

Malta Immigration Detention Profile

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INTRODUCTION

The Republic of Malta, an archipelago located in the southern Mediterranean, is the most densely populated country in the European Union (EU). It also has one of the highest concentrations of refugees in the world.¹ When Malta joined the EU in 2004 it became its southernmost border and an important entry point for migrants and asylum seekers attempting to reach Europe. Until recently, the country received more than 2,000 irregular boat arrivals annually.² This situation led officials to characterize unauthorized migration to the country as an “emergency” and a “national crisis.”³

However, the situation in Malta has changed dramatically in recent years as boat arrivals have plummeted and the country has revised its immigration laws and policies. Only 104 people arrived by boat in 2015 and 25 in 2016.⁴ Some reports contend that these declining numbers are the result of a secret agreement between Malta and Italy. The details of this agreement remain unclear, but statements by officials have indicated that the country agreed to give up oil exploration rights in exchange for Italian assistance interdicting boats. For its part, the European Commission has said that it “is not aware of any bilateral agreement between the Maltese and Italian authorities concerning Search and Rescue (SAR) operations in the Mediterranean Sea.”⁵

¹ United Nations Working Group on Arbitrary Detention (WGAD). 2016. Report of the Working Group on Arbitrary Detention follow-up mission to MALTA (23 to 25 June 2015). United Nations General Assembly.

² UNHCR. 2017. “Malta Asylum Trends”. Available at: <http://www.unhcr.org/mt/charts/>

³ European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE). 2006. Report by the LIBE Committee delegation on its visit to the administrative detention centres in Malta: Rapporteur: Giusto Catania. European Parliament Committee on Civil Liberties, Justice and Home Affairs. PV/613713EN.doc. Brussels. 30 March 2006

⁴ UNHCR. 2017. “Malta Asylum Trends”. Available at: <http://www.unhcr.org/mt/charts/>

⁵ Schembri Orland, K/The Malta Independent. 2016 “Malta-Italy migration 'secret deal' resurfaces in the international media”. Available at: <http://www.independent.com.mt/articles/2016-04-09/local-news/Malta-Italy-migration-secret-deal-resurfaces-in-the-international-media-6736156026>

In 2015, Malta revised its legal and policy framework regarding the reception of asylum seekers. One critical change was ending the policy of mandatory detention, which had made Malta unique among EU countries. Currently, most foreigners arrive to Malta by plane, including both regular and irregular travellers. Irregular arrivals are supposed to be transferred to an “Initial Reception Centre,” where immigration officers are to assess on a case-by-case basis whether there are grounds for longer term detention.⁶ However, civil society groups like Jesuit Refugee Services and Aditus claim that in practice people arriving irregularly often do not pass through the Initial Reception Center but are taken directly to detention.⁷

When Malta took over the presidency of the European Council in January 2017 it listed migration as a key priority. Its agenda has included strengthening the common European Asylum system by revising the Dublin regulations and improving implementation of the relocation system.⁸ Malta has also emphasized the EU objective of completing the work of “the European External Investment Plan to promote sustainable investment in Africa and the Neighbourhood and to tackle the root causes of migration.”⁹ Another critical focus has been the “wide-ranging cooperation” on Libya,¹⁰ as spelled out in the 2017 “Malta Declaration” of the European Council “addressing the Central Mediterranean route.”¹¹ Cooperation with Libya has included training and equipping the Libyan coast guard to enhance border management capacity and curtail migration to the EU.¹² These efforts have been the subject of intense scrutiny because of the [numerous reports](#) of severe human rights abuses migrants and asylum seekers face in Libya, including in detention centres.¹³

⁶ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. “AIDA Country Profile: Malta”. 2016 Update. Accessible at: http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

⁷ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. “AIDA Country Profile: Malta”. 2016 Update. Accessible at: http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

⁸ MaltaEu2017 website “The Maltese Priorities” Available at: <https://www.eu2017.mt/en/Pages/Maltese-Priorities.aspx>

⁹ MaltaEu2017 website “The Maltese Priorities” Available at: <https://www.eu2017.mt/en/Pages/Maltese-Priorities.aspx>

¹⁰ European Union External Action. 02/02/2017. “EU remains committed to wide-ranging cooperation with Libya, Mogherini says”. Available at: https://eeas.europa.eu/headquarters/headquarters-homepage_en/19829/EU%20remains%20committed%20to%20wide-ranging%20cooperation%20with%20Libya,%20Mogherini%20says

¹¹ European Council (03/02/2017) “Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route”. Available at: <http://www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/>

¹² European Council. 2017. “Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route”. Available at: <http://www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/>

¹³ Global Detention Project, “Submission to the UN Committee on Migrant Workers: Libya,” August 2017, <https://www.globaldetentionproject.org/submission-to-the-un-committee-on-migrant-workers-libya>; UN Support Mission to Libya and UNHCR. 2016. ““DETAINED AND DEHUMANISED” REPORT ON HUMAN RIGHTS ABUSES AGAINST MIGRANTS IN LIBYA”. 13 December 2016. Available at: <http://unsmil.unmissions.org/Portals/unsmil/Documents/Migrants%20report-EN.pdf>.

LAWS, POLICIES, PRACTICES

Key norms. The 1970 Immigration Act (Immigration Act, Chapter 217 of the Laws of Malta), which has been amended several times, is the main instrument regulating border control, detention, expulsion, and residence.¹⁴ A relevant subsidiary piece of legislation is the 2011 Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations¹⁵ (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.¹⁶

For years Malta was the only EU member in which persons entering the country irregularly were subject to automatic and mandatory pre-removal detention. However, this policy came to end in 2015 when the Maltese government revised its legal and policy framework, amending the Immigration Act (Act No. XXXVI of 2015) and regulations on the reception of asylum seekers (Legal notice 417). The country issued a new policy document entitled “Strategy for the Reception of Asylum Seekers and Irregular Migrants.” In addition to ending automatic detention, the policy changes included alternatives to detention and specific legal grounds for detention. The new migration strategy also included the establishment of a new accommodation facility, called “Initial Reception Facility,” where all irregular arrivals are to be held for medical screening and processing. The facility operates as a secure detention facility but stays are supposed to be limited to seven days unless there are health-related reasons that require extending the stay.

