

# COUNTRY REPORT

## IMMIGRATION DETENTION IN MALTA: "BETRAYING" EUROPEAN VALUES?

*JUNE 2019*

 GLOBALDETENTIONPROJECT



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# THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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**Front cover image:** HMS Lifeline, which has been used for search and rescue operations in the Mediterranean, pictured in June 2018. Shortly after the photo was taken, Malta charged the captain of the vessel with operating a ship without proper registration after disembarking 234 people who had been rescued off Libya. © Hermine Poschmann / Mission Lifeline

This report is also available online at [www.globaldetentionproject.org](http://www.globaldetentionproject.org)

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## GLOSSARY

<b>AWAS</b>	Agency for the Welfare of Asylum Seekers
<b>DS</b>	Detention Services
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECRI</b>	European Commission against Racism and Intolerance
<b>GDP</b>	Global Detention Project
<b>JRS</b>	Jesuit Refugee Services
<b>SAR</b>	Search and Rescue
<b>WGAD</b>	Working Group on Arbitrary Detention



## KEY FINDINGS

- Legislative amendments in 2015 that ended mandatory detention have failed to prevent the automatic placement of some migrants and asylum seekers in detention.
- Safeguards against mandatory detention do not apply to immigration detainees who are apprehended “in connection with an irregular border crossing” and who have not subsequently obtained authorisation to stay in the country.
- Provisions limiting the permissible length of detention do not apply to persons excluded from the scope of the Return Regulations, and the Immigration Act does not specify a maximum length of detention for these persons.
- Detainees face barriers in challenging detention, including lack of access to knowledgeable legal representatives and poor access of interpretation services.
- Malta’s policies concerning “alternatives to detention” appear to imply that non-custodial measures can be used for asylum seekers who would not otherwise be detained.
- Although not classified as an official detention centre, Malta’s Initial Reception Centre has operated as a secure detention site since mid-2018.



## 1. INTRODUCTION

The Republic of Malta, an archipelago located in the southern Mediterranean, is the most densely populated country in the European Union (EU). When Malta joined the European Union in 2004 it became the EU's southernmost border and an important entry point for migrants and asylum seekers attempting to reach Europe. Today, the country has one of the highest concentrations of refugees in the world,<sup>1</sup> although the overall number remains comparatively small, totalling approximately 8,000 as of 2017.<sup>2</sup> Until recently, Malta received more than 2,000 irregular boat arrivals annually.<sup>3</sup> This situation led officials to characterise unauthorised migration to the country as an “emergency” and a “national crisis.”<sup>4</sup>

The country is at the centre of a divisive debate in Europe over search and rescue (SAR) missions in the Mediterranean and how to ensure proper care and treatment for migrants, refugees, and asylum seekers. In mid-2018, for instance, Malta and Italy repeatedly refused to allow the migrant-rescue ship *Aquarius* to dock, leaving hundreds of men, women, and children in limbo on the high seas. After one such incident in June 2018, the International Federation of Red Cross and Red Crescent Societies (IFRC) accused the two countries of “betraying” European values.<sup>5</sup>

In a separate case that same month, the captain of the charity rescue ship *MV Lifeline* was charged with operating a ship without proper registration after disembarking 234 people in Malta who had been rescued off Libya. Although the captain was eventually found to have violated registration procedures in a May 2019 ruling, the magistrate in the case denounced the expressions of “racism, intolerance and animosity toward people who are humans like us” that the case had spurred.<sup>6</sup>

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<sup>1</sup> United Nations Working Group on Arbitrary Detention (WGAD), “Report of the Working Group on Arbitrary Detention Follow-Up Mission to Malta (23 to 25 June 2015),” *United Nations General Assembly*, 23 June 2016, [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_33\\_50\\_Add.1\\_AUV.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_33_50_Add.1_AUV.pdf)

<sup>2</sup> UNHCR, “UNHCR Statistics – The World in Numbers,” *UNHCR Website*, visited on May 29, 2019, <http://popstats.unhcr.org/en/overview>

<sup>3</sup> UN High Commissioner for Human Rights (UNHCR), “Malta Asylum Trends,” 2017, <http://www.unhcr.org/mt/charts/>

<sup>4</sup> European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE), “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*, 30 March 2006, <http://www.europarl.europa.eu/document/activities/cont/200801/20080104ATT17406/20080104ATT17406EN.pdf>

<sup>5</sup> S. Jones, “Aquarius Refusal was Betrayal of European Values, Says Charity Boss,” *The Guardian*, 17 June 2018, <https://www.theguardian.com/world/2018/jun/17/aquarius-refusal-was-betrayal-of-european-values-says-charity-boss>

<sup>6</sup> “ELENA Weekly Legal Update,” 17 May 2019, <https://mailchi.mp/ecre/elena-weekly-legal-update-17-may-2019?e=3065396695#10>



A number of more recent events have kept a spotlight on Malta's heavy-handed response to migrant and refugee arrivals. In May 2019, the captain of the NGO rescue ship *More Jonio* accused the Maltese air force of assisting Libyan coastguard vessels in intercepting asylum boats located offshore of Malta. Arguing that the asylum seekers would be taken to detention centres in Libya, the captain said: "We denounce this repatriation to an unsafe port, where human rights are not respected."<sup>7</sup>

Also in May 2019, Malta came under fire from the UN High Commissioner for Human Rights for its decision to charge three migrants—two of whom children—with terrorism charges stemming from an incident on a commercial ship carrying 100 rescued people. When the ship announced that it would return the people to Libya, a protest broke out on board, forcing the ship to dock in Malta, where the three teenagers were accused of hijacking the ship. The UN High Commissioner chastised the government for its treatment of the migrants: "In spite of the fact that two of them are minors, all three of the accused were held in the high-security division of an adult prison after they were reportedly interrogated by the authorities without being appointed legal guardians or placed in the care of independent child protection officials."<sup>8</sup>

In 2015, Malta revised its legal and policy framework regarding the reception of asylum seekers. One critical change was ending the practice of automatically detaining individuals who enter the state irregularly, a practice that had set Malta apart from other EU countries—and brought it more closely in line with [Australia](#) and its controversial mandatory detention policies. Today, 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.<sup>9</sup> However, civil society groups including Jesuit Refugee Services (JRS) and Aditus have argued that in practice, those arriving irregularly often do not pass through the Initial Reception Centre and are instead directly placed in detention.<sup>10</sup>

When Malta took over the presidency of the European Council in January 2017 it listed migration as a key priority. Its agenda included strengthening the common European Asylum system by revising the Dublin regulations and improving implementation of the relocation system.<sup>11</sup> Malta also emphasised 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."<sup>12</sup> Another critical focus was the "wide-ranging cooperation" on Libya,<sup>13</sup> as spelled out in the 2017 "Malta Declaration" of the

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<sup>7</sup> The National, "Malta Denounced After Assisting Libyan Coastguard to Intercept Migrant Boat," *The National*, May 3, 2019, <https://bit.ly/2ZXuCX8>

<sup>8</sup> UN High Commissioner for Human Rights (UNHCR), "Press Briefing Note on Malta," 7 May 2019, <https://www.thenational.ae/world/europe/malta-denounced-after-assisting-libyan-coastguard-to-intercept-migrant-boat-1.856853>

<sup>9</sup> Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE), "AIDA Country Profile: Malta," 2016, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf)

