

# Country Report: Malta



2020  
Update

## Acknowledgements & Methodology

This report was jointly researched and written by aditus foundation and was edited by ECRE.

This report draws on the information gathered by the authors' practice, statistical data and other information provided by the Maltese authorities, as well as other available sources.

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The information in this report is up to date as of 31 December 2020, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey and the UK) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.



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## Glossary & List of Abbreviations

<b>AAT</b>	Age Assessment Team
<b>ATD</b>	Alternatives to Detention
<b>AFM</b>	Armed Forces of Malta
<b>AWAS</b>	Agency for the Welfare of Asylum Seekers
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>DS</b>	Detention Service, Ministry for Home Affairs
<b>DVB</b>	Detainees Visitors Board
<b>ECHR</b>	European Convention on Human Rights
<b>EctHR</b>	European Court of Human Rights
<b>EDAL</b>	European Database of Asylum Law
<b>EEPO</b>	European Employment Policy Observatory
<b>FAV</b>	Further Age Verification
<b>FSM</b>	Foundation for Shelter and Support to Migrants
<b>IAB</b>	Immigration Appeals Board
<b>IOM</b>	International Organization for Migration
<b>IRC</b>	Initial Reception Centre
<b>MMA</b>	Malta Migrants' Association
<b>MQF</b>	Malta Qualifications Framework
<b>MQRIC</b>	Malta Qualifications Recognition Information Centre
<b>NCFHE</b>	National Commission for Further Higher Education
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PHP</b>	Provisional Humanitarian Protection
<b>PQ</b>	Preliminary Questionnaire
<b>IPAT</b>	International Protection Appeals Tribunal
<b>IPA</b>	International Protection Agency
<b>SAR</b>	Search and Rescue
<b>SRA</b>	Specific Residence Authorisation
<b>THP</b>	Temporary Humanitarian Protection
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestinian Refugees
<b>VAAP</b>	Vulnerable Adult Assessment Procedure

## Statistics

### Overview of statistical practice

Regular statistics are not published by the authorities. UNHCR Malta regularly publishes information on arrivals, asylum applications, decisions and reception of asylum seekers.<sup>1</sup>

### Applications and granting of protection status at first instance: 2020<sup>2</sup>

	Applicants in 2020	Pending at end 2020	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot.rate	Rejection rate
<b>Total</b>	2,419	4,320	76	192	605	8.5%	22%	69.5%

Breakdown by countries of origin of the total numbers

<b>Sudan</b>	444	1,149	19	0	24	44%	0%	56%
<b>Bangladesh</b>	260	144	0	0	130	0%	0%	100%
<b>Eritrea</b>	227	367	1	5	5	9%	45.5%	45.5%
<b>Nigeria</b>	214	224	1	0	30	3%	0%	97%
<b>Somalia</b>	146	205	0	5	79	0%	6%	94%
<b>Syria</b>	136	366	45	107	57	21.5%	51%	27.5%
<b>Morocco</b>	120	-	0	0	78	0%	0%	100%
<b>Cote d'Ivoire</b>	115	189	1	0	14	6.5%	0%	93.5%
<b>Guinea</b>	81	124	0	0	9	0%	0%	100%
<b>Mali</b>	67	154	0	0	17	0%	0%	100%

Source: International Protection Agency (IPA), April 2021. It should be noted that rejections include inadmissibility decisions

<sup>1</sup> UNHCR Malta, *Figures at a glance*, available at: <https://bit.ly/3bgXj6a>.

<sup>2</sup> UNHCR Malta, *Figures at a glance*, available at: <https://bit.ly/2OJOKLF>.

### Gender/age breakdown of the total number of applicants: 2020

	Number	Percentage
<b>Total number of applicants</b>	2,419	100%
Men	2,024	83.5%
Women	229	9.5%
Children	154	6.5%
Unaccompanied children	12	0.5%

Source: International Protection Agency (IPA), April 2021.

### Comparison between first instance and appeal decision rates: 2020

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	873	100%	-	-
Positive decisions	268	30.5%	-	-
• <i>Refugee status</i>	76	8.5%	-	-
• <i>Subsidiary protection</i>	192	22%	-	-
Negative decisions	605	69.5%	-	-

Source: International Protection Agency (IPA), April 2021. Statistics on second instance decisions were not available at the time of writing of this report.



## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Abbreviation	Web Link
International Protection Act, Chapter 420 <i>Amended by:</i> Act VI of 2015 <i>Amended by:</i> Act VII of 2015 <i>Amended by:</i> Act XX of 2017 <i>Amended by:</i> Act XL of 2020	Refugees Act	<a href="https://bit.ly/30XOgUt">https://bit.ly/30XOgUt</a> (EN) <a href="http://bit.ly/1LQjEov">http://bit.ly/1LQjEov</a> (EN) <a href="http://bit.ly/1Npu2Vg">http://bit.ly/1Npu2Vg</a> (EN) <a href="http://bit.ly/2DKUu18">http://bit.ly/2DKUu18</a> (EN) <a href="https://bit.ly/38PosP3">https://bit.ly/38PosP3</a> (EN)
Immigration Act, Chapter 217	Immigration Act	<a href="http://bit.ly/1ee7pa9">http://bit.ly/1ee7pa9</a> (EN)
Prevention of Disease Ordinance, CAP 36, 1908		<a href="https://bit.ly/2E9u73v">https://bit.ly/2E9u73v</a> (EN)
Minor Protection (Alternative Care) Act, CAP 602		<a href="https://bit.ly/3bX5Z54">https://bit.ly/3bX5Z54</a> (EN)

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Abbreviation	Web Link
Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015 <i>Amended by:</i> Act XL of 2020	Procedural Regulations	<a href="https://bit.ly/3ltkbpI">https://bit.ly/3ltkbpI</a> (EN)
Social Security (UN Convention relating to the Status of Refugees) Order, Legal Notice 291 of 2001	Refugees Social Security Regulations	<a href="http://bit.ly/1eUcuVZ">http://bit.ly/1eUcuVZ</a> (EN)
International Protection Appeals Tribunal (Procedures) Regulations, Legal Notice 252 of 2001	IPAT Regulations	<a href="https://bit.ly/30UbZVE">https://bit.ly/30UbZVE</a> (EN)
Board of Visitors for Detained Persons Regulations, Legal Notice 266 of 2007	DVB Regulations	<a href="http://bit.ly/1GURBTA">http://bit.ly/1GURBTA</a> (EN)
Agency for the Welfare of Asylum-seekers Regulations, Legal Notice 205 of 2009	AWAS Regulations	<a href="http://bit.ly/1GURCHj">http://bit.ly/1GURCHj</a> (EN)
Asylum Procedures (Application for a Declaration) Regulations, Legal Notice 253 of 2001	Declaration Regulations	<a href="http://bit.ly/1KpjB5V">http://bit.ly/1KpjB5V</a> (EN)

Immigration Appeals Board (Additional Jurisdiction) Regulations, Legal Notice 2 of 2012	IAB Dublin Regulations	<a href="http://bit.ly/1ds1pK9">http://bit.ly/1ds1pK9</a> (EN)
Refugee Appeals Board (Chambers) Rules, Legal Notice 47 of 2005	RAB Chambers Regulations	<a href="http://bit.ly/1GHgCyh">http://bit.ly/1GHgCyh</a> (EN)
Reception of Asylum-seekers (Minimum Standards) Regulations, Legal Notice 320 of 2005 <i>Amended by:</i> Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015	Reception Regulations	<a href="https://bit.ly/3rdvDqu">https://bit.ly/3rdvDqu</a> . (EN) <a href="http://bit.ly/1HpyUcd">http://bit.ly/1HpyUcd</a> (EN)
Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, Legal Notice 81 of 2011 <i>Amended by:</i> Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals (Amendment) Regulations, Legal Notice 15 of 2014	Returns Regulations	<a href="https://bit.ly/2U5VQXR">https://bit.ly/2U5VQXR</a> (EN)
Family Reunification Regulations, Legal Notice 150 of 2007	Family Reunification Regulations	<a href="https://bit.ly/2FQ0N33">https://bit.ly/2FQ0N33</a> (EN)
Strategy for the Reception of Asylum Seekers and Irregular Immigrants (2015)	2015 Strategy Document	<a href="https://goo.gl/FFz7qJ">https://goo.gl/FFz7qJ</a> (EN)
Detention Service Regulations, Legal Notice 16 of 2016	Detention Service Regulations	<a href="https://bit.ly/2R5z5RN">https://bit.ly/2R5z5RN</a> (EN)
Migrant Integration Strategy & Action Plan - Vision 2020	Integration Strategy	<a href="https://bit.ly/2FWLF4x">https://bit.ly/2FWLF4x</a> (EN)
Policy regarding Specific Residence Authorisation – Updated policy October 2020	Specific Residence Authorisation	<a href="https://bit.ly/2OZBQJ9">https://bit.ly/2OZBQJ9</a> (EN)

## Overview of the main changes since the previous report update

The report was previously updated in **April 2020**.