Observers welcomed the 2015 legal amendments. A human rights lawyer speaking on behalf of a coalition of civil society organisations,¹⁷ commented, “It is positive to see Malta finally moving from a system of automatic detention to one based on individual assessments of each case.”¹⁸ UNHCR said that “the revised legislative and policy framework introduces a number of important changes which, once implemented in

¹⁴ Immigration Act. 1970. Chapter 217 of the Laws of Malta. 21st September 1970. ACT IX of 1970, as amended by Acts XLIV of 1972, XLIX of 1981, VIII of 1982, XIII of 1983, XXXIII of 1988, XXV of 1989, VIII of 1990, XXIV of 1995, IV and IX of 2000, XXIII of 2002, and VIII of 2004; Legal Notice 248 of 2004; Acts XIII and XVII of 2005; Legal Notices 274 and 411 of 2007; Acts VII and XV of 2008, and XVIII of 2009; Legal Notice 20 of 2013; and Act XXXVI of 2015.

Available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1>

¹⁵ COMMON STANDARDS AND PROCEDURES FOR RETURNING ILLEGALLY STAYING THIRD-COUNTRY NATIONALS. Subsidiary Legislation 217.12. 11th March, 2011. LEGAL NOTICE 81 of 2011, as amended by Legal Notice 15 of 2014. Available at:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1>

¹⁶ Refugees Act. 2001. Chapter 420 of the Laws of Malta. 1st October, 2001. ACT XX of 2000, as amended by Act VIII of 2004; Legal Notices 40 of 2005 and 426 of 2007; and Acts VII of 2008, and VI and VII of 2015. Available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8886>

¹⁷ The informal coalition is comprised of Aditus Foundation, African Media Association Malta, Foundation for Shelter and Support to Migrants, Integra Foundation, International Association for Refugees, JRS Malta, Kopin, Malta Emigrants' Commission, Migrants' Network for Equality, Migrant Women Association, Organisation for Friendship in Diversity, Peace Lab, People for Change Foundation and SOS Malta.

¹⁸ Dalli, Kim / Times of Malta (03/01/2016) “New migration strategy is a step in right direction – NGOs”. Available at: <http://www.timesofmalta.com/articles/view/20160103/local/new-migration-strategy-is-a-step-in-right-direction-ngos.597489>

practice, will lead to improved reception standards and treatment for many asylum applicants who arrive in Malta in an irregular manner.”¹⁹

Nevertheless, some of the new measures have been the subject of criticism, including: detention at the initial reception centre because it could be based on discriminatory assumptions concerning the risk of contracting and transmitting infectious diseases; poorly defined alternatives to detention (see the section on “alternatives to detention” below); and lack of clarity on asylum procedures for people arriving by plane.²⁰ UNHCR also expressed concern that some elements in the migration policy are not fully in line with international human rights standards and could lead to arbitrary or unlawful detention.²¹

Grounds for Detention. “Prohibited migrants” are issued a removal order that can include detention measures to ensure removal (Immigration Act 14(2)). The Immigration 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)).

Prior to the 2015 amendments to the Immigration Act, article 14(1) stated that an immigration officer could issue a “removal decision,” which automatically triggered detention. The new law replaces this language with “return decision.” A return decision is not necessarily accompanied by a removal order. According to UNHCR, this substitution means that immigration authorities may now issue return decisions instead of removal orders, which should stop the automatic issuing of removal orders. The Immigration Act provides discretion to immigration officials on whether to issue a return decision. 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. 5).

¹⁹ UNHCR (2016) “UNHCR’s Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers”. 25TH February 2016. Available at: <http://www.refworld.org/pdfid/56e963824.pdf>

²⁰ Dalli, Kim / Times of Malta (03/01/2016) “New migration strategy is a step in right direction – NGOs”. Available at: <http://www.timesofmalta.com/articles/view/20160103/local/new-migration-strategy-is-a-step-in-right-direction-ngos.597489>

²¹ UNHCR (2016) “UNHCR’s Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers”. 25TH February 2016. Available at: <http://www.refworld.org/pdfid/56e963824.pdf>

Under article 10 of the Immigration Act persons refused entry 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 resulted in limited reforms to Malta’s legal provisions related to detention. 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(6)).

The December 2015 amendment to the Immigration Act introduced three new provisions to article 14(4). Of particular relevance is the provision stating that “whenever a prohibited immigrant has filed an application for asylum, the Principal Immigration Officer shall not be required to issue a return decision or removal order.” The introduction of this provision ended the practice of systematic and automatic detention of all persons arriving in an irregular manner.

Regarding asylum seekers, article 8 of the “Reception of Asylum Seekers Regulations” provides multiple grounds upon which asylum seekers may be detained (see “Asylum seekers” below).

Asylum seekers. Before the Ministry of Home Affairs and National Security adopted the 2015 “Strategy for the Reception of Asylum Seekers and Irregular Migrants,”²² asylum seekers were detained on the same grounds as other categories of non-citizens, with the only difference being that asylum seekers faced a maximum detention period of 12 months. Legal notice 417 of 2015 provided a new regulation for reception regulations, which establishes for following grounds for the detention of asylum seekers: a) to determine or verify identity or nationality; b) to determine those elements on which the application is based which could not be obtained in the absence of detention, in

²² Ministry of Home Affairs and National Security. 2015. *Strategy for the Reception of Asylum Seekers and Irregular Migrants*. Available at: <https://0d2d5d19eb0c0d8cc8c6-a655c0f6dcd98e765a68760c407565ae.ssl.cf3.rackcdn.com/ee87eb6093978ddf835be5759bc86d018724f3a8.pdf>

particular when there is a risk of absconding on part of the applicant; c) to decide on the applicant's right to enter Maltese territory; d) when the applicant is subject to a return procedure and there are reasonable grounds to believe that the application for international protection was made merely to delay or frustrate a enforcement of a return decision; e) to protect national security or public order; f) to determine the member state responsible for the examining of the application.

