



## **Immigration Detention in Malta**

**Global Detention Project**

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The Global Detention Project (GDP) is a research initiative that tracks the use of detention in response to global migration. Based at the Graduate Global Migration Centre in Geneva, Switzerland, the GDP's aims include: (1) providing researchers, advocates, and journalists with a measurable and regularly updated baseline for analysing the growth and evolution of detention practices and policies; (2) encouraging scholarship in this field of immigration studies; and (3) facilitating accountability and transparency in the treatment of detainees.

“Immigration Detention in Malta”  
By Izabella Majcher and Michael Flynn  
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Global Detention Project  
Global Migration Centre  
Graduate Institute of International and Development Studies  
Rue de Lausanne 132  
P.O. Box 136  
CH – 1211 Geneva 21  
Switzerland  
Tel: + 41 22 908 4556  
<http://www.globaldetentionproject.org/>

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Introduction..... 3  
Detention Policy..... 4  
Detention Infrastructure ..... 11  
Facts & Figures ..... 15  
List of Detention Sites..... 17  
Map of Detention Sites ..... 18  
Country links..... 19  
Reference List ..... 21

## Introduction

Among the factors impacting Malta's immigration detention policies and practices are its geographical location and political posturing related to perceived population pressures. When Malta joined the European Union (EU) in 2004 it became Europe's southernmost country and a key entryway for migrants travelling from North Africa to Europe. Malta is also one of the smallest European countries and has one of the highest population densities in the region (ECRI 2013). While the actual numbers of residing non-citizens and asylum seekers are low, they are quite high vis-à-vis Malta's population of 400,000. For example, although the country received only 2,080 asylum applications in 2012, Malta was nevertheless the EU country with the highest proportion of asylum claims (4.9 applicants per 1,000 inhabitants), followed by Sweden (4.7 applicants per 1,000 inhabitants). Also, with 20 residing refugees per 1,000 inhabitants, Malta ranks eighth in the world and has the highest rate among its European neighbors (UNHCR 2013a; UNHCR 2013b).

Increasing numbers of irregular maritime arrivals have prompted the government to declare that undocumented immigration has reached an "emergency scale" and that there is a "national crisis" with respect to administrative detention (LIBE 2006, p.3; Government of Malta 2008, p.5). When Maltese officials refer to this "crisis," they argue that Malta represents an exceptional case due to its small size, high population density, and extensive maritime borders (Mainwaring 2012). This situation recently prompted Malta to oppose Frontex' draft Regulation on Sea Operations, which establishes a Frontex operation's host country as the country of disembarkation of migrants rescued during the mission (Camilleri 2013).

To cope with boat arrivals Malta applies a form of mandatory detention which, although unique among EU countries, has some similarities to the policy pursued by [Australia](#). Non-nationals without the right to enter, transit, or reside in the country can be subject to a removal order, which once ordered automatically triggers detention.

Maltese authorities have argued that immigration detention is a "powerful deterrent" and referred to their policies as a form of punishment. As the Minister of Foreign Affairs noted in 2009, "The message needs to ... be received by everyone that entering Malta illegally will not go unpunished." Another government official once explained that detention serves to persuade migrants "that they have to go back home. ... It's good that they contact their relatives and say, listen, don't come to Malta because it's terrible here" (Mainwaring 2012).

## Detention Policy

**Key norms.** The 1970 [Immigration Act To restrict, control and regulate immigration into Malta and to make provision for matters ancillary thereto](#) (*Immigration Act*, Chapter 217 of the Laws of Malta), which has been amended several times, is the main instrument dealing with immigration and regulates, *inter alia*, border control, detention, expulsion, and the issuing of residence permits. A relevant subsidiary piece of legislation is the 2011 [Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations](#) (*Return Regulations*, Legal Notice 81), which transposed the [EU Returns Directive](#) into Maltese law. The treatment of asylum seekers is regulated by the 2001 [Refugees Act: An Act to make provisions relating to and establishing procedures with regard to refugees and asylum seekers](#) (*Refugees Act*, Chapter 420 of the Laws of Malta) as well as the 2005 [Reception of Asylum Seekers \(Minimum Standards\) Regulations](#) (*Reception Regulations*, Legal Notice 320).