<sup>10</sup> Aditus, Jesuit Refugee Service (JRS) and European Council for Refugees and Exiles (ECRE), "AIDA Country Profile: Malta," 2016, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf)

<sup>11</sup> MaltaEu2017, "The Maltese Priorities," <https://www.eu2017.mt/en/Pages/Maltese-Priorities.aspx>

<sup>12</sup> MaltaEu2017, "The Maltese Priorities," <https://www.eu2017.mt/en/Pages/Maltese-Priorities.aspx>

<sup>13</sup> European Union External Action, "EU Remains Committed to Wide-Ranging Cooperation with Libya, Mogherini Says," 2 February 2017, <https://bit.ly/2VEJnzu>



European Council “addressing the Central Mediterranean route.”<sup>14</sup> Cooperation with Libya has included training and equipping the Libyan coast guard to enhance border management capacity and curtail migration to the EU.<sup>15</sup> These efforts have been the subject of intense scrutiny due to the [numerous reports](#) of severe human rights abuses that migrants and asylum seekers face in [Libya](#), including in detention centres.<sup>16</sup>

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<sup>14</sup> European Council, “Malta Declaration by the Members of the European Council on the External Aspects of Migration: Addressing the Central Mediterranean Route,” 3 February 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/>

<sup>15</sup> European Council, “Malta Declaration by the members of the European Council on the External Aspects of Migration: Addressing the Central Mediterranean Route,” 3 February 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/>

<sup>16</sup> Global Detention Project (GDP), “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, “Detained and Dehumanised: Report on Human Rights Abuses Against Migrants in Libya,” 13 December 2016, [https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf)



## 2. LAWS, POLICIES, PRACTICES

**2.1 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.<sup>17</sup> A relevant subsidiary piece of legislation is the 2011 *Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations*<sup>18</sup> (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*.<sup>19</sup>

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 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 provisions on “alternatives to detention” and specific legal grounds for detention. The new migration strategy also included the establishment of a new accommodation facility, the “Initial Reception Centre,” where all irregular arrivals are to be held for medical screening and processing. The facility operates as a secure detention facility but stays are intended 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<sup>20</sup> commented, “It is positive to see Malta finally moving from a system of automatic detention to one based on individual assessments

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<sup>17</sup> Government of Malta, 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, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1>

<sup>18</sup> Government of Malta, Common Standards and Procedures For Returning Illegally Staying Third-Country Nationals, Subsidiary Legislation 217.12., 11 March 2011, Legal Notice 81 of 2011, as amended by Legal Notice 15 of 2014, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1>

<sup>19</sup> Government of Malta, Refugees Act, 2001, Chapter 420 of the Laws of Malta, 1 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, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8886>

<sup>20</sup> 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.

of each case.”<sup>21</sup> UNHCR also noted that “the revised legislative and policy framework introduces a number of important changes which, once implemented in practice, will lead to improved reception standards and treatment for many asylum applicants who arrive in Malta in an irregular manner.”<sup>22</sup>

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 2.9 Non-custodial measures (“alternatives to detention”)); and lack of clarity on asylum procedures for people arriving by plane.<sup>23</sup> UNHCR also expressed concern that some elements in the migration policy are not fully in line with international human rights standards and could potentially lead to arbitrary or unlawful detention.<sup>24</sup>

**2.2 Grounds for detention.** Similar to laws in other commonwealth countries—including Australia, Cyprus, Malaysia, Malawi, Tanzania, Singapore, and Nigeria—Malta’s legislation provides for a category of “prohibited migrants,” who can be issued a removal order that includes detention measures to ensure removal (Immigration Act 14(2)).<sup>25</sup> The Immigration Act describes two categories of “prohibited immigrants”: (1) persons who enter or are present in Malta without authorisation (Article 5(1)); and (2) persons whose authorisation to enter or stay in the country is invalidated because: they are unable to support themselves and their dependents; suffer from a 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 change may stop the automatic issuing of removal orders. The Immigration Act provides discretion to immigration officials on whether to issue a return decision. The legislation also states that any person who belongs to the first category of “prohibited immigrants” or is reasonably suspected of belonging to it “may be taken into custody without warrant by the Principal

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<sup>21</sup> K. Dalli, “New Migration Strategy is a Step in Right Direction – NGOs,” *Times of Malta*, 3 January 2016, <http://www.timesofmalta.com/Articles/view/20160103/local/new-migration-strategy-is-a-step-in-right-direction-ngos.597489>

<sup>22</sup> UN High Commissioner for Human Rights (UNHCR), “UNHCR’s Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers,” 25 February 2016, <http://www.refworld.org/pdfid/56e963824.pdf>

<sup>23</sup> K. Dalli, “New Migration Strategy is a Step in Right Direction – NGOs,” *Times of Malta*, 3 January 2016, <http://www.timesofmalta.com/Articles/view/20160103/local/new-migration-strategy-is-a-step-in-right-direction-ngos.597489>

<sup>24</sup> UN High Commissioner for Human Rights (UNHCR), “UNHCR’s Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers,” 25 February 2016, <http://www.refworld.org/pdfid/56e963824.pdf>

<sup>25</sup> See: M. Allen, “Innocents Abroad’ and ‘Prohibited Immigrants’: Australians in India and Indians in Australia, 1890 – 1910,” in A. Curthoys and M. Lake, *Connected Worlds: History in Transnational Perspective*, 2005, <https://www.jstor.org/stable/pdf/j.ctt2jbkp3.11.pdf>; A. Bashford, “Immigration Restriction: Rethinking Period and Place from Settler Colonies to Postcolonial Nations,” *Journal of Global History*, 9(1), 12 February 2014, <https://bit.ly/2K83dNp>

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” (Immigration Act, Article 22, para. 1) under conditions deemed “proper” by the Minister (Article 22, para. 2). Such persons are required to leave Malta (Article 22, para. 4) and “may be detained in such manner as may be directed by the Minister until he leaves Malta” (Article 22, para. 5).

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. Thus, the Return Regulations exclude from its scope persons refused entry or those who are apprehended “in connection with the irregular border crossing” and who have not subsequently obtained authorisation to stay in the country (Return Regulations, Regulation 11(1)). Because the majority of immigration detainees in Malta are individuals who have entered the country without authorisation or have been refused entry, the directive’s provisions are not applied in most detention cases.

For those non-nationals to whom it applies—in other words, 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)).

Regarding asylum seekers, Article 6 of the “Reception of Asylum Seekers Regulations” provides multiple grounds upon which asylum seekers may be detained (see 2.4 Asylum seekers).

**2.3 Criminalisation.** In December 2002, Malta decriminalised immigration-status-related violations.<sup>26</sup> However, if a non-citizen applying for a visa or a residence permit fails to declare their previous removal from Malta, they can be charged with an offence and be subject to a fine of up to 1,165 EUR and/or imprisonment for up to six months (Immigration Act, Article 24). In addition, Article 32 of the Immigration Act lists other immigration-related offences, punishable by fines or with up to two years of imprisonment. These penalties, however, are not for status-related violations.