Further, the Amendment Act 2015 introduced three new provisions under article 14(4) of the immigration Act. It states that if a person considered a prohibited immigrant under article 5 applies for international protection then the effect of the removal order shall be suspended until final determination of the asylum application. When a prohibited immigrant files an asylum application the Principle Immigration Officer shall not be required to issue a return decision or a removal order.

As various civil society actors note, the migration strategy presented in December 2015 mainly focuses on the procedures relating to asylum seekers arriving in Malta in an irregular manner, usually by boat. The policy paper fails to clearly state how it is to be applied in the case of asylum seekers who arrive in a regular manner, usually by plane, and only subsequently seek asylum.²³ UNHCR's 2016 asylum trends²⁴ appears to shows that the majority of applications for international protection are filed by people arriving to Malta in a regular manner; in 2016, 1,733 asylum applications were filed (652 by Libyans) while only 25 people arrived by boat (irregularly) during the same year.

During 2016, 20 asylum seekers were reportedly detained in Malta.²⁵

Length of detention. As stipulated in the Return Regulations, detention is generally not to exceed six months (Return Regulations, Regulation 11(12)). Reflecting the Returns Directive, the legislation allows for extending the period of detention up to 18 months because of (1) lack of cooperation by the detainee or (2) delays in obtaining the necessary documents from the third country (Return Regulations, Regulation 11(13)).

Malta did not transpose the Directive's due diligence standard regarding extension of detention, notably that the 18-month detention is permissible only if the removal operation lasts longer than the initial six-month period despite authorities taking all reasonable efforts to secure the removal. 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.²⁶

²³ Dalli, Kim / Times of Malta (03/01/2016) "New migration strategy is a step in right direction – NGOs". Available at: <http://www.timesofmalta.com/articles/view/20160103/local/new-migration-strategy-is-a-step-in-right-direction-ngos.597489>

²⁴ UNHCR. 2017. "Malta Asylum Trends". Available at: <http://www.unhcr.org/mt/charts/>

²⁵ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. "AIDA Country Profile: Malta". 2016 Update. Accessible at: http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

²⁶ European Court of Human Rights (ECtHR). 2010. Massoud v. Malta. ECtHR. 27 July 2010. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#%22itemid%22:\[%22001-100143%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#%22itemid%22:[%22001-100143%22]}) (accessed 25 March 2013).

Provisions limiting the permissible length of detention do not apply to persons excluded from the scope of the Return Regulations. Importantly, the Immigration Act also 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 UN Working Group on Arbitrary Detention (WGAD) has expressed concern over the possibility of people being detained for longer than 18 months.²⁷

The maximum length of detention for asylum seekers was introduced in law in 2015 as regulation (6(7)) of the revised reception regulations. It establishes that any person detained in accordance with reception regulations shall, after nine months, be released from detention if he is still an applicant. As UNHCR notes,²⁸ despite the shortening of the maximum detention period, it appears that the practice of using the time limit established by EU reception conditions Directive for access to the labour market to regulate detention practices seems to have been retained. This regulation is not in line with Article 9(1) of the EU Reception Conditions Directive, which instead states that an asylum seeker is to be detained for as short a period as possible and only in so long as the grounds for detention (set out in art 8(3)) remain applicable.

The WGAD, in the report on its July 2015 visit to Malta, stated that the overall average detention period had decreased to three months. However, non-citizens whose applications for international protection were rejected continued to be detained for periods of time up to 18 months.²⁹ According to the AIDA report, at the end of 2016 asylum seekers were detained for an average of two months.³⁰

Procedural guarantees. According to article 14(2) of the Immigration Act detention may result from the issuing of a return decision with a removal order. The law provides for the possibility to appeal a removal order but not a detention measure that is tied to a removal order. Under article 25(A), 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.³¹

²⁷ UN Working Group on Arbitrary Detention (WGAD). 2009 Annex. "Annex to the press release on the visit of the United Nations Working Group on Arbitrary Detention to Malta." United Nations Press Release. 26 January 2009

²⁸ UNHCR (2016) "UNHCR's Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers". 25TH February 2016. Available at: <http://www.refworld.org/pdfid/56e963824.pdf>

²⁹ United Nations Working Group on Arbitrary Detention (WGAD). 2016. Report of the Working Group on Arbitrary Detention follow-up mission to MALTA (23 to 25 June 2015). United Nations General Assembly.

³⁰ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. "AIDA Country Profile: Malta". 2016 Update. Accessible at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

³¹ Warnier de Wailly, Celine (Jesuit Refugee Service Malta). 2011f. "Detention Law and Policy." Global Detention Project. 20 November 2011. Geneva, Switzerland.

Immigration Act. 1970. Chapter 217 of the Laws of Malta. 21st September 1970. ACT IX of 1970, as amended by Acts XLIV of 1972, XLIX of 1981, VIII of 1982, XIII of 1983, XXXIII of 1988, XXV of 1989, VIII

Detainees may also apply to the Board to be released pending asylum or deportation procedures. 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 (Art. 25A (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.

Regarding detention review, the “Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations” state that a detained non-citizen awaiting removal shall have his detention reviewed either by application or *ex officio* by the Principal Immigration Officer at reasonable intervals of time which should not exceed three months (Art. 11 (8)). If the Board finds that the detention is not lawful the person concerned is to be released immediately (Return Regulations, Regulation 11(10)-(12)). However, the Returns Regulations apply to a very restricted categories of non-citizens and most immigration detainees are excluded from their scope (see Grounds for Detention section for more details on this).