**Grounds for detention.** The *Immigration Act* provides for mandatory detention of all persons who have been issued a removal order. According to article 14(2), “[u]pon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta.” This automatic pre-removal detention provision appears to be unique among EU countries.

To be issued a removal order, you must first be designated a “prohibited immigrant,” a category provided in the *Immigration Act*. The Act describes two categories of “prohibited immigrants”: (1) persons who enter or are present in Malta without authorization (article 5(1)); and (2) persons whose authorization to enter or stay in the country is invalidated because they are unable to support themselves and their dependents; suffer from mental disorder; are found guilty of certain crimes; contravene the provisions of the *Immigration Act* or the regulation made thereunder; cease to comply with the conditions under which they were granted leave to land or to remain in Malta or when the circumstances which determined the granting of such leave cease to exist; are prostitutes; or are dependents of a “prohibited immigrant” (article 5(2)).

If a person is designated a “prohibited immigrant” he is subject to removal (*Immigration Act*, article 14(1)). The *Immigration Act* leaves discretion to the “Principal Immigration Officer” on whether to order removal. However, in practice unauthorized entrants—the first category of “prohibited immigrants” described above—are usually issued removal orders (HRW 2012). Also, the legislation states that any person who belongs to the first category of “prohibited immigrants” or is reasonably suspected of it “may be taken into custody without warrant by the Principal Immigration Officer or by any Police officer and while he is so kept in custody he shall be deemed to be in legal custody” (*Immigration Act*, article 16). In addition, 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).

Under article 10 of the *Immigration Act* persons refused entry to the country may be placed temporarily on land or shore and detained until their departure. These people are considered not to have formally entered the country. As spelled out in article 10(3) of the *Immigration Act*, such detainees “shall be deemed to be in legal custody and not to have landed.”

In 2011, Malta adopted the *Return Regulations*, transposing the EU Returns Directive. This legislation further refined Malta’s legal provisions related to detention, although only to a limited extent. In particular, while the Returns Directive provides some basic safeguards against mandatory detention, these safeguards only apply to a small number of non-nationals in Malta because the country took advantage of the option offered in the Directive to limit the scope of some of its provisions. The *Return Regulations* excludes from its scope persons refused entry or those who are apprehended “in connection with the irregular border crossing” and who have not subsequently obtained an authorization to stay in the country (*Return Regulations*, Regulation 11(1)). Because the majority of immigration detainees in Malta are people who have entered the country without authorization or have been refused entry, the Directive’s provisions are not applied in most detention cases.

For those non-nationals to whom it applies—i.e. the second category of “prohibited immigrants” discussed above—the *Return Regulations* provides that there must be specific grounds to justify detention: (1) if the person displays a risk of absconding; or (2) avoids or hampers the return or removal procedure (Regulation 11(8)).

Malta’s detention policies have attracted broad criticism from international and non-governmental organizations (CRC 2013; WGAD 2010; Commissioner for Human Rights of the Council of Europe 2011; HRW 2012). Malta informed the [UN Working Group on Arbitrary Detention](#) (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. The WGAD found that a mandatory detention regime without genuine recourse to a court of law is not in line with international human rights law. It recommended that Malta “[c]hange its laws and policies related to administrative detention of migrants in an irregular situation and asylum-seekers, so that detention is decided upon by a court of law, on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation, under which detention may be resorted to, rather than being the automatic legal consequence of a decision to refuse admission of entry or a removal order” (WGAD 2010). Also, the [International Commission of Jurists](#) (ICJ) has expressed concern that Malta’s administrative detention of asylum seekers and migrants was automatic, excessive, and disproportionate in length and duration (UN Press Release 2009).

**Asylum seekers.** The *Refugees Act* does not provide specific detention grounds for asylum seekers. Yet, detention of this category of persons is implicitly permitted under the *Reception Regulations* (Regulations 11(2) and 12(6)) and they can be detained under the same grounds—discussed above—as other categories of non-citizens

(Warnier de Wailly 2011f). The main difference relates to the maximum length of detention (see below).

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, were once described by a government minister as “ghettos” (LIBE 2006).

**Length of detention.** As stipulated in the Return Regulations, detention is generally not to exceed six months (*Return Regulations*, Regulation 11(14)). Reflecting the Returns Directive, the legislation allows for extending the period of detention up to 18 months on account of (1) lack of cooperation by the detainee; or (2) delays in obtaining the necessary documents from the third country (*Return Regulations*, Regulation 11(15)).