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<sup>26</sup> European Migration Network (EMN), “The Organisation of Asylum and Migration Policies: Factsheet: Malta,” October 2012, <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?entryTitle=0.%20Institutional%20Charts%20on%20Asylum%20and%20Migration>; Malta Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, “Irregular Immigrants, Refugees and Integration – Policy Document,” <http://www.enaro.eu/documents/immigration-English.pdf>

**2.4 Asylum seekers.** Before the Ministry of Home Affairs and National Security adopted the 2015 “Strategy for the Reception of Asylum Seekers and Irregular Migrants,”<sup>27</sup> 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 (the Reception of Asylum Seeker Regulations), which establishes the following six grounds for the detention of asylum seekers (which are the ones listed in the [EU Reception Conditions Directive](#)): 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 particular when there is a risk that the applicant will abscond; 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 solely to delay or frustrate an enforcement of a return decision; e) to protect national security or public order; f) to determine the member state responsible for examining the application (Reception of Asylum Seeker Regulations, Article 6).

Further, the 2015 amendments to the Immigration Act introduced three new provisions under Article 14(4). It states that if a person considered a prohibited immigrant under Article 5 applies for international protection, the effect of the removal order shall be suspended until final determination of the asylum application. Yet, Article 5 also specifies that while the effects of the removal order are suspended, detention is not. 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.<sup>28</sup>

During 2016, 20 asylum seekers were reportedly detained in Malta.<sup>29</sup> In 2018, the country detained 53 asylum seekers (including foreign nationals who lodged an application in detention), most of whom were issued a detention decision based on Article 6(1) (a) and (b) of the Reception of Asylum Seekers Regulations—specifically, verification of identity and verification of claims in the presence of a risk of absconding.<sup>30</sup>

**2.5 Children.** Several provisions address the detention of children. The Return Regulations (for those to whom they apply) stipulate that unaccompanied minors as well as families with minors shall only be detained as a measure of last resort and for the shortest period

<sup>27</sup> Malta Ministry of Home Affairs and National Security, “Strategy for the Reception of Asylum Seekers and Irregular Migrants,” 2015, <https://0d2d5d19eb0c0d8cc8c6-a655c0f6dcd98e765a68760c407565ae.ssl.cf3.rackcdn.com/ee87eb6093978ddf835be5759bc86d018724f3a8.pdf>

<sup>28</sup> K. Dalli, “New Migration Strategy is a Step in Right dDirection – NGOs,” *Times of Malta*, 3 January 2016, <http://www.timesofmalta.com/Articles/view/20160103/local/new-migration-strategy-is-a-step-in-right-direction-ngos.597489>

<sup>29</sup> Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), “AIDA Country Profile: Malta,” 2016, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf)

<sup>30</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

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. As far as it is possible, unaccompanied minors shall be accommodated in institutions provided with personnel and facilities that take into account the minors' needs (Return Regulations, Regulation 10).

With regards to asylum seeking children, Regulation 14(1) of the Reception Regulations 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 their claim is manifestly unfounded. Further, it is provided that in the application of the regulations, the best interest of the child shall constitute the primary consideration (Reception Regulations, Regulation 14(4)).

Unaccompanied minors aged sixteen or over may however be placed in accommodation centres for adult asylum seekers (Reception Regulations, Regulation 15).

According to the new migration strategy, the Agency for the Welfare of Asylum Seekers (AWAS) shall conduct vulnerability assessments including age identification procedures in the new Initial Reception Centre, when required. Age identification procedures shall be based on psycho-social assessments, and medical age assessment tests shall be undertaken only as a measure of last resort when an individual's age is in doubt. In cases where a non-citizen is identified as being a minor, or another vulnerability is detected, the result is communicated to police authorities to prevent, or immediately withdraw, a detention order.<sup>31</sup>

In its 2016 report, the Working Group on Arbitrary Detention (WGAD) welcomed and highlighted the positive steps taken by the Maltese government in regards to migrant children.<sup>32</sup> However, Aditus and the JRS have observed that changes in legislation notwithstanding, the current praxis is to immediately detain migrants who irregularly arrive in Malta by plane, without taking them to the Initial Reception Centre—a practice that increases the possibility of vulnerabilities going unidentified.<sup>33</sup> Even when a detainee is referred for a vulnerability assessment, they will continue to be detained pending the assessment's outcome.<sup>34</sup>

Prior to the 2015 legislation amendments and following examination of the country's periodic report in 2013, the UN Committee on the Rights of the Child (CRC) made several recommendations to the Maltese 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;

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<sup>31</sup> Malta Ministry for Home Affairs and National Security, "Strategy for the Reception of Asylum Seekers and Irregular Migrants," 2016, <https://0d2d5d19eb0c0d8cc8c6-a655c0f6dcd98e765a68760c407565ae.ssl.cf3.rackcdn.com/ee87eb6093978ddf835be5759bc86d018724f3a8.pdf>

<sup>32</sup> United Nations Working Group on Arbitrary Detention (WGAD), "Report of the Working Group on Arbitrary Detention Follow-Up Mission to Malta, (23 to 25 June 2015)," 2016, <https://daccess-ods.un.org/TMP/7304381.7281723.html>

<sup>33</sup> Aditus and Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>34</sup> Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), "AIDA Country Profile: Malta," 2016, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf); Aditus and Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)



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.<sup>35</sup>

In 2016, the European Court of Human Rights (ECtHR) unanimously held that Malta had breached Articles 3, prohibiting degrading treatment, and 5, prohibiting arbitrary and unlawful detention, of the ECHR in the case of *Abdullahi Elmi and Ameys Abubakar v. Malta*. The two Somali asylum seekers—aged 16 and 17—had been detained in Malta in 2012 for approximately eight months, despite the fact that they had been orally informed that tests had confirmed their status of minors.<sup>36</sup>

**2.6 Other vulnerable persons.** According to Maltese legislation, children (both accompanied and unaccompanied), the elderly, disabled persons, pregnant women, single parents with children, and victims of torture, rape, or other serious forms of violence are to be considered vulnerable persons (Return Regulations, Regulation 2; Reception of Asylum Seekers Regulations, Regulation 14(1)).

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 medical treatment (Return Regulations, Regulation 9(3)).

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 when an applicant's vulnerability is ascertained, no detention order shall be issued. If a detention order has already been issued it shall be revoked with immediate effect.

In *Aden Ahmed v. Malta*, the conditions of detention were challenged by a migrant woman of fragile health, who had suffered a miscarriage in detention. Her detention lasted for more than 14 months. The Court found the conditions of her detention generally inappropriate, including the lack of sufficient female staff. That said, if assessed individually, the conditions and length of detention would not have reached the threshold of Article 3 of the ECHR. However, taken together and in light of the applicant's vulnerability, the conditions of detention amounted to degrading treatment.

**2.7 Length of detention.** As stipulated in the Return Regulations, detention should generally not exceed six months (Return Regulations, Regulation 11(12)). Reflecting the Returns Directive, the legislation allows for an extension of the detention period up to 18 months in cases where (1) the detainee fails to cooperate or (2) there are 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 the extension of detention, notably that a detainee can be confined for 18 months only if the removal operation lasts longer than the initial six month period despite authorities taking all

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<sup>35</sup> UN Committee on the Rights of the Child (CRC), "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," 5 February 2013, <http://www2.ohchr.org/english/bodies/crc/crcs62.htm>

<sup>36</sup> European Court of Human Rights (ECtHR), "Abdullahi Elmi and Awets Abubakar vs Malta," 22 November 2016, [http://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-168780\"\]}](http://hudoc.echr.coe.int/eng#{\)



reasonable efforts to secure their removal. In the one case, *Massoud v. Malta*, the ECtHR found that Malta violated the applicant's right to liberty because it did not prove that the deportation proceedings were pursued vigorously pending the applicant's extended detention.<sup>37</sup>

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 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 that non-citizens may be detained for more than 18 months.<sup>38</sup>

The maximum length of detention for asylum seekers was introduced in law in 2015 as Regulation (6(7)) of the Reception of Asylum Seekers 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,<sup>39</sup> despite shortening the maximum detention period (from 12 months), it appears that the practice of using the time limit established by the 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 for so long as the grounds for detention remain applicable.