### **Arrivals**

In 2020, 2,281 people were rescued at sea and disembarked in Malta. This is a significant decrease compared to 2019 when over 3,400 sea arrivals were recorded. However, search and rescue operations, shipwrecks and disembarkation events continued to take place throughout the year, while media and NGOs reported multiple failures from the authorities to respect Malta's obligation under international law including pushbacks, maritime detention, and delays in rescue coordination.

#### *Closed borders*

On 21 March 2020, in order to contain the COVID-19 pandemic, Malta officially closed its borders for travel purposes and the authorities announced in April that no migrant would be allowed to disembark in Malta. This resulted in Malta refusing all disembarkation of people rescued at sea, including the rescue operations carried out by the Maltese authorities themselves. Malta made use of private vessels outside territorial waters to detain people rescued at sea. By the end of May 2020, 425 persons were kept aboard four vessels, allegedly for quarantine purposes. This situation sparked outrage from Maltese NGOs relentlessly calling on the government to end this *de facto* detention in inhumane conditions. The EU Commission also urged Malta to immediately disembark the detained migrants. On 6 June 2020, Malta disembarked the group, but only to place them directly in its detention centres.

#### *Pushbacks*

On 15 April 2020, a group of 51 people, including women and children, were unlawfully returned to Tripoli after having been rescued in Malta's SAR area by a Libyan-flagged fishing boat routinely docked in Malta. Five bodies were recovered whilst migrants onboard also reported seven missing to the International Organisation for Migration (IOM). Although the boat sent several alarm messages, it took days for Italy and Malta to send out air reconnaissance flights. Eventually, Malta coordinated their return to Libya. Upon arrival, the 51 survivors were placed in detention. In the investigations following the incident, a former official in the Office of the Prime Minister recounted how, during previous years, Malta would prevent migrant boats from entering Malta's SAR zone but alerting the Libyan coast guard about their presence. In summer 2020, Malta and Libya signed a Memorandum of Understanding aimed at coordinating respective efforts on migration issues.

### **Asylum procedure**

In 2020, the asylum procedure in Malta was reformed in law and also in policy. The new International Protection Act established an International Protection Agency and an International Protection Appeals Tribunal, in replacement of the Office of the Refugee Commissioner and the Refugee Appeals Board. Despite some positive steps (establishment of more formal procedures, revision of interview and assessment templates, legalisation of a temporary humanitarian protection status, additional safeguards for vulnerable applicants), the reform did not address some of the most important issues faced by asylum-seekers in Malta, namely the lack of effective remedy for applications processed under accelerated procedures and the lack of capacity of the (non-judicial) appeal body. In 2020, the European Asylum Support Office (EASO) further increased its support to the asylum authorities since mid-2019. The Agency is now involved in almost all steps of the procedure: registration and lodging of applications, conducting personal interview, and drafting assessment or assisting with Dublin cases.

## **Reception conditions**

The reception system (open centres and other State-funded accommodation) had already reached its full capacity in 2019. As a result, newly arrived applicants in 2020 could not access reception centres and were systematically held in detention. Despite notable improvements – increased capacity of staff in the centres; development of information provision systems; new vulnerability assessment procedure; *per diem* allowance extended to asylum-seekers not living in the centres – the situation remained very chaotic due to the serious lack of space and lack of resources, leading to deteriorated living conditions. The length of stay in the reception system was lowered from one year to six months, except for families and the vulnerable. As a result, homelessness has been steadily on the rise, in particular during a year of pandemic when protection beneficiaries, applicants, and other migrants struggled to find or secure employment.

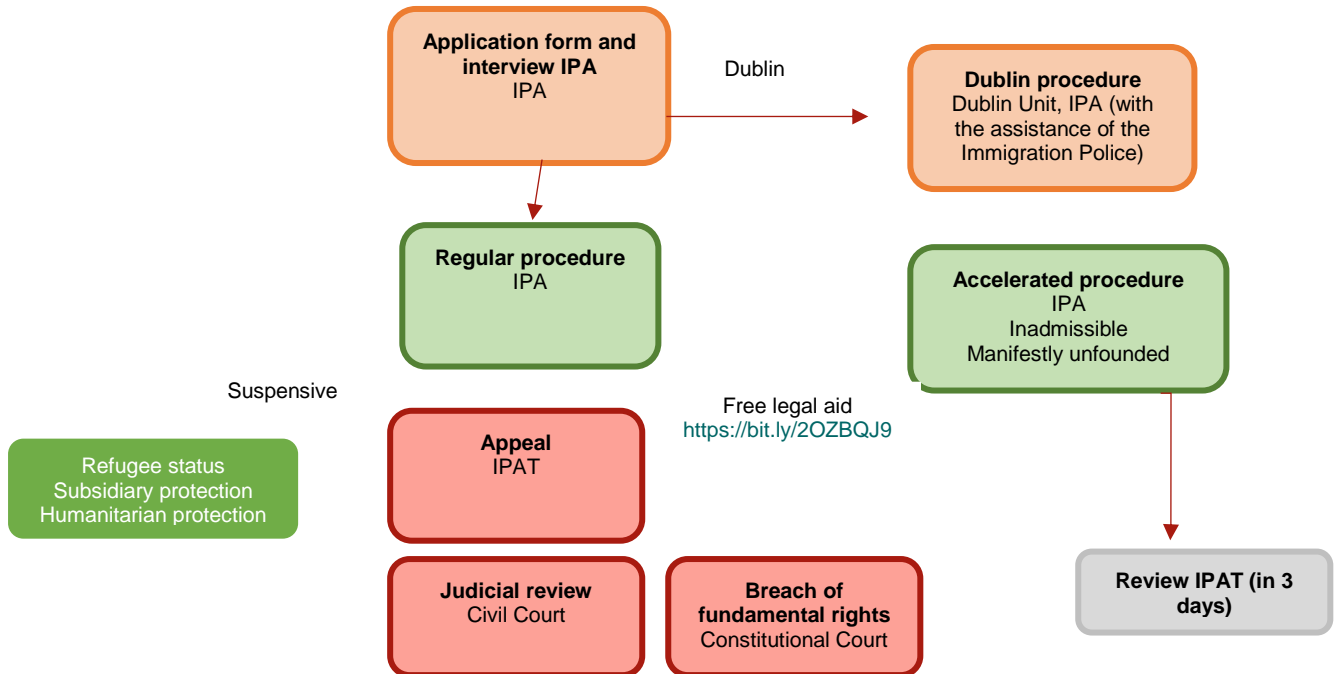
## **Detention of asylum seekers**

In 2020, all applicants rescued at sea and disembarked in Malta were automatically detained without any form of individualised assessment. As a result, vulnerable applicants, including minors, were also *de facto* detained upon arrival. Newly arrived asylum-seekers were detained under different legal regimes, largely depending on their nationality. Applicants coming from a country listed in the Act's safe country of origin list were generally detained under the recast Reception Conditions Directive, without the possibility to effectively challenge their detention. Other applicants were detained under either national public health legislation or under no legal regime at all but on a *de facto* basis. Both situations were declared illegal by the Maltese courts. Applicants detained in the latter two scenarios were generally released when space was made available in the open reception centres, often after several months of arbitrary detention. Moreover, due to the Covid-19 pandemic, access to detention was severely restricted for all entities, including NGOs, for several weeks, leaving detained applicants without any information or counsel regarding their situation. The Council of Europe Committee for the Prevention of Torture visited Malta in September 2020 and confirmed the systematic arbitrary detention of all asylum-seekers without any access to information or effective remedy, in conditions that were described as "*institutional neglect*".

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |   |   |  |
|---|---|--|
| ❖ Regular procedure:                    | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>3</sup> | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: <sup>4</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                     | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: <sup>5</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Other:                                |   |  |

Are any of the procedures that are foreseen in the law, not being applied in practice?  Yes  No

## 3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)
Application	International Protection Agency
Dublin (responsibility assessment)	Dublin Unit, (within the International Protection Agency)
Refugee status determination	International Protection Agency
Accelerated procedure	International Protection Agency and International Protection Appeals Tribunal (joint procedure)
Appeal	International Protection Appeals Tribunal
Subsequent application (admissibility)	International Protection Agency

## 4. Number of staff and nature of the determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
International Protection Agency (IPA)	28	Ministry for Home Affairs, National Security and Law Enforcement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Malta amended its Refugees Act in August 2020, transforming the Office of the Refugee Commissioner (RefCom) into the International Protection Agency (IPA) without changing its mandate. The IPA is the authority responsible for examining and determining applications for international protection at first instance.<sup>6</sup> The IPA is a specialised authority in the field of asylum. However, it falls under the Ministry also responsible for Police, Immigration, Asylum, Correctional Services and National Security. As of the end of 2020, the Office of the Refugee Commissioner, now the International Protection Agency employed 28 staff, among them 19 are case workers. Out of these 19 case workers, 5 are in charge of drafting decisions on asylum applications.

<sup>3</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>4</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>5</sup> Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

<sup>6</sup> Article 4 International Protection Act.