Regulation 6(2) of the “Reception of Asylum Seekers Regulations” stipulates that the principal immigration officer has to issue a detention order stating the reasons upon which the decision on the detention of an applicant for international protection has been taken, in a language that the applicant is reasonably supposed to understand. The Immigration Appeals Board has to review the lawfulness of detention after seven days. If the applicant is still detained after two months of detention another review is to be carried out (Regulation 6(4)). Whenever the Immigration Appeal Board rules that detention is unlawful the applicant is to be immediately released. As well as this automatic review of detention, the new reception regulations state that whenever the an immigration officer issues such a detention order he shall also inform the applicant of the procedures through which detention can be challenged and free legal assistance obtained.

Despite these changes, both the WGAD³² and UNHCR³³ have stated that public defence lawyers face hurdles bringing procedures before domestic courts or the European regional justice mechanisms. Further, no provisions are provided that specify that the Appeals Board is to periodically assess the necessity and proportionality of the continuation of detention in each individual case. UNHCR reported that interpretation services are often lacking thus making lawyer client meetings complicated and that

of 1990, XXIV of 1995, IV and IX of 2000, XXIII of 2002, and VIII of 2004; Legal Notice 248 of 2004; Acts XIII and XVII of 2005; Legal Notices 274 and 411 of 2007; Acts VII and XV of 2008, and XVIII of 2009; Legal Notice 20 of 2013; and Act XXXVI of 2015. Article 25(A)(5).

³² United Nations Working Group on Arbitrary Detention (WGAD). 2016. Report of the Working Group on Arbitrary Detention follow-up mission to MALTA (23 to 25 June 2015). United Nations General Assembly.

³³ UNHCR (2016) “UNHCR’s Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers”. 25TH February 2016. Available at: <http://www.refworld.org/pdfid/56e963824.pdf>

some lawyers in the legal aid pool were not knowledgeable on matters referring to refugee law.

Despite these limitations in challenging detention, there exist various possible remedies, though their efficacy appears to be severely limited.³⁴ 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).³⁵

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.³⁶ 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.³⁷

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.³⁸

³⁴ Committee on the Rights of the Child (CRC). 2013. *Concluding observations on the combined second periodic reports of Malta, adopted by the Committee at its sixty-second session (14 January – 1 February 2013)*. CRC/C/MLT/CO/2. Committee on the Rights of the Child. 5 February 2013. <http://www2.ohchr.org/english/bodies/crc/crcs62.htm> (accessed 25 March 2013)

Warnier de Wailly, Celine (Jesuit Refugee Service Malta). 2011f. "Detention Law and Policy." Global Detention Project. 20 November 2011. Geneva, Switzerland.

³⁵ European Court of Human Rights (ECtHR). 2010. *Massoud v. Malta*. ECtHR. 27 July 2010. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#{%22itemid%22:\[%22001-100143%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#{%22itemid%22:[%22001-100143%22]})

European Court of Human Rights (ECtHR). 2013b. *Suso Musa v. Malta*. ECtHR. 23 July 2013. [http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-122893#{%22itemid%22:\[%22001-122893%22\]}](http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-122893#{%22itemid%22:[%22001-122893%22]}) (accessed 9 January 2014).

Jesuit Refugee Service (JRS) Malta and aditus. 2013. "Country report: Malta." Asylum Information Database (AIDA). July 2013. <http://www.asylumineurope.org/reports/country/malta> (accessed 8 January 2014).

³⁶ Warnier de Wailly, Celine (Jesuit Refugee Service Malta). 2011f. "Detention Law and Policy." Global Detention Project. 20 November 2011. Geneva, Switzerland.

³⁷ European Court of Human Rights (ECtHR). 2010. *Massoud v. Malta*. ECtHR. 27 July 2010. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#{%22itemid%22:\[%22001-100143%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#{%22itemid%22:[%22001-100143%22]}) (accessed 25 March 2013).

³⁸ European Court of Human Rights (ECtHR). 2010. *Massoud v. Malta*. ECtHR. 27 July 2010. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#{%22itemid%22:\[%22001-100143%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#{%22itemid%22:[%22001-100143%22]}) (accessed 25 March 2013).

Malta's weak procedural guarantees have repeatedly attracted criticism from the UN and regional human rights bodies. The WGAD in 2016 observed that effective and speedy remedies for detainees to challenge the necessity and legality of detention were still lacking.³⁹ In October 2013, the European Commission against Racism and Intolerance (ECRI) recommended that Malta 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).⁴⁰ 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.⁴¹

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.⁴² 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).⁴³

Children and other vulnerable persons. Although the Return Regulations do not explicitly state that vulnerable people can be detained, they state that when they are detained they are to be provided with emergency health care and essential treatment of illness (Return Regulations, Regulation 9(3)). There are also several provisions addressing children. 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

³⁹ United Nations Working Group on Arbitrary Detention (WGAD). 2016. Report of the Working Group on Arbitrary Detention follow-up mission to MALTA (23 to 25 June 2015). United Nations General Assembly.

⁴⁰ European Commission against Racism and Intolerance (ECRI). 2013. ECRI REPORT ON MALTA (fourth monitoring cycle). CRI (2013)37. October 2013. http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Malta/Malta_CBC_en.asp (accessed 9 January 2014).

⁴¹ Committee on the Rights of the Child (CRC). 2013. Concluding observations on the combined second periodic reports of Malta, adopted by the Committee at its sixty-second session (14 January – 1 February 2013). CRC/C/MLT/CO/2. Committee on the Rights of the Child. 5 February 2013. <http://www2.ohchr.org/english/bodies/crc/crcs62.htm> (accessed 25 March 2013).