In its report following its July 2015 visit to Malta, the WGAD 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 up to 18 months.<sup>40</sup> Meanwhile, according to an AIDA report, at the end of 2016 asylum seekers were detained for an average of two months.<sup>41</sup> In 2017, asylum seekers were detained on average for around two months (56 days)<sup>42</sup> and in 2018 for an average of three months (97

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<sup>37</sup> European Court of Human Rights (ECtHR), "*Massoud vs Malta*," 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]})

<sup>38</sup> UN Working Group on Arbitrary Detention (WGAD), "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.

<sup>39</sup> United Nations Commissioner for Human Rights (UNHCR), "UNHCR's Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers," 25 February 2016, <http://www.refworld.org/pdfid/56e963824.pdf>

<sup>40</sup> United Nations Working Group on Arbitrary Detention (WGAD), "Report of the Working Group on Arbitrary Detention Follow-Up Mission to Malta (23 to 25 June 2015)," 23 June 2016, [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_33\\_50\\_Add.1\\_AUV.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_33_50_Add.1_AUV.pdf)

<sup>41</sup> Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), "AIDA Country Profile: Malta," 2016, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf)

<sup>42</sup> Aditus and Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, February 2018, [https://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2017update.pdf](https://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2017update.pdf)

days).<sup>43</sup> According to the findings of the 2018 NPM report, as of December 2018 four of the detainees at Safi Barracks had been detained for periods ranging from 240 to 446 days.<sup>44</sup>

**2.8 Procedural standards.** 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 of appealing a removal order but not a detention measure tied to a removal order. Under Article 25A, 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.<sup>45</sup> 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 their 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 due to public security reasons (Article 25A (9-13)). This restriction, combined with long delays in examining appeals and rare cases where this remedy is successful, led the ECtHR to conclude that this remedy falls short of judicial review of detention under Article 5(4) of the ECHR.

Regarding detention review, the Return 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 (Regulation 11 (8)). If the Board finds that the detention is not lawful, the individual 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 2.2 Grounds for detention).

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 must review the lawfulness of detention after seven days, which can be extended by an additional seven days (Reception Regulations, 6(3)). If the applicant is still detained after two months of detention, an additional review is to be carried out. Whenever the Immigration Appeal Board rules that detention is unlawful the applicant is to be immediately released. (Reception Regulations, Regulation 6(4)). Besides providing for the automatic review of detention, the Reception Regulations also stipulate that the non-citizen concerned shall be informed by the Principal Immigration Officer about the existing mechanism to challenge detention and about the possibility of obtaining free legal assistance (Reception Regulations, 6(2)).

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<sup>43</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>44</sup> J. Debono, “Lack of Privacy Inside Detention Centres, Monitoring Board Finds,” *Malta Today*, 30 April 2019, [https://www.maltatoday.com.mt/news/national/94642/lack\\_of\\_privacy\\_inside\\_detention\\_centres\\_monitoring\\_board\\_finds#.XNKqztMzZUQ](https://www.maltatoday.com.mt/news/national/94642/lack_of_privacy_inside_detention_centres_monitoring_board_finds#.XNKqztMzZUQ)

<sup>45</sup> C. Warnier de Wailly, “Detention Law and Policy,” *Global Detention Project*, 20 November 2011, ; Government of Malta, 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, Article 25(A)(5).

Both the WGAD<sup>46</sup> and UNHCR<sup>47</sup> 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 some lawyers in the legal aid pool were not knowledgeable on matters relating to refugee law.

Despite these limitations in challenging detention, there exist various possible remedies, though their efficacy appears to be severely limited.<sup>48</sup> As mentioned previously, 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).<sup>49</sup>

One 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 authorises pre-removal detention, such detention remains lawful.<sup>50</sup> Due to the limited scope of this scrutiny, the ECtHR found that this remedy cannot be considered an effective remedy as required under the ECHR.<sup>51</sup>

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 ECtHR 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.<sup>52</sup>

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<sup>46</sup> United Nations Working Group on Arbitrary Detention (WGAD), "Report of the Working Group on Arbitrary Detention Follow-Up Mission to Malta (23 to 25 June 2015)," 23 June 2016, [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_33\\_50\\_Add.1\\_AUV.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_33_50_Add.1_AUV.pdf)

<sup>47</sup> United Nations High Commissioner for Human Rights (UNHCR), "UNHCR's Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers," 25 February 2016, <http://www.refworld.org/pdfid/56e963824.pdf>

<sup>48</sup> UN Committee on the Rights of the Child (CRC), "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," 5 February 2013, <http://www2.ohchr.org/english/bodies/crc/crcs62.htm>; C. Warnier de Wailly, Celine, "Detention Law and Policy," *Global Detention Project*, 20 November 2011.

<sup>49</sup> European Court of Human Rights (ECtHR), "Massoud vs Malta," 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), "Suso Musa vs Malta," 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]}); Aditus et Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>50</sup> C. Warnier de Wailly, "Detention Law and Policy," *Global Detention Project*, 20 November 2011,

<sup>51</sup> European Court of Human Rights (ECtHR), "Massoud vs Malta," 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]})

<sup>52</sup> European Court of Human Rights (ECtHR), "Massoud vs Malta," 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]})

Malta's weak procedural guarantees have repeatedly attracted criticism from the UN as well as regional human rights bodies. In 2016, the WGAD observed that effective and speedy remedies for detainees to challenge the necessity and legality of detention were still lacking.<sup>53</sup> 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).<sup>54</sup> 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.<sup>55</sup>

Previously, in 2011, the UN Committee on the Elimination of Racial Discrimination (CERD) called on Malta to effectively guarantee legal safeguards for all immigrants detained, in particular to inform them about their rights, including legal assistance, and to provide assistance to those who seek asylum.<sup>56</sup> In 2009, the WGAD also 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.<sup>57</sup>

**2.9 Non-custodial measures (“alternatives to detention”).** Regulation 6(8) of the Reception for Asylum Seekers Regulations introduced non-custodial measures, including: reporting obligations; residence at an assigned place; surrender of a document; and payment of a guarantee. Such measures are to have a maximum duration of nine months. The provision stipulates that detention can be ordered in cases when an individual fails to comply with the above-mentioned measures.