In 2019, due to a large increase in sea arrivals, the Maltese authorities requested EASO support in several areas, including the registration and lodging of applications, the interview and assessment of applications and support to increase the capacity and efficiency of the Dublin Unit. An operational and technical assistance plan was therefore signed on 24 June 2019.<sup>7</sup>

Given the continued increase in sea arrivals, a new plan for 2020 was signed between Malta and EASO in December 2019.<sup>8</sup> This plan foresaw that EASO would strengthen and increase the support already provided but also add additional support in the field of reception. This new plan did not only foresee support for the screening and referral of vulnerable cases, but also support to establish a Country of Origin Information unit and to enhance a quality control mechanism through the deployment of quality control officers and research officers. Moreover, in 2020, EASO gradually increased support for the Agency for the Welfare of Asylum Seekers (AWAS) in the management of reception capacity/facilities, vulnerability screening and referral and age assessment. This is done by deploying social worker experts, vulnerability officers and other experts.

In 2020, EASO deployed 85 different experts in Malta across asylum and reception-related activities. The majority of them were caseworkers (23), flow managers, field support officers (16), registration support staff (14), vulnerability assessors (14), and other support staff (e.g. administrative staff, operations staff, Dublin staff). As of 14 December 2020, there were a total of 53 EASO experts in Malta, mainly caseworkers (11), vulnerability assessors (11), and registration support staff (6).<sup>9</sup>

On 11 December 2020, a new operation plan was signed with Malta for the year 2021.<sup>10</sup> It foresees to strengthen the support already provided and identifies two priority needs to be addressed: firstly, improve the access to the asylum procedure and increase capacity to manage the asylum backlog at first instance determination; secondly, enhance the capacity of the Maltese authorities to implement reception standards in line with the CEAS.

In order to achieve the first objective to improve access to the asylum procedure and manage the backlog at first instance, EASO will continue to support the IPA and AWAS with information provision, screening of vulnerable cases, document analysis, registration, interview, drafting of evaluation reports but also the Agency will help with the creation of a Quality Control Unit and a COI Unit. EASO will also offer support in terms of interpretation and training. These objectives will be achieved with the deployment of 10 registration personnel and 2 Member States experts, 10 clerical personnel, 2 flow management support officers, 1 document analysis expert, 15 case workers, 3 team leaders, up to 5 Member States experts to complement the case workers and team leaders, 2 Dublin assistants, 2 quality assurance support officers, and 2 COI researchers.

In order to meet the second priority for reception, the Plan foresees to support AWAS in creating an information provision package, delivering information provision sessions. EASO will also support the national referral mechanism, the identification of vulnerable cases and the age assessment procedure. The Agency will also develop guidelines, guidance, SOPs, and any other necessary tool. Training and interpretation are also included in the Plan. In order to achieve these objectives, EASO will deploy a number of staff, including 5 information providers, 2 quality assurance support officers, 5 information providers, 2 quality assurance support officers and 20 vulnerability assessment officers, 1 or 2 vulnerability focal points, 6 Care Team officers, up to 9 social workers and up to 3 Member States experts on vulnerability assessment, 1 flow management support officer as well as interpreters.

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<sup>7</sup> 2019 Operational and Technical Assistance Plan Agreed by EASO and Malta, 24 June 2019, available at: <https://bit.ly/3b8FQ00>.

<sup>8</sup> 2020 Operational and Technical Assistance Plan Agreed by EASO and Malta, 12 December 2019, available at: <https://bit.ly/3abiYfn>.

<sup>9</sup> Information provided by EASO, 26 February 2021.

<sup>10</sup> EASO, 2021 *Operating plan agreed by EASO and Malta*, 11 December 2020, available at: <https://bit.ly/3tpXLIW>.

## 5. Short overview of the asylum procedure

The procedure in place is a single procedure with the examination and determination of eligibility for subsidiary protection being undertaken by the International Protection Agency (IPA) within the context of the same procedure. The IPA is the only entity authorised by law to receive applications for international protection. Should the individual express a need for international protection at the border, this information is passed on to the IPA for the necessary follow-up. Since 2019, the IPA has been supported by EASO across asylum and reception-related activities.

The registration process – whether undertaken by the IPA or EASO - consists of collecting personal details and issuing a unique IPA number as well as the Asylum Seeker Document/Certificate. It also consists in lodging applications wherein asylum-seekers are requested to fill in the application form stating the basic reasons for seeking protection.

All those who apply for asylum are systematically fingerprinted and photographed by the immigration authorities for insertion into the Eurodac database. Those who enter Malta irregularly are now immediately placed in detention and are subsequently fingerprinted and photographed.

The initial stages of the procedure requires completion an application form which asylum seekers are asked to fill in and sign. This constitutes the lodging of the application.<sup>11</sup>

Dublin assessments are conducted for all cases and if necessary, an interview with the Dublin Unit is scheduled. If required, the examination of the application for protection is suspended pending the outcome of the Dublin procedure. The CEO of the IPA is designated as the head of the Dublin Unit.

Following the initial collection of information in the application form, and if Malta is deemed responsible for processing the application, an appointment is scheduled by the IPA for an interview with the applicant. After the recorded interview takes place, the applicant is informed that he or she will be notified of the decision in due course.

The caseworkers' decision on the application is reviewed by a more experienced officer or manager and the final decision is made by the IPA.<sup>12</sup>

According to the amended Procedural Regulations, the IPA shall ensure that the examination procedure is concluded within six-months of the lodging of the application. The examination procedure shall not exceed the maximum time limit of twenty-one months from the lodging of the application.<sup>13</sup> However, most of the decisions taken by the IPA are, in practice, not taken before the lapse of six months.

National law specifies a two-week time period from when an applicant is notified of the decision of the IPA during which he or she may appeal to the International Protection Appeals Tribunal IPAT (as established by the International Protection Act and replacing the Refugee Appeals Board (RAB)). This Tribunal, an administrative tribunal set up in terms of the International Protection Act and which is currently made up of three chambers, is entrusted to hear and determine appeals against decisions issued by the IPA. An appeal to the Tribunal has suspensive effect such that an asylum seeker may not be removed from Malta prior to a final decision being taken on his or her appeal.<sup>14</sup> In the majority of cases, the decision given by the IPAT is binding on the parties and the Tribunal will not remit it back to IPA to take a new decision.

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<sup>11</sup> Information provided by the International Protection Agency, September 2020.

<sup>12</sup> ECRE, *Asylum authorities: an overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/2Ut8QIK>, 55.

<sup>13</sup> Regulation 6(6) Procedural Regulations.

<sup>14</sup> Regulation 12 Procedural Regulations.



The International Protection Act specifies that no appeal is possible from the decision of the IPAT, although it is possible to submit a judicial review application to the First Hall of the Civil Court.<sup>15</sup> Notwithstanding this, no appeal lies on the merits of the decision except the possibility of filing a human rights claim to the Constitutional Court alleging a violation of fundamental human rights in terms of the European Convention on Human Rights (ECHR) and/or the Maltese Constitution, should the rejected appellant be faced with a return that is prejudicial to his or her rights.<sup>16</sup>

Accelerated procedures are also foreseen in national law for applications that appear to be *prima facie* inadmissible or manifestly unfounded. In practice, most applicants are interviewed by the IPA although their case might be classified as being inadmissible or manifestly unfounded following an evaluation of their asylum claim.

In such cases, the accelerated procedure kicks in at the appeal stage. The decision of the IPA is transmitted to the IPAT with the Tribunal having a three-day time limit, specified in law, during which an examination and review of the IPA's decisions to be carried out.<sup>17</sup>

The procedure for determining applications for international protection from detained applicants is identical to that for applicants who are not detained. Asylum seekers who arrive in Malta without the required documentation, therefore being classified as "prohibited immigrants", are automatically and systematically detained upon arrival in immigration detention facilities. In such cases, their application for protection starts to be examined while they are in detention and interviews are also now conducted in detention.

The amendments to the Refugees Act in 2020 also formalised the Temporary Humanitarian Protection (THP) status into legal norms.

This status was before granted by the IPA to failed asylum-seekers who, for personal and specific reasons unrelated to international protection needs, were unable to return to their countries of origin. It was only a policy-based approach granting regularisation and a set of rights to the persons. Over the years, THP was granted to hundreds of people, including elderly persons, unaccompanied minors, and persons suffering from chronic illness. Being only policy-based, there was a broad margin of discretion and the set of rights attached to such status was not fully clear.

THP is now included in the International Protection Act, and it is granted to "an applicant for international protection who does not qualify for refugee status or subsidiary protection status, but who is deemed to qualify for protection on humanitarian grounds".<sup>18</sup> The law is listing several categories of persons eligible for such status: an accompanied minor who cannot return to his country of origin pursuant to the principle of the best interest of the child; a terminally ill applicant or one who suffers from a severe or life-threatening medical condition not treatable in his country of origin; and an applicant who cannot be returned for other humanitarian reasons which can include serious disability affecting the applicant's normal life. Applicants who committed crimes as defined in the International Protection Act are excluded from this status.

THP is now included in the asylum procedure in the sense that the Act specifies that the decision concerning the granting of THP will be given in conjunction with the determination that the applicant does not meet the criteria of a refugee or a subsidiary protection beneficiary. The Act also clearly mentions that no appeal shall be made following a decision by the IPA not to grant THP.<sup>19</sup> THP set of rights will be similar to those attached to the subsidiary protection status.