However, Malta failed to transpose the Directive’s due diligence standard regarding extension of detention, notably that the 18-month detention is permissible if the removal operation lasts longer than the initial six-month period, *regardless of all reasonable efforts of the authorities*. In the *Massoud* case, the [European Court of Human Rights](#) (European Court or ECtHR) found that Malta violated the applicant’s right to liberty because the country did not prove that the deportation proceedings were pursued vigorously pending the applicant’s extended detention (ECtHR 2010).

Maltese legislation also provides a mechanism for extending detention to 18 months that is not provided in the Returns Directive. Detention can be extended whenever “the Principal Immigration Officer” deems it necessary (*Return Regulations*, Regulation 11(15)(c)). By virtue of this highly discretionary ground, authorities can order 18-month detention terms without any specific justification.

Provisions limiting the permissible length of detention do not apply to persons excluded from the scope of the *Return Regulations*. Importantly, the *Immigration Act* does not specify a maximum length for these persons; rather, time limits are determined by a government policy document, the Ministry’s for Justice and Home Affairs 2005 [Policy Document Irregular Immigrants, Refugees and Integration](#). This policy provides that no one is to be kept in detention for longer than 18 months. However, because this maximum period is not stipulated in law, the WGAD has expressed concern over the possibility of people being detained for longer than 18 months (WGAD 2009 Annex).

The length of detention of asylum seekers is also not established in law. The above-mentioned policy document provides that detention can last as long as an asylum application is being examined. However, in practice asylum seekers are released after the lapse of one year. This practice is based on an interpretation of the *Reception Regulations* (Warnier de Wailly 2011f). As stipulated therein, asylum seekers should be granted access to the labour market if a decision at first instance has not been taken within one year. This access is not to be withdrawn during the appeal stage of asylum procedures (*Reception Regulations*, Regulation 10(2)-(3)). Because detention would prevent employment, this provision is construed as meaning that an applicant for

international protection should be released from detention once the period of one year has elapsed (Warnier de Wailly 2011f; WGAD 2010).

Several human rights monitoring bodies have expressed concern that the length of immigration detention is not clearly defined under law. The WGAD urged Malta to legally define maximum period of detention rather than relying solely on a government policy document, while the CRC recommended “clear time limits” on detention (CRC 2013; WGAD 2010).

**Procedural guarantees.** Under Maltese law there is no obligation for authorities to issue a detention order. Detention is an automatic consequence of a removal order or a decision refusing admission into the territory (Warnier de Wailly 2011f; *Return Regulations*, Regulation 11(9)). Thus, it is not possible to appeal the decision to detain. Only a removal order may be challenged. Maltese law also does not guarantee regular and automatic judicial review of detention.

Despite these limitations in challenging detention, there exist various possible remedies, though their efficacy appears to be severely limited (CRC 2013; Warnier de Wailly 2011f). The European Court has argued that most of the remedies fail to satisfy the requirement of judicial review under article 5(4) of the [European Convention on Human Rights](#) (ECHR) (ECtHR 2010; ECtHR 2013b; JRS Malta and aditus 2013).

Under article 25(A) of *the Immigration Act*, immigration detainees may appeal a removal order to the Immigration Appeals Board within three working days following the issuance of the order. If the removal order is revoked the person concerned is automatically released (Warnier de Wailly 2011f; *Immigration Act*, article 25(A)(5)). Detainees may also apply to the Board to be released pending asylum or deportation procedures. Release may only be granted if the continued detention is of unreasonable length or there is no reasonable prospect of deportation within a reasonable time. Thus the Board rules solely on reasonableness of detention, rather than assessing its lawfulness.

Persons released are still obligated to report to the authorities at least once a week. The Board may refuse to grant a release in cases where the person concerned does not cooperate with the authorities regarding his or her removal. Moreover, the release is refused where the identity of the appellant, including nationality, has not yet been verified, the elements of asylum application have not yet been determined, or for public security reasons (*Immigration Act*, article 25(A)(9)-(13)). This restriction, combined with long delays in examining appeals and rare cases where this remedy is successful, led the European Court to conclude that this remedy falls short of judicial review of detention under article 5(4) of the ECHR (ECtHR 2010). The WGAD has also questioned the effectiveness of the Board 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).