The Reception Regulations stipulate that non-custodial measures are to be applied when no detention decision is issued. However, an annex to the guidance on the regulations, titled “Strategy for the Reception of Asylum Seekers and Irregular Migrants,” controversially specifies that when a recommendation is made to the Principal Immigration Officer not to detain an asylum seeker due to the lack of applicable grounds or the absence of a

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<sup>53</sup> United Nations Working Group on Arbitrary Detention (WGAD), “Report of the Working Group on Arbitrary Detention Follow-Up Mission to Malta (23 to 25 June 2015),” 23 June 2016, [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_33\\_50\\_Add.1\\_AUV.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_33_50_Add.1_AUV.pdf)

<sup>54</sup> European Commission against Racism and Intolerance (ECRI), “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](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Malta/Malta_CBC_en.asp)

<sup>55</sup> UN Committee on the Rights of the Child (CRC), “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,” 5 February 2013, <http://www2.ohchr.org/english/bodies/crc/crcs62.htm>

<sup>56</sup> UN Committee on the Elimination of Racial Discrimination (CERD), “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,” August 2011, <http://daccess-ods.un.org/TMP/8803405.1656723.html>

<sup>57</sup> United Nations Working Group on Arbitrary Detention (WGAD), “Report of the Working Group on Arbitrary Detention: Addendum: Mission to Malta (19 to 23 January 2009),” 18 January 2010, <http://daccess-ods.un.org/TMP/9688466.19129181.html>

sufficiently high risk of absconding, “the Officer making the recommendation shall indicate whether alternatives to detention should be applied in the specific case and, if so, which.”<sup>58</sup>

Malta’s framework governing non-custodial measures has sparked criticism from civil society actors, particularly because both the Reception Regulations and the strategy document appear to imply that such measures can be used for asylum seekers who would not otherwise be detained. As such, these measures should not be considered as “alternatives.” Aditus and the JRS report that there have been numerous cases where asylum seekers have been released from detention and one of these measures has been ordered, despite the detention grounds no longer existing.<sup>59</sup>

UNHCR has stated that these regulations lack sufficient clarity to be considered “alternatives to detention,” particularly due to the fact that the measures can be applied when no detention decision has been taken. In short, the conditions outlined in the new policy document appear to be “alternative forms of liberty” rather than “alternatives to detention.” UNHCR argues that the policy is based on an incorrect interpretation of the right to liberty and security of person. It also fails to transpose Article 8(2) of the EU Reception Conditions.<sup>60</sup>

Immigration detainees may be granted provisional release on bail within the context of appeal proceedings before the Immigration Appeals Board (Immigration Act, Article 25A(6)).<sup>61</sup> In the past, civil society organisations 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 themselves, and can provide sufficient financial guarantees to comply with the conditions of bail.<sup>62</sup>

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 ECtHR to conclude that Malta had 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.”<sup>63</sup>

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<sup>58</sup> Malta Ministry for Home Affairs and National Security, “Strategy for the Reception of Asylum Seekers and Irregular Migrants,” 2016, <https://0d2d5d19eb0c0d8cc8c6-a655c0f6dcd98e765a68760c407565ae.ssl.cf3.rackcdn.com/ee87eb6093978ddf835be5759bc86d018724f3a8.pdf>

<sup>59</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>60</sup> United Nations High Commissioner for Human Rights (UNHCR), “UNHCR’s Observations on Malta’s Revised Legislative and Policy Framework for the Reception of Asylum-Seekers,” 25 February 2016, <http://www.refworld.org/pdfid/56e963824.pdf>

<sup>61</sup> Aditus and Jesuit Refugee Service (JRS), “Country Report: Malta,” *Asylum Information Database (AIDA)*, July 2013, <http://www.asylumineurope.org/reports/country/malta>

<sup>62</sup> C. Warnier de Wailly, “Detention Law and Policy,” *Global Detention Project*, 20 November 2011.

<sup>63</sup> European Court of Human Rights (ECtHR), “*Massoud vs Malta*,” 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]})



**2.10 Detaining authorities and institutions.** The Principal Immigration Officer, under the authority of the Ministry for Home Affairs and National Security,<sup>64</sup> is responsible for issuing detention orders (Reception of Asylum Seekers Regulations, Regulation 6(1); Immigration Act, Article 14; see also Return Regulations). Article 34(1) of the Immigration Act provides that non-citizens may be detained for immigration-related reasons in prisons or authorised detention facilities, although prisons do not appear to be used.<sup>65</sup>

**2.11 Regulation of detention conditions and regimes.** 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 dedicated facilities and kept separate from convicted criminals and, as far as possible, from other immigration detainees. Families shall be kept separated from other detainees in order to ensure their privacy and women shall be separated from men. Detained applicants shall have access to outdoor spaces, and be informed in a language they understand about the rules applying to the facility, their rights, and their obligations. Detained applicants can receive visits from UNHCR, other relevant organisations, legal advisors, and family members (Reception Regulations, Regulation 6A).

The Return Regulations provide similar, though less extensive, regulations of conditions. Detainees shall be able to contact a lawyer, consular authorities, and family members (Return Regulations, 9(2)). Relevant international and national organisations as well as NGOs can visit detention centres (Regulation 9(4)). Detainees shall be informed about the house rules governing the facility and about their rights and obligations in detention (Regulation 9(5)). Families shall be kept separated from other detainees so as to guarantee their privacy (Regulation 10(2)).

Guidelines on detention conditions are further specified in the policy document “Strategy for the Reception of Asylum Seekers and Irregular Migrants,” which posits that facilities must be equipped with lighting, ventilation, heating, and sanitary annexes; detainees shall be able to spend at least one hour a day outdoors; detainees shall receive free health care; and detainees shall be accommodated in separate female, male, and family sections. Examples of services to be established in Maltese detention centres are: phones, places of worship, and rooms for interviews. Detainees can receive visits from their friends and family members once a week, subject to the approval of the Principal Immigration Officer, and relevant national and international organisations shall be granted access to the centre.<sup>66</sup>

**2.12 Domestic Monitoring.** In Malta, immigration detention operations are monitored by both official and non-governmental entities.

In 2007, Malta designated two entities as National Preventive Mechanisms, in accordance with the Optional Protocol to the UN Convention against Torture (OPCAT), which Malta

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<sup>64</sup> Ministry for Home Affairs and National Security, “Detention Services,” *Departments and Entities – Homeaffairs.gov.mt*, <https://homeaffairs.gov.mt/en/MHAS-Departments/Detention-Services/Pages/DS.aspx>

<sup>65</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf); Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), “AIDA Country Profile: Malta,” 2016, <http://www.asylumineurope.org/reports/country/malta>

<sup>66</sup> Malta Ministry for Home Affairs and National Security, “Strategy for the Reception of Asylum Seekers and Irregular Migrants,” 2016, <https://0d2d5d19eb0c0d8cc8c6-a655c0f6dcd98e765a68760c407565ae.ssl.cf3.rackcdn.com/ee87eb6093978ddf835be5759bc86d018724f3a8.pdf>

ratified in 2003. These are the Prison Board and the Monitoring Board for Detained Persons (previously, the Board of Visitors for Detained Persons). The latter is responsible for carrying out visits to monitor immigration detention facilities. International watchdogs have raised concerns in the past over limited public access to the reports issued by these boards, including the European Committee for the Prevention of Torture (CPT) and the UN Subcommittee on the Prevention of Torture (SPT).<sup>67</sup> In 2018 the Monitoring Board for Detained Persons made public its annual report, which contained the findings of its monitoring visits.<sup>68</sup> That year, the Monitoring Board had visited the Safi Barracks facility 47 times.<sup>69</sup>

Local NGOs are granted access to detention centres in order to provide their services to detained non-citizens.<sup>70</sup> The Jesuit Refugee Service Malta has assisted immigration detainees since 2002 and today provides legal advice to immigration detainees.<sup>71</sup> Together with Aditus foundation, the two are the only entities offering free legal aid services to immigration detainees.<sup>72</sup>

**2.13 International Monitoring.** Immigration detention practices in Malta have been the subject of reports and investigations from several regional and international bodies.