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<sup>15</sup> This is the Chamber of general jurisdiction. For further information on the First Hall of the Civil Court see the website of Malta's judiciary, available at: <http://bit.ly/1ds58HF>.

<sup>16</sup> Article 7(9) International Protection Act.

<sup>17</sup> Articles 23 and 24 International Protection Act.

<sup>18</sup> Art 17A International Protection Act.

<sup>19</sup> Art 17A (1) International Protection Act.

NGOs reacted positively to the legalisation of such status but deplored the fact that the assessment of THP is now included in the interview for asylum, as the assessments of eligibility to these distinct statuses require entirely different approaches and a different set of elements, information, and documents to examine. The lack of possibility to appeal was also negatively highlighted as it gives all discretion to the IPA. 6 temporary humanitarian statuses were granted in 2020.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No
2. Is there a border monitoring system in place?  Yes  No
  - ❖ If so, who is responsible for border monitoring?  National authorities  NGOs
  - ❖ If so, how often is border monitoring carried out?  Frequently  Rarely  Never

In November 2015, following the transposition of the recast Reception Conditions Directive and the recast Asylum Procedures Directive into national legislation, the authorities launched a policy document entitled “Strategy for the Reception of Asylum Seekers and Irregular Migrants” (Strategy Document) detailing a new system to be put in place in respect of procedures and reception for asylum seekers.<sup>20</sup>

According to this new system, all migrants entering Malta irregularly by boat were first pre-screened upon arrival by the Police and Health authorities. They were then taken to an Initial Reception Centre (IRC) **Marsa** in order “to be medically screened and processed by the pertinent authorities”.<sup>21</sup> According to the authorities, migrants could be kept in this centre for a time limited of up to seven days, unless health-related considerations so dictate. This IRC is administrated by the Agency of the Welfare of Asylum Seekers (AWAS) within the Ministry for Home Affairs, National Security and Law Enforcement.

During their stay, migrants were provided with information about their right to apply for international protection, assigned a caseworker, and interviewed by Immigration Police.

An assessment of the need to detain the applicant was then carried out by the Principal Immigration Officer based on the limited list of detention grounds foreseen in the amended legislation.<sup>22</sup> Following this assessment, the applicant was either put in detention or offered accommodation in an open centre.

This procedure changed in mid-2018 when the new Italian government withdrew from the informal agreement concluded between Italy and Malta in 2014.<sup>23</sup> As a consequence, people rescued within Maltese territorial waters and its Search and Rescue (SAR) zone are now disembarked in Malta.

Therefore, the number of arrivals increased significantly leading the authorities to revise their 2015 reception policy and to again resort to the systematic and automatic detention of all applicants entering

<sup>20</sup> Ministry for Home Affairs, National Security and Law Enforcement, *Strategy for the reception of asylum seekers and irregular migrants* (hereafter “Strategy Document”), November 2015, available at: <http://bit.ly/2kPVI3A>, 9-10.

<sup>21</sup> *Ibid*, 10.

<sup>22</sup> Regulation 6(1) Reception Regulations.

<sup>23</sup> Following an informal agreement between Italy and Malta in 2014, almost all persons rescued at sea, including persons rescued by the Armed Forces of Malta, and those rescued in Maltese territorial waters or Malta’s Search and Rescue Zone, were disembarked in Italy. As a consequence, very few persons arrived in Malta by boat between 2014 and mid-2018, all of whom were medical evacuations.

Malta irregularly, as was the case pre-2015. This new detention regime was imposed in 2019 on “reasonable grounds” to believe that arrivals carry contagious diseases and need to be medically screened (see [Detention](#)).

According to the Strategy Document, migrants entering Malta irregularly by plane and subsequently apprehended at the airport should be taken to the IRC. They are now directly placed in detention.

### Arrivals by boat

From January to December 2020, 2,281 people were rescued at sea and disembarked in Malta. This is a significant decrease compared to 2019 sea arrivals (3,406 sea arrivals in total). Out of the 2,281 migrants, 67% were men, 6% were women and 27% were children (24% were unaccompanied children).<sup>24</sup> The main countries of origin were **Sudan** (28%), **Bangladesh** (12%), and **Eritrea** (12%). Except for women and obvious minors, all asylum-seekers disembarked in Malta were automatically and systematically detained upon arrival, very often for several months. Search and rescue events and disembarkation continued to occur throughout the year and the media and NGOs reported multiple failures from the authorities to respect Malta’s obligation under international law. This section provides a chronological overview of the different arrivals and relevant developments in 2020.

On 27 January 2020, 142 migrants were rescued at sea and disembarked in less than 24 hours. A first group consisted of 47 people located in the Maltese SAR zone, Alarm Phone informed the Armed Forces of Malta which intervened several hours later. Another group of 95 people were disembarked the day after.<sup>25</sup>

Two days later, on 29 January 2020, Malta finally agreed to disembark 77 persons after negotiations on relocation agreements for 27 persons. These migrants were rescued by the Alan Kurdi operating for Sea Eye and eventually transferred to the Armed Forces of Malta AFM. The Maltese authorities immediately stated that “Malta is already doing more than its fair share of solidarity and it is currently experiencing disproportionate pressure with its reception facilities under stress”.<sup>26</sup>

In February 2020, a group of 47 migrants were disembarked after being rescued in the Maltese SAR zone and transferred immediately to detention.<sup>27</sup>

In March 2020, 48 hours after the alarm sent by Alarm Phone, AFM rescued a distress boat of 112 people.<sup>28</sup> The ONG publicly blamed the Maltese authorities for leaving the migrants out at sea for a long time.<sup>29</sup> They also reported that the day before, they were informed that the Maltese authorities had pushed back 49 people to Libya aboard a fiberglass boat, located in the Maltese SAR zone and eventually by the Libyan Coast Guard. Alarm Phone claimed that FRONTEX was involved in the said push-back.<sup>30</sup>

On 21 March 2020, in order to contain the COVID-19 pandemic, Malta officially closed their borders for travel purposes through Legal Notice 92 of 2020, Travel Ban (Extension to all Countries) Order.<sup>31</sup>

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<sup>24</sup> UNHCR statistics, 2021, available at: <https://bit.ly/38PBFHv>.

<sup>25</sup> Times of Malta, ‘Armed Forces rescue 142 migrants at sea’, 29 January 2021, available at: <https://bit.ly/38Q5xUc>.

<sup>26</sup> Times of Malta, ‘Malta agrees to take in 50 stranded migrants after deal reached’, 29 January 2020, available at: <https://bit.ly/2P5A35b>.

<sup>27</sup> Times of Malta, ‘Migrants brought to Malta after rescue’, 2 February 2020, available at: <https://bit.ly/3looH8J>.

<sup>28</sup> Reuters, ‘Malta rescues 112 migrants from sinking boat’, 15 March 2020 available at: <https://reut.rs/3tfAd9s>.

<sup>29</sup> Malta Today, ‘AFM rescues 112 migrants after 48-hour wait’, 15 March 2021, available at: <https://bit.ly/3rYjPJZ>.

<sup>30</sup> Reuters, ‘Malta rescues 112 migrants from sinking boat’, 15 March 2020, available at: <https://reut.rs/3tfAd9s>.

<sup>31</sup> A previous ban taken on 12th March already prohibited travel from France, Germany, Italy, Switzerland, Japan, Spain, South Korea, China, Singapore, and Iran.

On 9 April 2020, the AFM rescued a large group of migrants within the Maltese SAR Zone. Immediately after, the Government announced that Malta “is not in a position to guarantee the rescue of prohibited immigrants on board of any boats, ships or other vessels, not to ensure the availability of a “safe place” on the Maltese territory to any persons rescued at sea.”<sup>32</sup>

Promptly after, the AFM was accused by the NGO Alarm Phone of having organised the sabotage of the boat located within the Maltese SAR zone by cutting the electrical cord of their engine and by leaving the boat drifting for several days. This was evidenced by an audio recording made by a migrant present on the boat and was reported in The New York Times.<sup>33</sup>

The authorities did not address such accusations simply stating that a boat was rescued, but announced that from now on, Malta’s port was closed for any further disembarkation.<sup>34</sup> The authorities then issued a statement that in light of Covid-19 and the logistical and structural problems for health services associated therewith, Malta could no longer “guarantee the rescue of prohibited immigrants on board of any boats, ships or other vessels, nor to ensure the availability of a ‘safe place’ on Maltese territory to any persons rescued at sea”.<sup>35</sup> With this statement, Malta has effectively shut its sea borders to those who arrive by sea and are in need of international protection.<sup>36</sup>

On 15 April 2020, a group of 51 people, including seven women and three children, were unlawfully returned to Tripoli after having been rescued in Malta’s SAR region by the fishing boat Dar Al Salam, a Libyan-flagged vessel routinely docked in Malta. Five bodies were recovered whilst migrants also reported seven missing to the IOM.<sup>37</sup> Even though the boat sent alarm messages on 10 April 2020, no rescue operation seems to have happened before 13 April when Italy and Malta sent out air reconnaissance flights. Eventually, Maltese authorities coordinated their return to Libya. Upon arrival, the 51 survivors were placed in detention.<sup>38</sup> IOM confirmed that “[t]he migrants were rescued by a commercial ship from the Maltese search and rescue zone and handed over to the Libyan Coast Guard. We reiterate that people rescued at sea should not be returned to unsafe ports”.<sup>39</sup> UNHCR also expressed criticism about their transfer to Libya, describing the survivors as “traumatized and weakened by days adrift at sea” and reiterating that “Libya is a country at war and not a safe port for refugees and asylum-seekers to be returned to”.<sup>40</sup>