Another remedy is set out in article 409A of the *Criminal Code*, by virtue of which immigration detainees can make a request to the Court of Magistrates to examine the lawfulness of detention and order release from custody. The Court solely assesses

whether detention is founded on any provision of Maltese law. In particular, it is not competent to look into other circumstances which could render detention illegal, such as incompatibility with the ECHR. When this remedy has been pursued, the Court of Magistrates has found that as the *Immigration Act* authorized pre-removal detention, such detention was lawful (Warnier de Wailly 2011f). Due to the limited scope of this scrutiny, the European Court found that this remedy cannot be considered an effective remedy as required under the ECHR (ECtHR 2010).

Immigration detainees can also seek a constitutional remedy. They may challenge the length of detention, relying on article 34 of the Constitution of Malta, which protects people from arbitrary arrest or detention, or article 5 of the ECHR before the Civil Court. However the European Court found that constitutional proceedings were cumbersome and could not satisfy the requirement of speedy review of the lawfulness of detention under article 5(4) of the ECHR (ECtHR 2010).

The *Return Regulations* provides an appeal procedure to the narrow categories of immigration detainees not excluded from their scope. Non-citizens covered by the *Return Regulations* are entitled to challenge the lawfulness of their detention before the Immigration Appeals Board and “such proceedings shall be subject to a speedy judicial review.” If the Board finds that the detention is not lawful the person concerned is to be released immediately (*Return Regulations*, Regulation 11(10)-(12)).

Malta’s weak procedural guarantees have attracted criticism from the UN and regional human rights bodies. In October 2013, the [European Commission against Racism and Intolerance](#) (ECRI) explicitly recommended Malta to amend its legislation to ensure that all immigration detainees be provided with speedy and effective judicial remedy to challenge the lawfulness of their detention (ECRI 2013). In early 2013, the [UN Committee on the Rights of the Child](#) (CRC) expressed concern over the lack of systematic and regular judicial review of detention and the fact that existing procedures are frequently inaccessible and ineffective. It urged Malta to adopt legislation, policies and practices that subject immigration detention to periodic reviews (CRC 2013).

Previously, in 2011, the [UN Committee on the Elimination of Racial Discrimination](#) (CERD) called on Malta to effectively guarantee the legal safeguards for all immigrants detained, in particular to inform them about their rights, including the legal assistance and to provide assistance to those who seek asylum (CERD 2011). Also, in 2009, the WGAD urged Malta to set up an automatic periodic review procedure by a court of law on the necessity and legality of detention; to provide for an effective remedy to challenge the necessity and legality of detention at any time throughout detention; and to establish a system of legal aid for immigration detainees (WGAD 2010).

**Minors.** Minors, whether asylum seeking or not, may be detained in Malta. According to government policy persons vulnerable by virtue of their age and/or physical conditions are exempt from detention and should be accommodated in open centres. However, it also states that minors should only be released once their identification has been determined and they have been medically screened and cleared (Ministry for Justice and Home Affairs 2005). Thus, in practice minors are detained pending age

determination proceedings (HRW 2012; France Terre d'Asile 2012). Moreover, the *Return Regulations*, which provides protective standards for vulnerable persons, implicitly sanctions their detention. Accordingly, vulnerable persons in detention shall be provided with emergency health care and essential treatment of illness (*Return Regulations*, Regulation 9(3)). There are also several provisions addressing specifically minors. They shall only be detained as a measure of last resort and for the shortest period possible. Families shall be provided with separate accommodation guaranteeing adequate privacy. Minors shall have access to leisure activities, including play and recreational activities appropriate to their age and education, depending on the length of their stay. Unaccompanied minors as far as possible shall be accommodated in institutions provided with personnel and facilities, which take into account the minors' needs (*Return Regulations*, Regulation 10).

As reported by NGOs, upon arrival all minors, including unaccompanied whose age is in question are detained pending an age assessment procedure, which may take several months (HRW 2012; France Terre d'Asile 2012). [France Terre d'Asile](#) reported cases where unaccompanied minors claimed being adults because the age determination procedure could take even longer than the asylum procedure, which is suspended during the procedure (France Terre d'Asile 2012). According to [Human Rights Watch](#) (HRW), Malta applies a very low threshold for disputing the age of a child, which has led to 12-year-olds being forced to undergo age determination procedures. During their detention minors are held with unrelated adults, without any accommodation specific for their age or access to school (CRC 2013; France Terre d'Asile 2012; HRW 2012). Once their age is confirmed, unaccompanied minors are released from detention and offered accommodation in specialized centres (Dar is-Sliem or Dar il-Liedna). However, those who are aged sixteen years or more may be placed in accommodation centres for adult asylum seekers that do not offer adequate support for persons in their age (France Terre d'Asile 2012).