Malta is a party to the UN Convention against Torture and its Optional Protocol (OPCAT).<sup>73</sup> As such, places of detention can be monitored by the UN Subcommittee on the Prevention

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<sup>67</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "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, CPT/Inf (2016) 25," *Council of Europe*, 25 October 2016, <https://rm.coe.int/16806b26e8>; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "Report on the Visit Made by the Subcommittee on Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment for the Purpose of Providing Advisory Assistance to the National Preventive Mechanism of the Republic of Malta, CAT/OP/MLT/1," 1 February 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/013/27/PDF/G1601327.pdf?OpenElement>; Association for the Prevention of Torture (APT), "Malta – NPM Reports," 2019, [https://apt.ch/en/opcat\\_pages/reports-recommendations-12/](https://apt.ch/en/opcat_pages/reports-recommendations-12/); Government of Malta, "Response of the Maltese Government to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its Visits to Malta from 3 to 10 September 2015, CPT/Inf (2016) 26," 25 October 2016, <https://rm.coe.int/16806b2747>; Republic of Malta, "Subsidiary Legislation 217.08 – Board of Visitors for Detained Persons Regulations," 18 September 2007, <https://www.refworld.org/docid/55118ecc4.html>

<sup>68</sup> Monitoring Board for Detained Persons, "Annual Report 2018," April 2019, <https://parlament.mt/media/99913/03192.pdf>

<sup>69</sup> J. Debono, "Lack of Privacy Inside Detention Centres, Monitoring Board Finds," *Malta Today*, 30 April 2019, [https://www.maltatoday.com.mt/news/national/94642/lack\\_of\\_privacy\\_inside\\_detention\\_centres\\_monitoring\\_board\\_finds#.XNKqztMzZUQ](https://www.maltatoday.com.mt/news/national/94642/lack_of_privacy_inside_detention_centres_monitoring_board_finds#.XNKqztMzZUQ); Monitoring Board for Detained Persons, "Annual Report 2018," April 2019, <https://parlament.mt/media/99913/03192.pdf>

<sup>70</sup> Aditus and Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>71</sup> JRS Malta, "Our Mission," 2019, [http://www.jrsmalta.org/content.aspx?id=401389#.XO6g\\_9MzZUR](http://www.jrsmalta.org/content.aspx?id=401389#.XO6g_9MzZUR)

<sup>72</sup> Aditus and Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>73</sup> Office of the United Nations High Commissioner for Human Rights, "Status of Ratification: Interactive Dashboard," 2019, <http://indicators.ohchr.org/>



of Torture (SPT). The SPT carried out a visit to Malta, with a focus on the NPM, in October 2014.<sup>74</sup>

The Special Rapporteur on the Human Rights of Migrants visited Malta in 2014, when Malta was still enforcing a policy of mandatory detention, which the Special Rapporteur criticised. The Special Rapporteur also raised concern over the use of military barracks for immigration detention purposes and over the problematic conditions of detention, which included the absence of potable water and decent food.<sup>75</sup>

The UN Working Group on Arbitrary Detention (WAGD) visited Malta in 2015. While commending the improvements in detention conditions at Safi Barracks, resulting from the reduction of the number of immigration detainees, the WAGD criticised the lack of educational programmes, the problems and deficiencies concerning legal aid, and the use of military barracks.<sup>76</sup>

At least two UN treaty bodies have made immigration detention-related recommendations, including the HRC (2014) and the CRC (2013). Both committees, whose recommendations were made before Malta adopted changes in its immigration legislation ending mandatory detention in 2015, noted with concern the use of mandatory detention and the lack of a limit to its length. The HRC further recommended, *inter alia*, that the country guarantee that immigration detention be subject to judicial review, introduce vulnerability assessment mechanisms, and make efforts to improve detention conditions.<sup>77</sup> The CRC recommended, *inter alia*, that the country end the detention of children, improve age assessment procedures, and guarantee gender segregation in detention.<sup>78</sup>

Malta is also a member state of the Council of Europe and has ratified the European Convention on the Prevention of Torture. It therefore receives monitoring visits from the CPT, the last of which took place in 2015.<sup>79</sup> In the report published following its 2015 visit, the CPT criticised the prison-like design of Safi Barracks. In addition, the committee

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<sup>74</sup> Office of the United Nations High Commissioner for Human Rights, "Visits and Public Reports (Chronological Order)," 2019, [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological)

<sup>75</sup> UN Human Rights Council, "Report by the Special Rapporteur on the Human Rights of Migrants, Francois Crepea, Mission to Malta 6-10 December 2014, A/HRC/29/36/Add.3," 12 May 2015, <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/CountryVisits.aspx>

<sup>76</sup> United Nations Working Group on Arbitrary Detention (WGAD), "Report of the Working Group on Arbitrary Detention Follow-Up Mission to Malta (23 to 25 June 2015)," *United Nations General Assembly*, 23 June 2016, [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_33\\_50\\_Add.1\\_AUV.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_33_50_Add.1_AUV.pdf)

<sup>77</sup> Human Rights Committee, "Concluding Observations on the Second Periodic Report of Malta, CCPR/C/MLT/CO/2," 21 November 2014, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MLT/CO/2&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MLT/CO/2&Lang=En)

<sup>78</sup> Committee on the Rights of the Child, "Concluding Observations on the Second Periodic Report of Malta, Adopted by the Committee at its Sixty-Second Session (14 January – 1 February 2013), CRC/C/MLT/CO/2," 18 June 2013, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/MLT/CO/2&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/MLT/CO/2&Lang=En)

<sup>79</sup> Council of Europe, "The CPT and Malta," 2019, <https://www.coe.int/en/web/cpt/malta>

expressed its concern over the use of detainees as interpreters, the lack of information provided to detainees, and the restrictions imposed on contact with the outside world.<sup>80</sup>

**2.14 Transparency and access to information.** Sourcing up-to-date statistics on detention in Malta can be challenging. In 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. We repeatedly sent two brief questionnaires requesting 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 documents of the people making the request (as did the [Czech Republic](#)).<sup>81</sup> In our [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.”<sup>82</sup>

**2.15 Trends and statistics.** In 2018, Malta detained a total of 168 persons for immigration-related reasons at the Safi Barracks facility.<sup>83</sup> That same year, 53 asylum seekers were detained in the country (including persons who lodged an asylum application from immigration detention).<sup>84</sup> There were 34 different nationalities among immigration detainees in 2018, the five most common being Serbian (22); Bangladeshi (15); Moldavan (13); Chinese (11); and Libyan (9).<sup>85</sup>

In 2018, 1,990 non-nationals were found to be illegally present in Malta—a significant increase on previous years (530 non-citizens were found to be illegally present in Malta in 2017, and 450 in 2016).<sup>86</sup> Orders to leave, however, have only slightly increased during the

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<sup>80</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “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, CPT/Inf (2016) 25,” 25 October 2016, <https://rm.coe.int/16806b26e8>

<sup>81</sup> Nathalie Attard (Malta Ministry for Home Affairs and National Security), 2013, Email to Lydia Medland (Access Info Europe), 30 October 2013.