After the rescue, Malta issued a press release explaining their actions and confirming having coordinated the operation but contesting the fact that the boat was left floating in the Maltese SAR zone.<sup>41</sup> The same day, a Maltese civil society organisation Reppublika filed a police report against AFM and the Prime Minister for their inaction endangering the lives of the people on the boat. A magisterial inquiry was opened, and the appointed magistrate eventually dismissed the accusations. Several days later, the Times of Malta, a local newspaper, published an expose accusing the authorities of orchestrating the return of the migrants to Libya through a fishing vessel registered in Libya, but owned by a Maltese

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<sup>32</sup> FRA, via The Malta Independent, ‘Malta accepts group of rescued migrants, but says it will not allow more disembarkations’, 9 April 2020, available at <https://bit.ly/2POI8Zd>; The Associated Press, ‘Malta rescues 70 migrants, suspends rescues due to virus’, 10 April 2020, available at <https://bit.ly/3vCcsdq>; The New York Times, ‘Malta Accused of Sabotaging Migrant Boat’, 9 April 2020, available at <https://nyti.ms/38QUTMS>.

<sup>33</sup> The New York Times, Malta accused of sabotaging migrant boat, 9 April 2020, available at: <https://nyti.ms/38QUTMS>.

<sup>34</sup> Times of Malta, ‘OPM refuses to deny claims that AFM sabotaged migrant boat’, 11 April 2020, available at: <https://bit.ly/3eQRtxE>.

<sup>35</sup> Statement by the Government of Malta, 9 April 2020, available in Maltese at: <https://bit.ly/2VreEnP>.

<sup>36</sup> Times, of Malta, ‘Malta says it will not accept any more migrants, because of COVID-19’, 9 April 2020, available at: <https://bit.ly/3eHqC4y>.

<sup>37</sup> Times of Malta, ‘Five migrants found dead in boat stranded in Maltese waters’, 15 April 2020 available at: <https://bit.ly/3lrT9i0>.

<sup>38</sup> Amnesty International, ‘Malta waves of impunity’, 2020, available at: <https://bit.ly/3tzWdMb>.

<sup>39</sup> Official Twitter account of the International Organization for Migration in Libya, 15 April 2020, available at: <https://bit.ly/3qTE8Xv>.

<sup>40</sup> UNHCR Libya on Twitter, 15 April 2020, available at: <https://bit.ly/2P6nuXi>.

<sup>41</sup> Statement by the Government of Malta, 15 April 2020, available at: <https://bit.ly/3ly75HC>.

national.<sup>42</sup> The news sparked outrage among the NGO community which expressed their anger over the deaths of migrants and the illegal push-back of the survivors to Libya. Healthcare professionals also reacted pointing out that allowing people to die in the name of public health was contradictory.<sup>43</sup> The Government reiterated and justified its decision to close its port and claimed that Malta followed the established coordination procedure when the boat entered Malta's SAR zone.<sup>44</sup>

On 29 April 2020, Malta rescued a group of 60 migrants in their SAR zone. The Maltese government issued a statement that these migrants would not be allowed to disembark in Malta as a consequence of the closure of the ports because of the Covid-19 pandemic. During April and May 2020, Malta refused all disembarkation of people rescued at sea, including the rescued carried out by the Maltese authorities themselves.

The Government then started to use private vessels, small ferry boats generally used for tourist cruises, along Malta's coast to host people rescued at sea. By the end of May 2020, 425 persons were kept aboard four vessels, allegedly for quarantine purposes.<sup>45</sup> The Prime Minister stated indeed that the use of such ferries was justified by the need "to protect those migrants who were at the time in the open centres, from the risk of contracting the infectious disease".<sup>46</sup> NGOs, including Amnesty International, reacted that this was not consistent with the duration of this *de facto* detention since some people were kept more than a month.<sup>47</sup>

For several weeks, lawyers, NGOs, and even UNHCR were prevented from accessing the people on these boats.<sup>48</sup> Maltese NGOs relentlessly called on the government to disembark people in order to stop this *de facto* detention, in inhumane conditions, on tourists boats not equipped to host so many people for such a long time.<sup>49</sup>

As late as 6 June 2020, the Maltese government finally announced that the 425 persons detained were authorised to disembark. It is reported that the bad weather and rough conditions at sea linked with exasperation of people detained convinced the authorities to disembark people even though the Prime Minister claimed that the disembarkation occurred because the quarantine elapsed.<sup>50</sup> Migrants disembarked were detained upon arrival.

Several Member States pledged to relocate some of the migrants detained on board, France, Germany, Luxembourg, and Portugal were mentioned as countries having offered to take some of the migrants.<sup>51</sup>

On 7 July 2020, a group of 50 migrants stuck for three days on board a Syrian livestock transport ship, inadequate for transport of human beings, were finally disembarked in Malta after being rescued within

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<sup>42</sup> The Times of Malta, 'How a Maltese fishing boat pushed migrants back to Libya', 24 April 2020, available at: <https://bit.ly/3eQeOze>.

<sup>43</sup> Times of Malta, 'Five migrants found dead in boat stranded in Maltese waters', 15 April 2020, available at: <https://bit.ly/2XKLyRX>.

<sup>44</sup> Statement by the Government of Malta, 15 April 2020, available at: <https://bit.ly/2XLKBsx>.

<sup>45</sup> Malta Today, 'Rescued migrants to be kept on Captain Morgan vessel outside territorial waters', 30 April 2020, available at: <https://bit.ly/2NsLHa7>.

<sup>46</sup> Times of Malta, '128 migrant relocation pledges yet to materialise', Malta tells EU in letter, 1 May 2020, available at: <https://bit.ly/2OlilFd>.

<sup>47</sup> Amnesty International, Malta waves of impunity, 2020, available at: <https://bit.ly/3tzWdMb>.

<sup>48</sup> See Aditus, 'JRS and Integra submissions to the UN Special Rapporteur on the Human Rights of Migrants and to the UN Working Group on Arbitrary Detention' at: <https://bit.ly/3luk10X> and <https://bit.ly/3tvidHP>.

<sup>49</sup> JRS, Integra, Aditus, Our open letter to EU Commissioner Johansson regarding the detention of rescued migrants on private vessels just outside our territorial waters, 16 May 2020, <https://bit.ly/38QzseG>.

<sup>50</sup> Malta Today, 'Update 4: All four boats carrying 425 asylum seekers to dock in Malta', 6 June 2020, available at: <https://bit.ly/2QbpwWN>.

<sup>51</sup> The Malta Independent, 'Another EU member state offers to take migrants from Malta', 14 June 2020, <https://bit.ly/3r2RUY8>.



the Maltese SAR zone.<sup>52</sup> At the end of the month, the NGO Alarm Phone and IOM further reported that a boat with 95 people, including a baby, were left in the Maltese SAR zone for more than a day before being rescued by the AFM.<sup>53</sup>

Several boats arrived again in August 2020. After concerns were raised about a group being pushed back after a patrol boat was spotted in their vicinity but held off on rescuing them for several hours, 71 persons were disembarked on 2 August.<sup>54</sup> On 20 August, the AFM announced it had rescued 118 persons who were drowning in the Maltese SAR zone. The authorities also stated that the Government “was committed to continue to cooperate with the Libyan authorities to prevent more arrivals and deaths in the Mediterranean”.<sup>55</sup>

In September 2020, migrants rescued by the cargo ship Maersk Etienne were finally disembarked in Italy after being stranded at sea for nearly six weeks, after one of the longest standoffs in the Mediterranean between a boat and EU governments. The migrants were rescued in Tunisian waters. Malta refused to disembark despite numerous attempts by the cargo crew, arguing that the migrants on board the Maersk Etienne were not “the country’s responsibility as the vessel sails under the Danish flag”. The Danish government also declined responsibility.<sup>56</sup>

In October 2020, 38 persons were rescued and disembarked. As most people rescued were from Morocco, the authorities immediately stated they considered Morocco as a safe country of origin and that their claims will be processed as “quickly as possible”.<sup>57</sup>

## Relocations

Relocations from Malta continued to happen on an *ad hoc* basis throughout 2019 and 2020, involving non-binding, informal agreements with other EU Member States. This practice prevented many asylum seekers from having access to the asylum procedure and even to the territory of Malta for the time needed to secure the agreement of other EU Member States to take in a number of rescued persons on an *ad hoc* basis. Moreover, COVID-19 and applicable travel restrictions hindered the possibility to carry out relocations in 2020.