Following examination of Malta's periodic report in 2013, the CRC made several recommendation to the State's authorities, including to expeditiously and completely cease the detention of children in irregular migration situations; to accommodate minors in non-custodial, community-based contexts while their immigration status is being determined; to improve and expedite age assessment practices and ensure that age assessments are undertaken only in cases of serious doubt; to ensure that children in immigration detention have access to adequate guardianship and legal representation; and to provide children in detention with adequate opportunities and facilities for education, leisure and recreational activities in an open context (CRC 2013).

**Non-custodial measures.** Immigration detainees may request bail within the context of appeal proceedings before the Immigration Appeals Board (*Immigration Act*, article 25(a)(6); JRS Malta and aditus 2013). Civil society organizations have reported that the Board's decision is usually not based on the necessity or even the legality of detention but rather on whether the person concerned has accommodation and means to sustain himself, and can provide sufficient financial guarantees to comply with the conditions of bail (Warnier de Wailly 2011f). With respect to persons to whom the *Return Regulations*

apply, their detention may be imposed “unless other sufficient and less coercive measures are applicable” (*Return Regulations*, Regulation 11(8)).

The failure to apply non-custodial measures with respect to an immigration detainee in the *Massoud* case was one of the reasons that led the European Court to conclude that Malta violated the applicant’s right to liberty. The Court found it “hard to conceive that in a small island like Malta, where escape by sea without endangering one’s life is unlikely and fleeing by air is subject to strict control, the authorities could not have had at their disposal measures other than the applicant’s protracted detention to secure an eventual removal in the absence of any immediate prospect of his expulsion” (ECtHR 2010).

In late 2013, the ECRI recommended that Malta provide non-custodial alternatives to detention and refrain from resorting to detention unless it is strictly necessary in the particular circumstances of an individual case (ECRI 2013).

**Criminalization.** In December 2002 Malta decriminalized immigration-status-related violations (EMN 2012; Ministry for Justice and Home Affairs 2005). However, if a non-citizen applying for a visa or a residence permit fails to declare his previous removal from Malta, he can be charged with an offence and be subject to a fine of more than 1,000 Euros and/or imprisonment for up to six months (*Immigration Act*, article 24).

**Access to detention information.** Malta makes it difficult to get statistics on immigration detention. In 2013, [Access Info Europe](#) and the Global Detention Project launched a joint initiative aimed at assessing the degree of openness with respect to information about detention in 33 countries, including Malta. The groups sent two brief questionnaires asking for data on where people were detained and how many had been detained in recent years, and requesting details about asylum seekers and minors in detention. Malta refused to respond to these questions. Instead, an official in the Ministry for Home Affairs and National Security stated that only “eligible persons” could make freedom of information requests. The official pointed to legislation stipulating that an eligible person is someone “who is resident in Malta and who has been so resident in Malta for a period of at least five years” (Attard 2013).

## Detention Infrastructure

As of May 2013, Malta operated three dedicated immigration detention facilities: the **Hermes Block at Lyster Barracks** in Hal Far, **Warehouse One at Safi Barracks**, and **B-Block at Safi Barracks** (Warnier de Wailly 2013; HRW 2012).

Approved places of immigration detention are listed in the 1995 [Places of Detention Designation Order](#). In addition to the three facilities mentioned above, the list includes a number of other facilities, none of which appeared to be in operation as of 2013. These facilities include quarters at the Special Assignment Group Complex (Ta’Kandja); Victoria Police Station (Gozo); the building housing the courts of Justice at Valletta; Police Headquarters at Floriana; Police Custody place at the Malta International Airport; Police Custody place at the Seaport in Valletta; the Police Complex at Fort Mosta (Mosta); and the Hal-Far Immigration Reception Centre.