<sup>82</sup> Global Detention Project (GDP) 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>

<sup>83</sup> J. Debono, “Lack of Privacy Inside Detention Centres, Monitoring Board Finds,” *Malta Today*, 30 April 2019, [https://www.maltatoday.com.mt/news/national/94642/lack\\_of\\_privacy\\_inside\\_detention\\_centres\\_monitoring\\_board\\_finds#.XNKqztMzZUQ](https://www.maltatoday.com.mt/news/national/94642/lack_of_privacy_inside_detention_centres_monitoring_board_finds#.XNKqztMzZUQ) ; Monitoring Board for Detained Persons, “Annual Report 2018,” April 2019, <https://parlament.mt/media/99913/03192.pdf>

<sup>84</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>85</sup> J. Debono, “Lack of Privacy Inside Detention Centres, Monitoring Board Finds,” *Malta Today*, 30 April 2019, [https://www.maltatoday.com.mt/news/national/94642/lack\\_of\\_privacy\\_inside\\_detention\\_centres\\_monitoring\\_board\\_finds#.XNKqztMzZUQ](https://www.maltatoday.com.mt/news/national/94642/lack_of_privacy_inside_detention_centres_monitoring_board_finds#.XNKqztMzZUQ) ; Monitoring Board for Detained Persons, “Annual Report 2018,” April 2019, <https://parlament.mt/media/99913/03192.pdf>

<sup>86</sup> Eurostat, “Third Country Nationals Found to be Illegally Present – Annual Data (rounded),” *Enforcement of Immigration Legislation*, 1 May 2019, [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_eipre&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eipre&lang=en)

past three years: 515 persons were ordered to leave Malta in 2018, 470 in 2017, and 415 in 2016.<sup>87</sup>

Forced and voluntary returns have similarly increased: in 2018, 530 non-citizens were returned, of whom 225 were deported and 305 voluntarily departed; in 2017, 470 foreign nationals were returned, 170 forced and 300 voluntary; and in 2016, 420 non-citizens were returned, 95 forced and 325 voluntary.<sup>88</sup>

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<sup>87</sup> Eurostat, “Third Country Nationals Ordered to Leave – Annual Data (Rounded),” *Enforcement of Immigration Legislation*, 3 May 2019, [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_eiord&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eiord&lang=en)

<sup>88</sup> Eurostat, “Third Country Nationals Who Have Left the Territory by Type of Return and Citizenship,” *Enforcement of Immigration Legislation*, 7 May 2019, [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_eirt\\_vol&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eirt_vol&lang=en)



### 3. DETENTION INFRASTRUCTURE

**3.1 Summary.** Malta employs two dedicated facilities for immigration detention purposes: Safi Barracks, B Block, located in Safi, which has a capacity of 200; and the Initial Reception Centre, located in Marsa, which was opened in 2015 and has operated as a secure detention facility since mid-2018.<sup>89</sup> There is a second “Initial Reception Centre” in Hal Far, the opening of which is still pending.<sup>90</sup>

According to Article 34(1) of the Immigration Act, non-citizens 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 immigration reasons.<sup>91</sup>

Two detention facilities were closed in recent years. Warehouse One at Safi Barracks closed in mid-2014 for refurbishment works and has yet to reopen. *Lyster Barracks* in Hal Far closed in mid-2015 following a sharp decrease in the number of boat arrivals.<sup>92</sup>

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 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, so the Global Detention Project does not classify it as an “in use” detention centre.<sup>93</sup>

<sup>89</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>90</sup> Aditus, Phone conversation with the Global Detention Project (GDP), 16 August 2018.

<sup>91</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf); Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), “AIDA Country Profile: Malta,” 2016, <http://www.asylumineurope.org/reports/country/malta>

<sup>92</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf); Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), “AIDA Country Profile: Malta,” November 2015, <http://www.asylumineurope.org/reports/country/malta>

<sup>93</sup> Republic of Malta, “Subsidiary Legislation 217.03 – Places of Detention Designation Order,” 10 March 1995, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9558&l=1>

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).

### **3.2 Detention facilities.** B-Block at Safi Barracks and the Initial Reception Centre

### **3.3 Conditions and regimes in detention centres.**

**3.3a Overview.** Concerns about the conditions of detention in Malta are long-standing and have been the target of numerous criticisms from monitoring bodies. In 2013, for example, the CRC noted that it had received reports of unrelated female, male, and child 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.<sup>94</sup>

That same year, 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, an inadequate diet, and the particular vulnerability of Ms Ahmed due to her fragile health and personal emotional circumstances.<sup>95</sup>

As discussed in the subsections below, although some improvements have been reported in recent years, immigration detainees are still confronted with challenging detention conditions.

**3.3b Safi Barracks, B Block (Safi).** The only remaining long-term detention facility, B-Block at Safi Barracks, has a limited capacity of 200 people.<sup>96</sup> The centre has a common room furnished with tables, benches, and a TV, as well as a small recreation yard and a kitchen.<sup>97</sup>

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<sup>94</sup> UN Committee on the Rights of the Child (CRC), "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," 5 February 2013, <http://www2.ohchr.org/english/bodies/crc/crcs62.htm>

<sup>95</sup> European Court of Human Rights (ECtHR), "Aden Ahmed vs Malta," 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]})

<sup>96</sup> Aditus and Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf); Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), "AIDA Country Profile: Malta," 2016, <http://www.asylumineurope.org/reports/country/malta>

<sup>97</sup> International Commission of Jurists (ICJ), "Not Here to Stay: Report of the International Commission of Jurists on its Visit to Malta on 26-30 September 2011," May 2012, <http://www.refworld.org/topic,50ffbc582,50ffbc5b5,4fe4096a2,0,ICJURISTS,,.html>

At the time of the WGAD's visit in June 2015, only six people were confined here.<sup>98</sup> When the CPT visited the centre in September of 2015, there were still just six detainees registered in the centre, although three were temporarily in Mater Dei Hospital.<sup>99</sup>

Non-citizens are detained at the B-Block Safi Barracks facility for two main reasons: when they have been refused entry at the border or when they are in a pre-removal process for those in an "irregular" situation apprehended inside Maltese territory.<sup>100</sup> 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 authority of the Ministry of Home Affairs and National Security. Notably, the DS is neither established nor regulated by a specific law.<sup>101</sup> In 2009, the ministry informed the GDP 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, 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.<sup>102</sup>

In its 2018 Annual Report, the Monitoring Board for Detained Persons (acting as Malta's National Preventive Mechanism) noted that an on-going concern at the Safi facility is lack of privacy, which has spurred detainees to use their bedding to establish makeshift partitions separating their personal space from that of other detainees. The report also noted the poor quality of food provided to detainees, a key source of complaints at the facility. The Monitoring Board also made a number of additional recommendations, including: allowing the use of personal phones; creating a place of worship that can be used by all religious groups; and making better use of quiet periods to complete renovations and train staff. Despite these recommendations, the Monitoring Board found that the reduction in the number of immigration detainees coupled with improvements in staff attitudes were helping to create an improved environment within the facility.<sup>103</sup>

Concerns over detention conditions at Safi Barracks are not new. In December 2014 the Special Rapporteur on the Human Rights of Migrants visited the 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

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<sup>98</sup> United Nations Working Group on Arbitrary Detention (WGAD), "Report of the Working Group on Arbitrary Detention Follow-Up Mission to Malta, A/HRC/33/50/Add.1," 7 October 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/227/86/PDF/G1622786.pdf?OpenElement>

<sup>99</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "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, CPT/Inf (2016) 25," 25 October 2016, <https://rm.coe.int/16806b26e8>

<sup>100</sup> Aditus, Phone conversation with the Global Detention Project (GDP), 16 August 2017.