⁴² Committee on the Elimination of Racial Discrimination (CERD). 2011. Consideration of reports submitted by States parties under article 9 of the convention; Concluding observations of the Committee on the Elimination of Racial Discrimination: Malta. CERD/C/MLT/CO/15-20. Committee on the Elimination of Racial Discrimination. August 2011. <http://daccess-ods.un.org/TMP/8803405.1656723.html> (accessed 25 March 2013).

⁴³ United Nations Working Group on Arbitrary Detention (WGAD). 2010. Report of the Working Group on Arbitrary Detention: Addendum: Mission to MALTA (19 to 23 January 2009). United Nations General Assembly. A/HRC/13/30/Add.2. 18 January 2010. <http://daccess-ods.un.org/TMP/9688466.19129181.html> (accessed 25 March 2013).

institutions provided with personnel and facilities, which take into account the minors' needs (Return Regulations, Regulation 10).

The 2015 reforms to the Reception of Asylum Seekers Regulations provided new protections for asylum seeking children and other vulnerable applicants. Regulation 14(3) now states that whenever the vulnerability of an applicant is ascertained, no detention order shall be issued. If a detention order has already been issued it shall be revoked with immediate effect. The new regulation 14(1) also states that applicants identified as minors, or who claim to be minors, shall not be detained except as a measure of last resort or if the claim is manifestly unfounded. Further, it is provided that in the application of the regulations, the best interest of the child shall constitute primary consideration. Unaccompanied minors aged sixteen or over may however, be placed in accommodation centres for adult asylum seekers.

According to the new migration strategy in the new Initial Reception facility the Agency for the Welfare of Asylum Seekers (AWAS) shall conduct vulnerability assessments including age identification procedures when required. Age identification procedures shall be based on psycho-social assessments, medical age assessment tests shall be undertaken only as a measure of last resort. In cases where a person is identified as being a minor, or another vulnerability is detected, the result is communicated to Police authorities as to prevent or immediately withdraw detention orders.

In its report the WGAD welcomes and highlights the positive steps taken by the Maltese government in regards of migrant children.⁴⁴ However, Aditus and JRS observed that changes in legislation notwithstanding, the current praxis is to immediately detain migrants whom irregularly arrive to Malta by plane, without taking them to the Initial Reception Center. This practice increases the possibility of vulnerabilities going unidentified.⁴⁵ Once in detention, when a person is referred for a vulnerability assessment he/she will continue to be detained pending the outcome of the assessment.⁴⁶

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.⁴⁷ France Terre d'Asile reported cases where unaccompanied minors claimed

⁴⁴ United Nations Working Group on Arbitrary Detention (WGAD). 2016. Report of the Working Group on Arbitrary Detention follow-up mission to MALTA (23 to 25 June 2015). United Nations General Assembly.

⁴⁵ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. "AIDA Country Profile: Malta". 2016 Update. Accessible at: http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

⁴⁶ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. "AIDA Country Profile: Malta". 2016 Update. Accessible at: http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

⁴⁷ Human Rights Watch (HRW). 2012. Boat Ride to Detention: Adult and Child Migrants in Malta. Human Rights Watch. July 2012. <http://www.hrw.org/reports/2012/07/18/boat-ride-detention-0> (accessed 25 March 2013).

France Terre d'Asile. 2012. Le droit d'asile des mineurs isolés étrangers dans l'Union Européenne: Etude comparative dans les 27 pays de l'UE. France Terre d'Asile. 2012. <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etrangers/final-report-ac-couv.pdf>? (accessed 20 September 2012).

being adults because the age determination procedure could take even longer than the asylum procedure, which is suspended during the procedure.⁴⁸ 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.⁴⁹ Once their age is confirmed, unaccompanied minors are released from detention and offered accommodation in specialized centres. 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.⁵⁰

Following examination of Malta's periodic report in 2013, the CRC made several recommendations 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.⁵¹

Recently the European Court of Human Rights unanimously held that Malta breached article 3, prohibiting degrading treatment, and 5, prohibiting arbitrary and unlawful detention, of the ECHR in the case of Abdullahi Elmi and Ameys Abubakar Vs Malta. The case is of two Somali, minor asylum seekers whom in 2012 had been detained in

⁴⁸ France Terre d'Asile. 2012. Le droit d'asile des mineurs isolés étrangers dans l'Union Européenne: Etude comparative dans les 27 pays de l'UE. France Terre d'Asile. 2012. <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etrangers/final-report-ac-couv.pdf>? (accessed 20 September 2012).

⁴⁹ Committee on the Rights of the Child (CRC). 2013. Concluding observations on the combined second periodic reports of Malta, adopted by the Committee at its sixty-second session (14 January – 1 February 2013). CRC/C/MLT/CO/2. Committee on the Rights of the Child. 5 February 2013. <http://www2.ohchr.org/english/bodies/crc/crcs62.htm> (accessed 25 March 2013).

Human Rights Watch (HRW). 2012. Boat Ride to Detention: Adult and Child Migrants in Malta. Human Rights Watch. July 2012. <http://www.hrw.org/reports/2012/07/18/boat-ride-detention-0> (accessed 25 March 2013).

France Terre d'Asile. 2012. Le droit d'asile des mineurs isolés étrangers dans l'Union Européenne: Etude comparative dans les 27 pays de l'UE. France Terre d'Asile. 2012. <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etrangers/final-report-ac-couv.pdf>? (accessed 20 September 2012).

⁵⁰ France Terre d'Asile. 2012. Le droit d'asile des mineurs isolés étrangers dans l'Union Européenne: Etude comparative dans les 27 pays de l'UE. France Terre d'Asile. 2012. <http://www.france-terre-asile.org/images/stories/mineurs-isoles-etrangers/final-report-ac-couv.pdf>? (accessed 20 September 2012).