To illustrate, those to be relocated to other Member States were not allowed to lodge an asylum application in Malta and were not given any information on how to do so, even though some Member States’ authorities have deployed officers to interview them in the Initial Reception Centre Marsa (IRC).<sup>58</sup> This also meant that Dublin procedures could not be initiated. Moreover, having no access to the procedure, these potential asylum seekers were systematically (*de facto*) detained (at times for prolonged periods of time) in detention centres, without any individual assessment of the legality of their detention being conducted. They also had limited access to assisting NGOs and lawyers and lacked information regarding the rights and obligations of asylum seekers prescribed by Maltese and EU law. Instances were noted of some asylum seekers being left in a form of limbo and, despite being channelled into the

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<sup>52</sup> The Times of Malta, ‘Sea-sick migrants kept in stinking animal spaces on rescue ship off Malta’, 5 July 2020, available at: <https://bit.ly/2OAGCgA>.

<sup>53</sup> The Times of Malta, ‘95 rescued migrants brought to Malta’, 27 July 2020, available at: <https://bit.ly/38NOVMU>.

<sup>54</sup> The Times of Malta, ‘71 migrants rescued by Maltese armed forces’, 2 August 2020, available at: <https://bit.ly/3bTFZar>.

<sup>55</sup> The Times of Malta, ‘Army saves 118 drowning migrants in Malta’s search and rescue zone’, 20 August 2020, available at: <https://bit.ly/3r5edwl>.

<sup>56</sup> InfoMigrants, ‘Migrants on cargo ship Maersk Etienne disembark in Italy after 39 days at sea’, 14 September 2020, available at: <https://bit.ly/3qWaYac>.

<sup>57</sup> The Times of Malta, ‘Armed Forces rescue 38 migrants drifting in Maltese waters’, 3 October 2020, available at: <https://bit.ly/30QZDNY>.

<sup>58</sup> Le Monde, ‘Pour les 58 migrants débarqués de l’« Aquarius » à Malte, l’île est « comme une prison »’, 2 October 2018, available in French at: <https://bit.ly/3v8ppuy>.

relocation route, were never actually selected, or taken up by the Member States participating in the specific relocation exercise.

In 2020, IOM Malta supported the voluntary relocation of 270 people from Malta, including 28 children under the age of 12. The first relocation in 2020 took place in May, when 17 people were relocated to France despite travel restrictions.<sup>59</sup>

## **Criminalisation**

Concerns have been raised in recent years in Malta regarding the criminalisation by the authorities of the use of false documentation by asylum-seekers in their attempt to enter Malta. Asylum seekers entering Malta with fake documents are brought before the Magistrates Court (Criminal Judicature) and in most cases condemned to serve a prison sentence. The prosecutions are based on the Maltese Criminal Code and the Immigration Act, which foresee the use of false or forged documents as invariably constituting a criminal offence, with no exception for refugees in law, practice or jurisprudence.<sup>60</sup> In the past two years, several cases of applicants for international protection imprisoned and convicted for that reason have been reported. Several Maltese NGOs expressed their concern over the situation as this criminalisation goes against the provisions of the 1951 Geneva Convention and penalises persons opting not to risk their lives at sea.<sup>61</sup>

More concerning is the recent criminalisation by the Maltese authorities of people rescuing migrants at sea. Two significant cases were reported in 2019:

Claus-Peter Reisch was the Captain of the MV Lifeline, the rescue vessel of the German NGO Mission Lifeline, when it rescued 234 migrants in the Mediterranean in June 2018, leading to an international dispute and days-long stand-off as EU Member States could not agree over who would be the responsible State to take in the migrants. After a distribution agreement was reached, Malta accepted the disembarkation but immediately charged the captain, accusing him of entering Maltese waters with a ship that had not been appropriately registered. They also impounded the ship.

In May 2019, the Court of Magistrates in Malta concluded that the registration "was not to the satisfaction of the Dutch authorities" when the vessel entered Maltese waters and fined the Captain €10,000 for registration irregularities.<sup>62</sup> Nevertheless, the magistrate also strongly reiterated that saving the lives of migrants out at sea was not a crime. The Court turned down a request by the authorities for the boat to be confiscated, on the basis that the vessel was not the property of the accused.<sup>63</sup>

Claus Peter Reisch immediately appealed the decision and he was finally cleared of all charges by the Court of Criminal Appeal in January 2020.<sup>64</sup>

Amnesty International welcomed the final decision but stated that such "criminal prosecution against a human rights defender initiated in highly politicised circumstances was defeated, but not before having

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<sup>59</sup> IOM, EU Voluntary Relocations from Malta Top 270 People in 2020 amid COVID-19, 22 December 2020, available at: <https://bit.ly/3clk9Gb>.

<sup>60</sup> Article 32(1)(d) Immigration Act.

<sup>61</sup> JRS Malta et al., 'Journeys of Hope: We urge Malta to grant safe and legal access to refugees', 28-29 June 2016; available at: <http://bit.ly/2lwccYu>; Times of Malta, 'Refugees should not be prosecuted for using false documents', 1 July 2016; available at: <http://bit.ly/2kcquMZ>.

<sup>62</sup> Court of Magistrates, IL-PULIZIJA vs CLAUS PETER REISCH, 20/2019, 14 May 2019, available at: <https://bit.ly/2VtrfWo>.

<sup>63</sup> European Database of Asylum Law, Malta: Judgment in case against Captain of MV Lifeline, 14 May 2019, <https://bit.ly/2UxTVx3>.

<sup>64</sup> Court of Criminal Appeal, IL-PULIZIJA vs REISCH CLAUS PETER, 150/2019, 07 January 2020, available at: <https://bit.ly/3esqsOm>.

caused the lifesaving activities of a small NGO to stop for some 18 months and having put considerable financial strain on the accused and the NGO".<sup>65</sup>

The second case is still on-going. As mentioned above, in March 2019, a group of 108 migrants escaping Libya were rescued by the merchant vessel "El Hiblu 1" within the Libya SAR zone but outside its territorial waters. At first, the ship continued towards Libya but changed its course shortly before reaching the Libyan coast and headed instead towards Europe. A Maltese special operation unit boarded the ship and disembarked the migrants in Malta. Upon arrival, the authorities arrested five asylum-seekers and subsequently charged three of them – all teenagers - on suspicion of having hijacked the ship which had rescued them, so as to prevent the captain from returning them to Libya. The three teenagers were immediately detained in the high-security section of prison for adults and charged with very serious offences some falling under anti-terrorism legislation and punishable with life imprisonment.<sup>66</sup>

The three teenagers were released on bail in November 2019 and remain in Malta pending criminal proceedings. A magisterial inquiry is currently ongoing to gather the evidence, and the Office of the Attorney General should issue a bill indictment with the final charges against the accused. After almost one year and a half, the case remains at pre-trial stage, with the three individuals still awaiting the final bill of indictment to be filed by Malta's Attorney General. The Platform of Human Rights Organisations in Malta stated that the treatment received by the three boys was disrespectful and undignified and that their vulnerability as minors and young men was never taken into account by the authorities.<sup>67</sup> Although two of them were unaccompanied minors, all steps of the criminal proceedings were taken without the issuing of the required Care Order and, hence, without the appointment of a legal guardian.

The case is followed closely by the Office of the UN High Commissioner for Human Rights which urged Malta to reconsider the severity of the charges, and by Amnesty International which publicly stated that "the severity of the nine charges currently laid against the three youths appears disproportionate to the acts imputed to the defendants and do not reflect the risks they and their fellow travellers would have faced if returned to Libya. The use of counter-terrorism legislation is especially problematic".<sup>68</sup> This case was taken up by Amnesty International as part of their international campaigning,<sup>69</sup> as well as by several other Maltese and international NGOs.<sup>70</sup>

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<sup>65</sup> Amnesty International, *Europe: Punishing compassion: solidarity on trial in fortress Europe*, March 2020, available at: <https://bit.ly/2JaUfMX>. One aged 15 at the time from Ivory Coast, and two aged 16 and 19 at the time from Guinea.

<sup>66</sup> Pending a formal indictment, the three teenagers have been charged with: - Act of terrorism, involving the seizure of a ship (Art.328A(1)(b), (2)(e), Criminal Code). - Act of terrorism, involving the extensive destruction of private property (Art.328A(1)(b), (2)(d), (k) Criminal Code). - "terrorist activities", involving the unlawful seizure or the control of a ship by force or threat (Art.328A(4)(i) Criminal Code). - Illegal arrest, detention or confinement of persons and threats (Artt.86 and 87(2) Criminal Code). - Illegal arrest, detention or confinement of persons for the purpose of forcing another person to do or omit an act which if voluntary done, would be a crime (Art. 87(1)(f) Criminal Code). - Unlawful removal of persons to a foreign country (Art.90 Criminal Code). - Private violence against persons (Art. 251(1) and (2) Criminal Code). - Private violence against property (Art.251(3) Criminal Code). - Causing others to fear that violence will be used against them or their property (Art.251B Criminal Code).

<sup>67</sup> Platform of Human Rights Organisations in Malta, Submissions to the Committee on the Rights of the Child, 81st session, 2019, available at: <https://bit.ly/2JeiWlq>.

<sup>68</sup> Amnesty International, *Malta: The El Hiblu 1 Case: Three Teenagers in the Dock for Daring to Oppose Their Return to Suffering in Libya*, 23 October 2019, available at: <https://bit.ly/34T5dRi>; UN High Commissioner for Human Rights, *Press briefing note on Malta*, 7 May 2019, available at: <https://bit.ly/2XUEbY8>.