<sup>101</sup> Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), "AIDA Country Profile: Malta," November 2015, <http://www.asylumineurope.org/reports/country/malta>

<sup>102</sup> Julian Micallef, (Assistant Director Third Country Nationals, Ministry for Justice and Home Affairs, Malta), Email message to Cecilia Cannon (Global Detention Project), 20 November 2009.

<sup>103</sup> Monitoring Board for Detained Persons, "Annual Report 2018," April 2019, <https://parlament.mt/media/99913/03192.pdf>; J. Debono, "Lack of Privacy Inside Detention Centres, Monitoring Board Finds," *Malta Today*, 30 April 2019, [https://www.maltatoday.com.mt/news/national/94642/lack\\_of\\_privacy\\_inside\\_detention\\_centres\\_monitoring\\_board\\_finds#.XNKqztMzZUQ](https://www.maltatoday.com.mt/news/national/94642/lack_of_privacy_inside_detention_centres_monitoring_board_finds#.XNKqztMzZUQ)



in the same institutions as prisoners and drug offenders, were sometimes handcuffed to their beds or locked in a room, were rarely allowed to shower, and had infrequent medical visits.<sup>104</sup>

Later, during its visit in June 2015, the WGAD observed that conditions in Safi Barracks had improved due to the drastic reduction in the number of detainees. Nevertheless, educational and social programmes were still lacking and strong concerns were expressed regarding the fact that military barracks were being used as a detention facility for migrants.<sup>105</sup>

Following a September 2015 visit, the CPT remarked that the material conditions at Safi Barracks were generally satisfactory, although the facility remained restrictive and the conditions were carceral. In particular, it was noted that 30m<sup>2</sup> rooms were furnished to accommodate 22 persons, when the actual dimensions of the room meant they should only accommodate a maximum of seven people in order to guarantee a minimum living space of 4m<sup>2</sup> per detainee. The committee once again recommended that systematic medical screening be established for newly arrived detainees as well as a screening mechanism to identify potential victims of torture. Recommendations were also made concerning detainees' contact with the outside world, that access to mobile phones should be granted at set times, and that detainees should be able to receive visits on a regular basis and in an appropriate setting.<sup>106</sup>

In 2016, months after the government issued a set of new policies on immigration and asylum procedures, NGOs reported that the policies had not led to improvements in detention conditions.<sup>107</sup>

**3.3c Initial Reception Centre (Marsa).** Malta established the "Initial Reception Centre" (IRC) in 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.<sup>108</sup> As of December 2018, the centre accommodated all non-citizens irregularly arriving in the country.<sup>109</sup> Detention periods can vary between a couple of days and a couple of weeks,<sup>110</sup> even though

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<sup>104</sup> UN Human Rights Council, "Report by the Special Rapporteur on the Human Rights of Migrants, Francois Crepea, Mission to Malta 6-10 December 2014, A/HRC/29/36/Add.3," 12 May 2015, <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/CountryVisits.aspx>

<sup>105</sup> United Nations Working Group on Arbitrary Detention (WGAD), "Report of the Working Group on Arbitrary Detention Follow-Up Mission to Malta (23 to 25 June 2015)," *United Nations General Assembly*, 23 June 2016, [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_33\\_50\\_Add.1\\_AUV.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_33_50_Add.1_AUV.pdf)

<sup>106</sup> 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, CPT/Inf (2016) 25," 25 October 2016, <http://www.refworld.org/docid/581219334.html>

<sup>107</sup> Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), "AIDA Country Profile: Malta," 2016, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf)

<sup>108</sup> Aditus, Jesuit Refugee Service (JRS), and European Council for Refugees and Exiles (ECRE), "AIDA Country Profile: Malta," 2016, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2016update.pdf)

<sup>109</sup> Aditus and Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>110</sup> Aditus, Phone conversation with the Global Detention Project (GDP), 16 August 2017.



official policy stipulates that non-citizens should be held there for a maximum of seven days, unless health concerns require otherwise.<sup>111</sup> According to Aditus and the JRS, as of December 2018 all detainees are required to remain in the centre for a period ranging between two and three weeks for medical clearance.<sup>112</sup>

The Marsa facility resembles the secure reception centres in [Zastavka](#) and [Prague Airport](#) in the Czech Republic, where asylum seekers cannot leave the premises during initial admission procedures. Although Malta does not classify the IRC as a detention centre, since June 2018 it has unofficially operated as a closed facility from which detainees cannot exit at will—as reported by Aditus and the JRS, as well as by the IOM.<sup>113</sup> The GDP thus categorises it as a medium-term dedicated immigration detention centre.

According to Aditus and JRS, the centre accommodates approximately 400 persons.<sup>114</sup>

**3.3d Other centres.** Irregular migrants who are found to be suffering from mental illness are sent to the Mount Carmel Psychiatric Hospital.<sup>115</sup> In 2014, conditions at the migrants' unit of the hospital were deemed inadequate, to the point that migrants held at the psychiatric facility often asked to be sent back to detention.<sup>116</sup>

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 six open—or “non-secure”—reception centres in Malta: two of which are run by NGOs and the remaining four by AWAS. The conditions vary from centre to centre but are generally considered “extremely challenging” due to poor hygiene, overcrowding, remoteness, and poor material structure.<sup>117</sup> The number placed in these facilities has

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<sup>111</sup> Malta Ministry for Home Affairs and National Security, “Strategy for the Reception of Asylum Seekers and Irregular Migrants,” 2016, <https://0d2d5d19eb0c0d8cc8c6-a655c0f6dcd98e765a68760c407565ae.ssl.cf3.rackcdn.com/ee87eb6093978ddf835be5759bc86d018724f3a8.pdf>

<sup>112</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>113</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf); International Organisation for Migration (IOM), “Mixed Migration Flows in the Mediterranean: Compilation of Available Data and Information, February 2019,” 2019, [http://migration.iom.int/system/tdf/reports/Flows%20Compilation%20Report\\_February\\_2019\\_Final\\_0.pdf?file=1&type=node&id=5445](http://migration.iom.int/system/tdf/reports/Flows%20Compilation%20Report_February_2019_Final_0.pdf?file=1&type=node&id=5445)

<sup>114</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

<sup>115</sup> Julian Micallef (Assistant Director Third Country Nationals, Ministry for Justice and Home Affairs, Malta), Phone interview with Cecilia Cannon (Global Detention Project), 19 November 2009.

<sup>116</sup> Times of Malta, “Migrants’ Unit at Mt Carmel Hospital is Completely Substandard – JRS,” *Times of Malta*, 16 December 2014, <https://www.timesofmalta.com/articles/view/20141216/local/migrants-unit-at-mt-carmel-hospital-is-completely-substandard-jrs.548527>

<sup>117</sup> Aditus and Jesuit Refugee Service (JRS), “Country Profile: Malta,” *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)

increased in recent years: in 2016, the total population residing in Malta's open centres was 673,<sup>118</sup> while in December 2018 there were 1,182 persons residing in these facilities.<sup>119</sup>

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<sup>118</sup> United Nations High Commissioner for Human Rights (UNHCR), "UNHCR's Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers," 25 February 2016, <http://www.refworld.org/pdfid/56e963824.pdf>

<sup>119</sup> Aditus and Jesuit Refugee Service (JRS), "Country Profile: Malta," *European Council for Refugees and Exiles (ECRE) and Asylum Information Database (AIDA)*, March 2019, [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_mt\\_2018update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_mt_2018update.pdf)



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