Malta’s detention capacity continually fluctuates, according to a government source, as officials work to accommodate changing numbers of arrivals (Micallef 2009a). The three currently operating facilities had a total capacity of 740 as of November 2011 (160 in Safi B-Block, 200 in Safi Warehouse One, and 380 in Hermes Block at Lyster Barracks) (Warnier de Wailly 2011a; 2011b; 2011c).

Previously, in 2008, Malta’s total detention capacity was approximately 1,900. The capacity has decreased in recent years as some facilities have closed (including Ta’Kandja Police Complex) or been reduced (Lyster and Safi military bases).

According to the Maltese government, on 8 April 2011, there were 1,040 persons in immigration detention (Commissioner for Human Rights of the Council of Europe 2011). According to non-governmental sources, at the end of 2012 there were roughly 500 asylum seekers and failed asylum seekers in immigration detention (JRS Malta and aditus 2013).

The country’s three dedicated immigration detention facilities are located within compounds operated by the Armed Forces of Malta (in Hal Far and Safi). The day-to-day management of detention facilities is carried out by the Detention Service, a government body that falls under the authority of the Ministry of Home Affairs (Warnier de Wailly 2011a; 2011b; 2011c). The ministry 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).

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 provide 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 have been run by private contractors, were once described by a government minister as “ghettos” (LIBE 2006).

**Description of facilities.** Out of two Blocks located within Safi military base, the C Block holding up to 220 persons was closed in June 2011 (Warnier de Wailly 2011e). The remaining **B Block** has the capacity of 160 and holds migrants in collective cells, equipped with bunk beds. Only males, including adults and minors undergoing age assessment procedures, are detained in this facility (HRW 2012; Warnier de Wailly 2011a). The centre has a common room furnished with tables, benches and a TV, a small recreation yard and a kitchen (ICJ 2012).

At the Safi military base there are also two Warehouses that have been used to confine migrants. At the beginning of 2013, **Warehouse Two** was closed for refurbishment. **Warehouse One** has a capacity of 200 and holds only men and male minors undergoing age assessment procedures. It consists of a single open space with half-length low partitions between rows of bunk beds (Warnier de Wailly 2011c; HRW 2012). At the entrance to the warehouse, there is a common area with tables, benches and a TV, while at the end an exit leads to a small outdoor recreation room, closed with a wire fence (ICJ 2012).

The **Hermes Block** is the only facility within the Lyster Barracks in Hal Far used to detain migrants (Warnier de Wailly 2011d). Previously, the barracks also had 400-person tent compound, which closed in 2009 after receiving heavy criticism (Warnier de Wailly 2011d). With the official capacity of 380, the Hermes Block consists of five zones dedicated to detain different groups of persons, including single men, single women, and families. Immigration detainees are held in dormitories, which can hold 20 persons and are equipped with bunk beds. In zone A there are five dormitories, in zones B and D four in each, and in zones C and E three in each (Warnier de Wailly 2011b; HRW 2012). The detention facility has a small, fenced-in recreation yard, where detainees can spend two hours per day, a kitchen offering basic cooking facilities and a common-use room with tables, benches and a TV (ICJ 2012). In 2011 the facility was renovated with the EU financial assistance and since then is considered as offering better material conditions than other detention centres. As an officer from the [Jesuit Refugee Service](#) (JRS) found “This is the best center, this is the flagship, this is where everyone who asks to visit, gets taken” (Border Monitoring and Pro Asyl 2012).

**Criticism of detention conditions.** In 2013, in the case of *Aden Ahmed*, the European Court ruled for the first time that Malta’s conditions of immigration detention amounted to ill-treatment. The Court was concerned about the conditions in which the applicant was detained in Lyster Barracks, notably the possible exposure of detainees to cold conditions, the lack of female staff in the detention centre, a complete lack of access to open air and exercise for periods of up to three months, an inadequate diet, and the

particular vulnerability of Ms Ahmed due to her fragile health and personal emotional circumstances (ECtHR 2013a).

Also, international and non-governmental organizations have repetitively criticized conditions at detention centres in the country. In early 2013, the CRC noted that it had received reports of unrelated female, male, and children asylum seekers being accommodated in the same premises, with joint usage of common showers and toilets. The Committee recommended that Malta ensure the provision of adequate gender-separate accommodation, toilets, and shower facilities in migration detention centres (CRC 2013).

