflict and violence. Others originate from Sudan, Eritrea, Nigeria, and other African countries. Many of them are detained for long periods of time in Libya before arriving in Malta, and the majority of them are granted humanitarian protection (53 percent in 2008). A small portion of them (less than one percent) are granted refugee status (MSF 2009, p.6). ECRI reported that between January 2002 and May 2007, the Office of the Refugee Commissioner (the national institution responsible for first-instance asylum decisions) processed 4,303 asylum applications involving 4,817 persons. Four percent of them reportedly received refugee status and approximately 45 percent of them were granted temporary humanitarian protection (ECRI 2007, p.13).

During the first few months of 2009, MSF referred 63 pregnant women to Malta’s Organisation for the Integration and Welfare of Asylum Seekers (OIWAS), some of whom remained in detention with their newborns after giving birth (MSF 2009, p.27).

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List of Detention Sites

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Name	Status (Year)	Location	Facility Type	Security	Authority	Management	Capacity	Reported Population on a Single Day	Demographics & Segregation
Floriana Police Headquarters	In use (2007)	Floriana	Ad Hoc - Police Station	Secure	Ministry for Justice and Home Affairs	Police			
Lyster Barracks Closed Centre	In use (2009)	Lyster Barracks, Hal Far	Migrant detention centre	Secure	Ministry for Justice and Home Affairs	Detention Services		714 (31 December 2008)	Adult males and females (2009)
Safi Barracks Closed Centre	In use (2009)	Safi	Migrant detention centre	Secure	Ministry for Justice and Home Affairs	Detention Services		1080 (31 December 2008)	Adult males only (2009)
Ta'kandja Closed Centre	In use (2009)	Siggiewi	Migrant detention centre	Secure	Ministry for Justice and Home Affairs	Detention Services		70 (31 December 2008)	Adult males and females (2009)

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(This is only a partial list. More detailed information is available upon request.)

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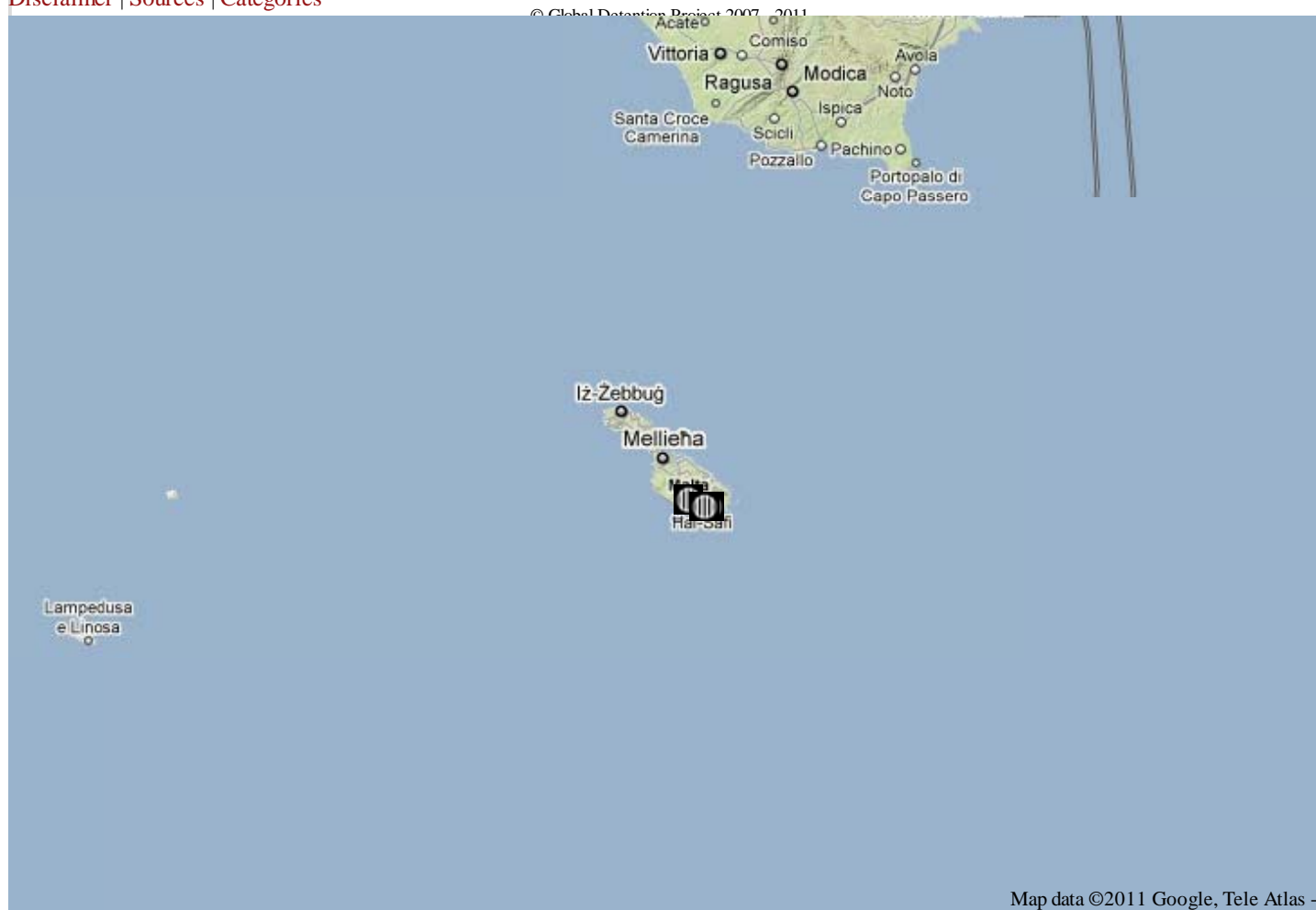
Map of "In Use" Detention Sites

For more detailed information, see the complete [List of Detention Sites](#).

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Country View

1. [Lyster Barracks Closed Centre](#)
2. [Safi Barracks Closed Centre](#)
3. [Ta'kandja Closed Centre](#)

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- » [Government Agencies](#)
- » [International Organizations](#)
- » [NGOs and Research Institutions](#)
- » [Media](#)

Government Agencies

Government of Malta

<http://www.gov.mt/>

Ministry of Foreign Affairs

<http://www.mfa.gov.mt/>

Ministry of Justice and Home Affairs

<http://www.mjha.gov.mt/>

International Organizations

International Organization for Migration – Malta Country Information

<http://www.iom.int/jahia/Jahia/activities/europe/southern-europe/malta>

UNHCR - Malta

<http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48eba6>

NGOs and Research Institutions

JRS Malta

www.jrs.net

Medecin San Frontières

<http://www.msf.org/>

Media

Times of Malta

<http://www.timesofmalta.com/>

The Malta Independent Online

<http://www.independent.com.mt/mainpage.asp>

L'orizzont

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