⁵¹ Committee on the Rights of the Child (CRC). 2013. Concluding observations on the combined second periodic reports of Malta, adopted by the Committee at its sixty-second session (14 January – 1 February 2013). CRC/C/MLT/CO/2. Committee on the Rights of the Child. 5 February 2013. <http://www2.ohchr.org/english/bodies/crc/crcs62.htm> (accessed 25 March 2013).

Malta for approximately 8 months notwithstanding the fact that they had been orally informed that tests had confirmed their status of minors.⁵²

Designated detention estate. Maltese laws and policies establish a set of facilities in which people can be detained for immigration reasons. Approved places of immigration detention are listed in the 1995 Places of Detention Designation Order. In addition to the three specialized detention sites (two of which were closed as this writing), the list includes a number of other police facilities, none of which appeared to be in operation as of 2016 (for more on detention sites, see the section “Detention Infrastructure” below).

New provisions regarding detention conditions were introduced in the 2015 Reception of Asylum Seekers Regulations (6A). These establish that whenever asylum seekers are detained they shall be detained in specialised facilities and kept separate from sentenced persons and, as far as possible, separate from third-country nationals whom have not applied for international protection.

Alternatives to detention. Regulation 6(8) of the Reception for Asylum Seekers Regulations introduced non-custodial measures, which can be imposed on asylum seekers. These measures include reporting and the obligation to reside at an assigned place. Such measures shall have a maximum duration of nine months. When an applicant is not required to reside in an assigned place he is required to notify the Principle Immigration Officer of any changes of address within 24 hours, to deposit or surrender documents, or to provide a one-time guarantee or surety. These measures do not appear to be “alternatives to detention” because the Principle Immigration Offices may order them even if detention is not foreseen in the case.

The regulations stipulate that non-custodial measures are applied when no detention decision is issued in respect of the person concerned but where there is nevertheless a risk of absconding. Annex C of the regulations affirms that when a recommendation is made to an immigration officer not to detain an asylum applicant given that the grounds for detention do not exist or the risk of absconding is not deemed to be sufficiently high, the officer making the recommendation shall indicate whether alternatives to detention should be applied.

According to UNHCR, these regulations lack sufficient clarity to be consider alternatives to detention, particularly due to the fact that the measures are to be applied when no detention decision has been taken in the individual case. In short, the conditions outlined in the new policy document appear to be alternatives to liberty rather than alternatives to detention.⁵³ UNHCR argues that the policy is based on an incorrect interpretation of the right to liberty and security if person. It also fails to transpose Article 8(2) of the EU Reception Conditions.

⁵² European Court of Human Rights (ECtHR). 2016. ABDULLAHI ELMI AND AWEYS ABUBAKAR v. MALTA. ECtHR. 22 November 2016. [http://hudoc.echr.coe.int/eng#{"itemid":\["001-168780"\]}](http://hudoc.echr.coe.int/eng#{)

⁵³ UNHCR (2016) “UNHCR’s Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers”. 25TH February 2016. Available at: <http://www.refworld.org/pdfid/56e963824.pdf>

Immigration detainees may request bail within the context of appeal proceedings before the Immigration Appeals Board (Immigration Act, article 25(a)(6)).⁵⁴ 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.⁵⁵

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 of Human Rights 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."⁵⁶

Criminalization. In December 2002 Malta decriminalized immigration-status-related violations.⁵⁷ 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. Getting up to date statistics on detention in Malta can be challenging. During 2013-2015, Access Info Europe and the Global Detention Project [undertook a joint initiative](#) aimed at assessing the degree of openness with respect to information about detention in 33 countries, including Malta. The groups repeatedly 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" and demanded ID

⁵⁴ Jesuit Refugee Service (JRS) Malta and aditus. 2013. "Country report: Malta." Asylum Information Database (AIDA). July 2013. <http://www.asylumineurope.org/reports/country/malta> (accessed 8 January 2014).

⁵⁵ Warnier de Wailly, Celine (Jesuit Refugee Service Malta). 2011f. "Detention Law and Policy." Global Detention Project. 20 November 2011. Geneva, Switzerland.

⁵⁶ European Court of Human Rights (ECtHR). 2010. *Massoud v. Malta*. ECtHR. 27 July 2010. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#{%22itemid%22:\[%22001-100143%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100143#{%22itemid%22:[%22001-100143%22]}) (accessed 25 March 2013).

⁵⁷ European Migration Network (EMN). 2012b. The Organisation of Asylum and Migration Policies: Factsheet: Malta. EMN. October 2012. <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?entryTitle=0.%20Institutional%20Charts%20on%20Asylum%20and%20Migration> (accessed 25 March 2013).

MINISTRY FOR JUSTICE AND HOME AFFAIRS AND MINISTRY FOR THE FAMILY AND SOCIAL SOLIDARITY (Malta), Irregular immigrants, refugees and integration – policy document <http://www.enaro.eu/documents/immigration-English.pdf> (accessed 25 March 2013).

documents of the people making the request (as did the Czech Republic).⁵⁸ It their [final report on the project](#), Access Info Europe and the GDP urged the Czech Republic and Malta to “reform their laws and practices so that freedom of information requests are never refused and/or delayed over questions relating to the identity of the requester.”⁵⁹

Access to detention centres. Sources in Malta report that access to detention centres is granted to international organisations and NGOs on a weekly basis.⁶⁰ According to the 2015 policy document “Strategy for the Reception of Asylum Seekers” UNHCR and other relevant international organisations and NGOs shall have access to asylum seekers in detention centres. Access to people slated for deportation is subject to the authorisation of an immigration officer. Detainees may also receive visits from family and friends up to once a week subject to approval of an immigration officer.