In 2011, the CERD called on Malta to ensure that detention conditions complied with international standards, in particular the modernization of detention centres and the placement of families with children in alternative open accommodation centres. The Committee expressed particular concern about the recurrence of riots in immigration detention facilities (including in 2005, 2008, and 2011) because of the paltry conditions at them and reports about excessive use of force to counter these riots. The Committee thus recommended that Malta take appropriate measures to improve conditions of detention and refrain of resorting to excessive use of force to counter riots by immigrants in detention centres, and to avoid such riots (CERD 2011).

HRW visited the detention centres in April/May 2012 and found that the sanitation and hygiene facilities seemed adequate on the surface but might decline in quality during times of overcrowding. It also noted that each facility had outdoor recreation areas, but at Lyster Barracks access to the recreation area is time-limited and subject to rota for different parts of the population (HRW 2012).

The Council of Europe's [Committee on the Prevention of Torture](#) (CPT) visited Maltese detention facilities in September 2011 and found that while material conditions in the Hermes Block and Safi B-Block had improved since its previous visit in 2008, the conditions at the warehouses were appalling. With respect to Warehouse One, the CPT found the "foreign nationals were being held in extremely crowded conditions and the sanitary facilities consisting of seven mobile toilets (without a flush) and seven mobile shower booths, located in the outdoor exercise yard, were in a deplorable state. In fact, the Warehouses are not suitable for accommodating persons for prolonged periods, but should only be used in the event of an emergency" (CPT 2013).

Following its September 2011 visit, the ICJ found that Warehouse One was overcrowded. It noted that the distance between the lines of bunk beds was just enough for one person to stand in. Without proper dormitories, the warehouse could not offer even minimal privacy. The hygienic needs of detainees were supposed to be satisfied by a couple of basins located in the external recreation yard. The basins were the main source of water for the detainees, which they used to clean, wash and drink. In the external space, there were also plastic showers without hot water and plastic chemical toilets that appeared unsanitary to the delegation. The ICJ found the number of toilets and showers insufficient for the number of persons detained (ICJ 2012).

Previously, in 2009, the WGAD 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).

After its visit in 2009, the CPT found that “Hermes Block is still in a very dilapidated state, dirty and infested with rats. All the rooms and common areas are in need of thorough cleaning and proper ventilation. Toilets and showers are in such a poor state of repair that it is practically impossible to ensure basic standards of hygiene. In Zone C, detainees complained that they could not drink the water from the taps without getting ill. However, the worst living conditions were observed on the ground floor in Zone A (including the isolation/disciplinary ward), the zone which was planned to be the last to be renovated. The CPT’s delegation formed the view that in its present state, Hermes Block could not be considered as fit for detention purposes” (CPT 2011).

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).

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).

## Facts & Figures

As of May 2013, Malta operated three dedicated immigration detention facilities: the Hermes Block at Lyster Barracks, the Warehouse One at Safi Barracks, and the B-Block at Safi Barracks (Warnier de Wailly 2013). The total capacity of these facilities was 740 in 2011, which include 380 at Hermes Block at Lyster Barracks, 200 at Warehouse One at Safi Barracks, and 160 at B-Block at Safi Barracks (Warnier de Wailly 2011a; 2011b; 2011c).

In 2008, the total reported cost of Malta's detention regime was 8.2 million Euros; in 2005, it was 6.8 million (Mainwaring 2012).

In 2012, 2,080 persons applied for international protection in Malta. With 1,250 asylum applicants from Somalia (60 percent) Malta was the country with the highest concentration of the applications from a single country. Other key countries of origin included Eritrea (435 or 21 percent) and Syria (150 or 7 percent). While the number of applications represented merely 0.63 percent of the EU total number of applications, Malta was the country with the highest proportion of the applications to its population (4.9 applicants per 1,000 inhabitants), followed by Sweden (4.7 applicants per 1,000 inhabitants) (Eurostat 2013; UNHCR 2013a).

The number of asylum requests in 2012 was close to the 2008 and 2009 trends, when 2,605 and 2,385 persons respectively sought international protection in Malta. There was a drop in 2010 when a mere 175 asylum applications were submitted, followed by 1,890 in 2011. In 2011, 25 applicants were considered unaccompanied minors (Eurostat website).

In 2011, the refugee recognition rate in the first instance was 4.3 percent, which placed Malta at the bottom end (20th) of the 27 EU countries. On the other hand, the complementary protection recognition rate in the first instance of 51.1 percent was the 5th highest in the EU. The ratio of refugees to 1,000 inhabitants was 16.7 percent, the highest among the EU countries, followed by 9.2 percent in Sweden (UNHCR 2012).