<sup>69</sup> Amnesty International, 'Demand justice for the El Hiblu 3', available at: <https://bit.ly/3lq3jQu>.

<sup>70</sup> For more information see 'The El Hiblu 3!' at: <https://bit.ly/3s02nVr>.



## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time limits laid down in law for making an application?  Yes  No  
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application?  Yes  No  
❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice?  Yes  No
4. Is the authority with which the application is lodged also the authority responsible for its examination?  Yes  No
5. Can an application be lodged at embassies, consulates or other external representations?  Yes  No

The authority responsible for registering asylum applications in Malta is the former Office of the Refugee Commissioner (RefCom) now known as the International Protection Agency. The IPA is also the authority responsible for taking decisions at first instance on asylum applications (see: [Number of staff and nature of the determining authority](#)).<sup>71</sup>

The law no longer provides for time limits for an asylum seeker to apply for international protection and it also specifies that the Commissioner shall ensure that applications are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.<sup>72</sup>

Since 2019, the registration process by RefCom was severely affected due to an increase in new arrivals and the vast majority of applicants for international protection being detained upon arrival. This created major delays whilst asylum-seekers remained detained in the IRC or Safi barracks for up to several weeks or months pending the registration of their applications. The situation further deteriorated in 2020 due to the systematic detention of all asylum-seekers arriving irregularly in Malta. Furthermore, the IPA remained closed for several weeks from 12 March 2020 to 25 May 2020 due to the COVID-19 pandemic.

EASO has been providing support to the IPA (previously RefCom) since 2019. On 11 December 2020, a new operation plan was signed with Malta for the year 2021 (see [Number of staff and nature of the determining authority](#)).<sup>73</sup> In 2020, 2,419 individuals applied for international protection in Malta. EASO registered a total of 2,187 applicants for international protection, mainly from **Sudan, Bangladesh and Eritrea**.<sup>74</sup> This indicates that EASO plays a crucial role in registering the large majority of applicants in Malta and is due to the fact that most applicants are detained upon arrival, i.e. registration mainly takes place in detention centres where only EASO is operating under the supervision of the IPA.

Detained asylum-seekers are registered in the detention facility by staff deployed by EASO. No data is publicly available, but practice shows that registration takes place months after arrival and, before that, migrants are kept detained and receive no information.

Asylum-seekers who arrived regularly and who expressed a wish to apply for protection when the IPA was closed due to Covid-19 were requested to send an email indicating basic information (name, surname, date of birth, arrival in Malta, nationality, family situation, address in Malta). They were later

<sup>71</sup> Article 4(3) International Protection Act.

<sup>72</sup> Regulation 8(1) Procedural Regulations.

<sup>73</sup> EASO, 2021 *Operating plan agreed by EASO and Malta*, 11 December 2020, available at: <https://bit.ly/3tpXLIW>.

<sup>74</sup> Information provided by EASO, 26 February 2021.

contacted and given an appointment to formally register their application. In the meantime, confirmation by the IPA by email could be used as a proof of an asylum-seeker status.<sup>75</sup>

For the registration and lodging phases, support is given through the deployment of experts. In particular, IPA is supported by EASO to register applicants within the premises of the detention centre at Safi barracks. EASO also assists IPA with the implementation of *ad hoc* relocation through the matching process and it appears that asylum-seekers to be relocated are prioritised for registration.

With respect to asylum seekers who arrive documented but who do not express a wish to apply for asylum to the immigration officials present or who become refugees *sur place*, problems may arise as a result of the fact that they could not readily know how or where to apply for asylum.

Applications must be made at the IPA premises. Any person approaching any other public entity, particularly the Malta Police Force, expressing his or her wish to seek asylum, will be referred to the IPA.

Unaccompanied children need legal guardians to submit an asylum application. The 2020 Minor Protection (Alternative Care) Act replaced earlier legislation on the protection of children in need of care and support, including unaccompanied and/or separated children. It introduced a judicial procedure where the Court is now in charge of appointing a legal guardian and a child advocate.

So far, being the Act's first year of implementation, 2020 saw a number of challenges and the vast majority of minors were not appointed legal guardians. This results in minors having their asylum procedure put on hold for months.

No data was provided for the whole year, but as of 31 October 2020, 1,350 persons were awaiting the registration of their asylum application.<sup>76</sup>

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance:     | 6 months  |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance at the end of 2020:  | 4,320   |

In 2020, the IPA received 2,419 applications, marking an important decrease from the previous year. In 2019, 4,021 applications for international protection were lodged in Malta and this represented a substantial increase compared to 2018 where RefCom had received 2,045 applications.

In August 2020, there were 3,961 cases awaiting first-instance decision, with more than 80% of cases pending for more than 6 months.<sup>77</sup> At the end of the year, 4,320 cases were still pending.

<sup>75</sup> Information provided by the IPA, June 2020.

<sup>76</sup> EASO, 2021 *Operating plan agreed by EASO and Malta*, 11 December 2020, available at: <https://bit.ly/3tpXLIW>.

<sup>77</sup> EASO, 2021 *Operating plan agreed by EASO and Malta*, 11 December 2020, available at: <https://bit.ly/3tpXLIW>.

The IPA is a specialised authority in the field of asylum. However, it falls under the Ministry also responsible for Police, Immigration, Asylum, Correctional Services, and National Security.

According to the Procedural Regulations, the IPA shall ensure that the examination procedure is concluded within six-months of the lodging of the application. The CEO may extend this time limit for a period not exceeding nine months for limited reasons: when complex issues are involved, when a large number of third-country nationals simultaneously apply for international protection or when the delay can clearly be attributed to the failure of the applicant to comply with his obligations.<sup>78</sup>

The examination procedure shall not exceed the maximum time limit of twenty-one months from the lodging of the application.<sup>79</sup>

When a decision cannot be made by the IPA within six months, the applicant concerned shall be informed of the delay and receive information on the time frame within which the decision on his application is to be expected. However, such information does not constitute an obligation for the Agency to take a decision within that time frame.<sup>80</sup>

Most of the decisions taken by the IPA are, in practice, not taken before the lapse of six months. According to the IPA, the average length of the asylum procedure was 263 days in 2020 (from the date of the lodging which can take place months after arrival). Moreover, asylum procedures were suspended due to Covid-19 between 12 March and 25 May 2020. During that period, cases were not processed and interviews were not carried out.

Applicants channelled through the regular procedure and free from detention may wait for more than a year just to be called to a personal interview. Those in detention and channelled through the accelerated procedure, mainly due to their country of origin, can receive a decision within six months.

Following on from the deployment of EASO staff to Malta in June 2019, EASO supports the IPA in the examination of asylum applications through the conduct of interviews and preparation of opinions recommending a first instance decision. EASO follows the same approach as the IPA regarding the scope of examination of asylum applications, meaning that it processes claims on both admissibility and merits. In 2020, EASO caseworkers carried out a total of 581 interviews and drafted a total of 653 concluding remarks. The three main three nationalities interviewed and processed by EASO staff were **Bangladesh**, **Sudan**, and **Morocco**.<sup>81</sup>

Interviews and opinions, as well as decisions taken by the IPA, are written in English.

## 1.2. Prioritised examination and fast-track processing

The IPA may decide to prioritise an examination of an application for international protection only when the application is likely to be well-founded and when the applicant is vulnerable or is in need of special procedural guarantees, in particular unaccompanied children.<sup>82</sup>

The IPA confirmed that applications lodged by applicants claiming to be **Bangladeshi** nationals or Moroccan nationals have been prioritised in 2019.<sup>83</sup> No official information is available for 2020 but lawyers assisting asylum-seekers report that it is still the case in 2020 for **Bangladeshis**, **Moroccans**, and **Ghanaians**, as these cases are processed when applicants are still in detention.

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<sup>78</sup> Regulation 6(4) Procedural Regulations.

<sup>79</sup> Regulation 6(6) Procedural Regulations.

<sup>80</sup> Regulation 6(7) Procedural Regulations.

<sup>81</sup> Information provided by EASO, 26 February 2021.

<sup>82</sup> Regulation 6(8) Procedural Regulations.

<sup>83</sup> Information provided by the Office of the Refugee Commissioner, January 2019.

Such cases are generally rejected as manifestly unfounded despite having been examined after a personal interview and a full assessment of the claim on the merit. When channelled through the accelerated procedure, applicants are not entitled to appeal and are usually immediately issued a return decision together with a detention order. Therefore, in 2020, applicants to which this procedure was applied were not released from detention after the final decision on their asylum application and remained in detention awaiting a possible return.

Moreover, applicants who applied for protection after being issued a removal order by Immigration Police were also prioritised.<sup>84</sup>

Following the crisis of December 2018, when the vessels operated by the NGOs Sea-Watch and Sea-Eye were stranded off the Maltese coast, the Prime Minister of Malta issued a statement announcing that Bangladeshi nationals shall face an expedient return, after due process.<sup>85</sup>

In January 2021, more than two years after this announcement, dozens of Bangladeshis were returned to their country of origin. They had entered Malta irregularly by boat in 2018, 2019, and 2020. They spent the duration of their stay in Malta in detention. Their applications were processed through the accelerated procedure and declared manifestly unfounded so they were never entitled to appeal their negative decision. Despite being the second main country of origin in Malta in 2020, the statistics of the IPA confirm that all of them were rejected and that not a single protection status was granted to them (see the statistical table at the beginning of the report), except for 1 THP status granted.