DETENTION INFRASTRUCTURE

According to article 34(1) of the immigration act people may be detained for immigration-related reasons in prisons or authorised detention facilities. In practice migrants and asylum seekers do not appear to be detained in prisons for reasons solely related to their immigration status.⁶¹

As of mid-2017, Malta operated two specialized facilities to detain people for immigration-related reasons, B-Block at Safi Barraks and an “Initial Reception Centre” in Marsa, which opened in 2015. Two other facilities have closed in recent years: Warehouse One at Safi Barracks closed in mid-2014 for refurbishment works and had yet to re-open as of mid-2017 and Lyster Barracks in Hal Far closed in mid-2015 following sharp decreases in the number of boat arrivals.⁶² There is a second “Initial Reception Centre,” located in Hal Far, but it was not in use of this writing because of the low number of arrivals.⁶³

A 1995 “Places of Detention Designation Order” lists a number of additional facilities that no longer appear to be used for immigration detention purposes: the Special Assignment Group Complex (Ta’Kandja); Victoria Police Station (Gozo); a building housing the courts of Justice at Valletta; Police Headquarters at Floriana; Police

⁵⁸ Attard, Nathalie (Malta Ministry for Home Affairs and National Security). 2013. Email to Lydia Medland (Access Info Europe). 30 October 2013.

⁵⁹ Global Detention Project and Access Info Europe, “THE UNCOUNTED: The Detention of Migrants and Asylum Seekers in Europe,” December 2015, <https://www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe>.

⁶⁰ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2015. “AIDA Country Profile: Malta”. November 2015. Accessible at: <http://www.asylumineurope.org/reports/country/malta>

⁶¹ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. “AIDA Country Profile: Malta”. 2016 Update. Accessible at: <http://www.asylumineurope.org/reports/country/malta>

⁶² Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2015. “AIDA Country Profile: Malta”. November 2015. Accessible at: <http://www.asylumineurope.org/reports/country/malta>

⁶³ Aduitus, phone conversation 16.08.2017

Custody at the Malta International Airport; Police Custody at the Seaport in Valletta; the Police Complex at Fort Mosta (Mosta); and the Hal-Far Immigration Reception Centre. Although, there is a holding facility currently in use in Malta's international airport, sources in Malta indicate that people are held in this facility for very brief periods, hence the Global Detention Project does not classify it as an "in use" detention centre.

Malta's immigration detention capacity has decreased significantly over the last decade: In 2008 it was an estimated 1,800; in 2011, 740; in 2016, 388 (including both Safi Barracks and the Initial Reception Centre). The only remaining long-term detention facility, B-Block at Safi Barracks, has a limited capacity of 200 people.⁶⁴ At the time of the WGAD's visit, only six people were in detention. When the CPT visited the centre in September of 2015 the number of detainees remained six, although three were momentarily at the hospital.

Malta established the "Initial Reception Centre" (IRC) at Marsa in 2015. The facility is managed by the Agency for the Welfare of Asylum Seekers (AWAS), part of the Ministry of Home Affairs and National Security. Immigration officers at the facility are supposed to assess on a case-by-case basis whether there are grounds for longer term detention for irregularly arriving non-citizens.⁶⁵ Currently, only asylum seekers who are relocated to Malta from Italy and Greece are detained here, and not those arriving "regularly" by plane. Detention periods can vary between a couple of days and a couple of weeks,⁶⁶ even though official policy stipulates that people should be held there for a maximum of seven days. Although Malta does not classify the IRC as a detention centre, the GDP categorizes it as a medium-term dedicated immigration detention centre because it operates as a secure facility from which people cannot exit at will.

People are detained at the B-Block Safi Barracks facility for two main reasons: if they have been refused entry at the border or during pre-removal process for those in an "irregular" situation apprehended inside the territory.⁶⁷ Safi Barracks (as well as the inoperative facility at Lyster Barracks) is under the control and management of Detention Services (DS), a government body under the Ministry of Home Affairs and National Security. Notably, the DS is neither established nor regulated by a specific law.⁶⁸ The ministry informed the Global Detention Project in 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

⁶⁴ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. "AIDA Country Profile: Malta". 2016 Update. Accessible at: <http://www.asylumineurope.org/reports/country/malta>

⁶⁵ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. "AIDA Country Profile: Malta". 2016 Update. Accessible at: http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

⁶⁶ Aditus, phone conversation 16.08.2017

⁶⁷ Aditus, phone conversation 16.08.2017

⁶⁸ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2015. "AIDA Country Profile: Malta". November 2015. Accessible at: <http://www.asylumineurope.org/reports/country/malta>

Commissioner for Refugees for asylum processing; access to non-governmental organisations; and access to means of contacting home or country representatives.⁶⁹

Irregular migrants who are found to be suffering from mental illness are sent to the Mount Carmel Psychiatric Hospital.⁷⁰ 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 AIDA, there are eight open—or “non-secure”—reception centres in Malta: two of run by NGOs and the remaining six by AWAS. The conditions vary from centre to centre but are generally considered “extremely challenging” due to poor hygiene, overcrowding, remoteness, poor material structure. According to UNHCR, in 2016 the total population residing in Malta’s open centres is of 673 persons.⁷¹

Detention conditions. The Returns Regulations only refer to conditions applicable to vulnerable persons (9(2))—who are to be provided with emergency healthcare and essential medical treatment—and minors (10), who are to be provided separate accommodation and have access to leisure activities.⁷²

In December 2015 new provisions regarding detention conditions were introduced in the Reception of Asylum Seekers Regulations (6A). Among the reforms, the regulations establish that whenever asylum seekers are to be detained they must be detained in specialised facilities and kept separate from sentenced persons and, as far as possible, separate from third-country nationals who have not applied for international protection. Further, applicants in detention are to have access to open-air spaces; and be given the possibility to communicate and receive visits from UNHCR representatives as well as from legal advisors, counsellors, NGO representatives and family members.⁷³

International and non-governmental organizations have repeatedly criticized conditions at detention centres in Malta. In 2016, months after the government issued its new

⁶⁹ Micallef, Julian (Assistant Director Third Country Nationals, Ministry for Justice and Home Affairs, Malta). 2009b. Email message to Cecilia Cannon (Global Detention Project). 20 November 2009. Global Detention Project. Geneva, Switzerland. 19th November 2009.