The number of non-nationals residing in Malta was 20,521 in 2012, or 4.9 percent of the Maltese population (Eurostat website).

The figures for refusals of entry at the Maltese borders are low compared to other EU countries. In 2012, 200 were refused entry, while in Cyprus more than twice as much. With 80 refusals of entry in 2011, Malta ranked at the almost last position (no person was refused entry to Luxembourg) (Eurostat website).

The Italy-Libya Treaty of Friendship, first adopted in 2008, and the resulting enhanced border control measures implemented by Libya reduced the number of irregular arrivals. Only 47 persons reached Maltese shores in two boats in 2010. The figures rose again in 2011 as a consequence of the Arab Spring uprisings. Nearly 1,600 persons arrived by boat in an irregular manner, of whom 155 were Somalis, 280 Eritreans, 238 Nigerians, 114 Ivorian, and 103 Ethiopians (EMN 2012a).

In 2012, 2,255 persons in irregular situations were apprehended, which represented an increase compared to 1,730 apprehensions in 2011 and 245 in 2010. The same trend was observed in the number of removal decisions issued. In 2010, 245 persons were given removal orders; in 2011, 1,730; and in 2012, 2,255. Some 570 persons were expelled in 2012, compared to 160 in 2011, which was the lowest figure across the EU (Eurostat website).

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).

## List of Detention Sites

Name	Status (Year)	Location	GDP Facility Type	Detention Time-frame	Security	Authority	Management	Capacity	Reported Population on a Single Day	Demo-graphics and Segregation
B-Block at Safi Barracks	In use (2013)	Safi	Migrant detention centre	Long-term	Secure	Ministry for Home Affairs and National Security	Detention Service/ Ministry for Home Affairs and National Security	160 (2011)	124 (September 2011)	Adult Males, Male Minors (2012)
C-Block at Safi Barracks	Closed (June 2011)	Safi	Migrant detention centre	Long-term	Secure	Ministry of Justice and Home Affairs	Detention Service/ Ministry of Justice and Home Affairs	220 (2011)		Adult Males, Male Minors (2011)
Hermes Block at Lyster Barracks	In use (2013)	Hal Far	Migrant detention centre	Long-term	Secure	Ministry for Home Affairs and National Security	Detention Service/ Ministry for Home Affairs and National Security	380 (2011)	248 (September 2011)	Adult Males, Adult Females, Families, Minors (2011); Separation of men and
Ta'kandja Closed Centre	Closed (March 2010)	Siggiewi	Migrant detention centre	Long-term	Secure	Ministry of Justice and Home Affairs	Detention Service/ Ministry of Justice and Home Affairs	300 (2010)	70 (31 December 2008)	Adult Males, Adult Females (2009)
Warehouse One at Safi Barracks	In use (2013)	Safi	Migrant detention centre	Long-term	Secure	Ministry for Home Affairs and National Security	Detention Service/ Ministry for Home Affairs and National Security	200 (2011)	236 (September 2011)	Adult Males, Male Minors (2012)
Warehouse Two at Safi Barracks	Closed (January 2012)	Safi	Migrant detention centre	Long-term	Secure	Ministry of Justice and Home Affairs	Detention Service/ Ministry of Justice and Home Affairs	200 (2011)	113 (September 2011)	Adult Males, Male Minors (2011)

# Map of Detention Sites



## Country View

- 1. B-Block at Safi Barracks
- 2. Hermes Block at Lyster Barracks
- 3. Warehouse One at Safi Barracks

## **Country links**

### **Government Agencies**

Government of Malta

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

Ministry of Home Affairs and National Security

<http://mhas.gov.mt/en/Pages/Home.aspx>

Armed Forces of Malta

<http://www.afm.gov.mt/home?l=1>

### **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**

Aditus

[www.aditus.org.mt](http://www.aditus.org.mt)

JRS Malta

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

Medecin San Frontières

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

Red Cross Malta

<http://www.redcross.org.mt/>

### **Media**

L'orizzont

<http://www.l-orizzont.com/>

Malta Independent

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

Malta Today

<http://www.maltatoday.com.mt/en/home>

Times of Malta

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

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