⁷⁰ Micallef, Julian (Assistant Director Third Country Nationals, Ministry for Justice and Home Affairs, Malta). 2009a. Interview by Cecilia Cannon (Global Detention Project). Phone conversation. 19 November 2009. Global Detention Project. Geneva, Switzerland. 19th November 2009.

⁷¹ UNHCR (2016) “UNHCR’s Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers”. 25TH February 2016. Available at: <http://www.refworld.org/pdfid/56e963824.pdf>

⁷² COMMON STANDARDS AND PROCEDURES FOR RETURNING ILLEGALLY STAYING THIRD-COUNTRY NATIONALS. Subsidiary Legislation 217.12. 11th March, 2011. LEGAL NOTICE 81 of 2011, as amended by Legal Notice 15 of 2014. Available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1>

⁷³ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. “AIDA Country Profile: Malta”. 2016 Update. Accessible at: http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

policies on immigration and asylum procedures, NGOs reported that the policies had not led to improvements in detention conditions.⁷⁴

In December 2014 the Special Rapporteur on the Human Rights of Migrants visited the Safi detention centre and found that it was lacking personal space and privacy for migrants, potable water, adequate food and adequate access to health care. He reported that asylum seekers were at times placed in the same institutions as prisoners and drug users, were sometimes handcuffed to their beds or locked in a room, were rarely allowed to shower, and lacked regular medical visits.⁷⁵

In 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.⁷⁶

In 2013, in the case of Aden Ahmed, the European Court ruled that Malta's conditions of immigration detention amounted to ill-treatment. The court was concerned about the conditions in which the applicant was detained at Lyster Barracks, notably the exposure to cold conditions, the lack of female staff, the complete lack of access to open air and exercise for periods of up to three months, inadequate diet, and the particular vulnerability of Ms Ahmed due to her fragile health and personal emotional circumstances.⁷⁷

As the WGAD observed, after their visit to Malta in June 2015, due to the drastic reduction in the number of detainees the conditions in Safi Barracks had improved. Nevertheless educational and social programs are still lacking and strong concerns were expressed over the fact that military barracks are used as a detention facility for migrants.⁷⁸ The CPT notes that the regime in B-Block in Safi Barracks remains restrictive and the conditions carceral.⁷⁹

⁷⁴ Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE). 2016. "AIDA Country Profile: Malta". 2016 Update. Accessible at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf

⁷⁵ UN Human Rights Council, *Report by the Special Rapporteur on the human rights of migrants, Francois Crepea. Mission to Malta 6-10 December 2014.*, 12 May 2015, A/HRC/29/36/Add.3, available at:

<http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/CountryVisits.aspx>

⁷⁶ Committee on the Rights of the Child (CRC). 2013. Concluding observations on the combined second periodic reports of Malta, adopted by the Committee at its sixty-second session (14 January – 1 February 2013). CRC/C/MLT/CO/2. Committee on the Rights of the Child. 5 February 2013. <http://www2.ohchr.org/english/bodies/crc/crcs62.htm> (accessed 25 March 2013).

⁷⁷ European Court of Human Rights (ECtHR). 2013a. Aden Ahmed v. Malta. ECtHR. 23 July 2013. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122894#{%22itemid%22:\[%22001-122894%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122894#{%22itemid%22:[%22001-122894%22]}) (accessed 9 January 2014).

⁷⁸ United Nations Working Group on Arbitrary Detention (WGAD). 2016. Report of the Working Group on Arbitrary Detention follow-up mission to MALTA (23 to 25 June 2015). United Nations General Assembly.

⁷⁹ Council of Europe: Committee for the Prevention of Torture, *Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 10 September 2015*, 25 October 2016, CPT/Inf (2016) 25, available at: <http://www.refworld.org/docid/581219334.html>

At the time of the CPT visit (September 2015) there were only three persons detained in B-Block in Safi Barracks (other three detainees were momentarily recovered in Mater Dei Hospital). The three detainees were accommodated in one room with four sets of bunk beds, located on the ground floor.⁸⁰ The centre has a common room furnished with tables, benches and a TV, a small recreation yard and a kitchen.⁸¹

The committee remarked that the material conditions were in general satisfactory. Nevertheless it was pointed out that 30m² rooms are currently furnished to accommodate 22 persons, whilst given the size of the rooms they should accommodate a maximum of 7 people in order to guarantee a minimum living space of 4m² per detainee. Further, the CPT once again recommended that a systematic medical screening should be put in place for newly arrived detainees as well as a screening mechanism to identify potential victims of torture. Recommendation was also made concerning the detainees' contact with the outside world; the CPT advises that the right of detainees to receive visits on a regular basis and in an appropriate setting should be introduced, further, access to mobile phones at set times should be granted.⁸²

⁸⁰ Council of Europe: Committee for the Prevention of Torture, Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 10 September 2015, 25 October 2016, CPT/Inf (2016) 25, available at: <http://www.refworld.org/docid/581219334.html>

⁸¹ International Commission of Jurists (ICJ). 2012. Not Here to Stay: Report of the International Commission of Jurists on its Visit to Malta on 26-30 September 2011. ICJ. May 2012. <http://www.refworld.org/topic,50ffbce582,50ffbce5b5,4fe4096a2,0,ICJURISTS,,.html> (accessed 25 March 2013).

⁸² Council of Europe: Committee for the Prevention of Torture, Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 10 September 2015, 25 October 2016, CPT/Inf (2016) 25, available at: <http://www.refworld.org/docid/581219334.html>

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