The Prime Minister himself posted on social media about this return operation stating that “Following months of intensive work, a number of migrants without an authorisation to stay have been returned home. Malta is committed to prevent irregular arrivals, share the responsibility with other EU countries and return migrants who are not truly in need of protection”.<sup>86</sup>

### 1.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
3. Are interviews conducted through video conferencing?  Frequently  Rarely  Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender?  Yes  No
  - ❖ If so, is this applied in practice, for interviews?  Yes  No

The Procedural Regulations provide for a systematic personal interview of all applicants for international protection but foresee a few restrictive exceptions. The grounds for omitting a personal interview are the same as those contained in the recast Asylum Procedures Directive, namely: (a) when the Commissioner is able to make a positive recommendation on the basis of evidence available; or (b) when the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control.<sup>87</sup>

<sup>84</sup> Information provided by the Office of the Refugee Commissioner, April 2020.

<sup>85</sup> Department of Information, ‘Statement by Prime Minister Joseph Muscat about the situation of Seawatch3 and Albrecht Penck’, PR190025, 9 January 2019, available at: <http://bit.ly/2RXXc5i>.

<sup>86</sup> The Times of Malta, ‘Migrants returned to their country after asylum applications are rejected’, 12 January 2021, available at: <https://bit.ly/30R11mu>.

<sup>87</sup> Regulation 10 Procedural Regulations.

In practice, most asylum seekers are interviewed, except when their application is declared inadmissible for reason of already benefitting from the protection of another Member State.

The interviews are conducted either by caseworkers at the IPA, or by EASO on behalf of the IPA for asylum-seekers who are detained, which means that the interviews are conducted by the same authority that takes the decision on the application.

The new IPA's CEO, appointed in October 2019, expressed her willingness to revise the interview and assessment templates in order to process cases more efficiently and in line with accepted standards. This was done in 2020 with the support of EASO and after receiving feedback from UNHCR and local NGOs. The new interview and assessment template is shorter, clearer, and clearly differentiate the establishment of material facts and the legal analysis. It leaves more space for the caseworker to develop a reasoned individual assessment.

As mentioned above, interviews were not conducted between 12 March and 25 May 2020 as a result of COVID-19. No significant changes in interview techniques due to covid were noticed in 2020, but the IPA indicated that a limited number of interviews were conducted remotely<sup>88</sup>.

### **Interpretation**

The presence of an interpreter during the personal interview is required according to national legislation.<sup>89</sup> Interpreters for **Sudanese, Bangladeshis, Somalis, Eritreans, Syrians, or Libyans** – which are amongst the main nationalities of asylum seekers in Malta - are largely available. However, interpreters for other languages are not always readily available.

Complaints as to the quality and conduct of the first instance interpreters are at times raised with legal representatives at the appeal stage, with the possibility of these being included in the appeal submissions. It is possible for interview procedures to be gender sensitive by appointing an interpreter and interviewer of the gender preferred by the applicant.<sup>90</sup> However, this is not automatic, and requests to this end must be made either by the applicant themselves, or by their legal assistant before the interview is carried out.

### **Recording and report**

The law provides for the possibility of audio or audio-visual recording of the personal interview.<sup>91</sup> As a matter of standard practice, all interviews are recorded. Regulations state that when such recording is made, the Commissioner shall ensure that the recording (or transcript) is available in connection with the applicant's file.

In practice, interview notes are taken during the personal interview whilst the interviewer is asking the questions, as well as the responses provided by the interpreter, if any. However, there is no indication that the consent of the asylum seeker is obtained for the audio recording of the interview and it appears, from several case files of applicants, that asylum seekers are simply informed of the fact that the interview will be audio recorded. It is uncertain whether an audio/video recording is admissible in the appeal procedure as there are no known cases wherein the Refugee Appeals Board made use of such recording material.

Interviews can and have been conducted through video conferencing. According to the Refugee Commissioner, interviews through video conferencing are considered to be essential in situations where

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<sup>88</sup> Information provided by the IPA, April 2021

<sup>89</sup> Regulations 4(2)(c) and 5(3) Procedural Regulations.

<sup>90</sup> Regulation 10(10)(d) Procedural Regulations.

<sup>91</sup> Regulation 11(2) Procedural Regulations.

there is a lack of interpreters available in order to proceed with the interview of an asylum seeker. In 2020, a limited number of personal interviews were conducted remotely.<sup>92</sup> However, videoconferencing was used on a couple of occasions to lodge an application when physical interpretation was not possible.<sup>93</sup>

Following changes in RefCom’s policy in 2017, asylum seekers automatically receive, along with the decision and the interview notes, the evaluation report explaining in detail the motivation of the decision.<sup>94</sup> This constitutes a real improvement in the applicants’ rights to access their file and access to an effective remedy. The importance of access to the evaluation report for the right to a fair hearing has also been highlighted by case law of the Court of Appeal.<sup>95</sup>

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

- |   |   |  |
|---|---|--|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| ❖ If yes, is it   | <input type="checkbox"/> Judicial       | <input checked="" type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| 2. Average processing time for the appeal body to make a decision: <sup>96</sup>                    | Not available                           |  |

### 1.4.1. Appeal before the International Protection Appeals Tribunal

An appeal mechanism of the first instance decision is available before a board formerly known as the Refugee Appeals Board (RAB) and now called the International Protection Appeals Tribunal (IPAT) following the amendment made to the Refugees Act, now the International Protection Act.

According to the new Act, the IPAT now consists of one Chairperson on a full-time basis and two or more members on a part-time basis.<sup>97</sup> Originally composed of three Chambers, the Home Affairs Ministry increased the Tribunal’s capacity by adding an additional Chamber in 2019. Each Chamber is made of a Chairperson and two other members,<sup>98</sup> all appointed by the President acting on the advice of the Prime Minister.

NGOs assisting applicants at appeal stage have called for a reform of the appeal procedure for years. However, if the establishment of a full-time Chairperson was welcome, they criticised the modalities of appointments of the members where the Prime Minister directly appoints members of a tribunal that is supposed to be independent and impartial.<sup>99</sup>

The appeal is an administrative review and involves the assessment of facts and points of law. An asylum seeker has two weeks to appeal, which in practice is interpreted as being a written intention to file an appeal, and these two weeks start to run from the day the asylum seeker receives the written negative decision of the International Protection Agency.<sup>100</sup> They are also requested to make written submissions within no more than 15 days following the registration of the appeal.<sup>101</sup>

<sup>92</sup> Information provided by the IPA, April 2021

<sup>93</sup> Information provided by the Office of the Refugee Commissioner, April 2020.

<sup>94</sup> The evaluation report is a very long template used for all the cases. It is currently being reviewed by the new Commissioner.

<sup>95</sup> Court of Appeal, *TeshoomeTensaeGebremariam v Refugee Appeals Board and the Attorney General*, 65/10 RCP, 30 September 2016.

<sup>96</sup> Information provided by the Refugee Appeals Board, January 2020.

<sup>97</sup> Art 5 International Protection Act.

<sup>98</sup> Art 5.5 International Protection Act.

<sup>99</sup> aditus foundation, JRS Malta, Comments on Bill No.133 Refugees (Amendment) Bill, July 2020, available at: <https://bit.ly/2P2xUr6>.

<sup>100</sup> Article 7 International Protection Act.

<sup>101</sup> Art 7.6 International Protection Act.

The IPAT does not accept late appeals.

The new International Protection Act now provides for time limits to take a final decision on the appeal. Each case shall now be concluded within three months of the lodging of the appeal. In cases involving complex issues of fact or law, the time limit may be further extended under exceptional circumstances but cannot exceed a total period of six months.<sup>102</sup>

The introduction of time limits for appeals, which have suspensive effect, is an undeniable improvement as the procedure could, previously, take up to several years. However, lawyers assisting asylum-seekers reports that many applicants have been waiting for much longer periods than the foreseen time limits. Moreover, it is not clear how one can challenge the fact that appeal decisions are not taken in time.

The decision containing the reasons for the rejection of the application at first instance is always written in English. The IPA is now providing a document in several languages mentioning the appeal procedure. However, this letter is a standard one and the number of languages is limited.

As already mentioned, applicants who receive a negative decision, either because their application was deemed manifestly unfounded or inadmissible, are not entitled to appeal against such decision. The IPA's decision is automatically transferred to the IPAT who shall review the decision and confirm it within three days.<sup>103</sup> Such reviews do not allow the applicant to express his/her views or to be heard. The decision generally consists of a one sentence document confirming the IPA's decision. No data is available but from the experiences of NGOs, such reviews systematically confirm the original rejection.

Asylum seekers in detention can face obstacles in appealing because there are no clear and established procedures in place for them to lodge an appeal. For instance, standard appeal forms are not always available to asylum seekers in detention as these forms are mostly provided by NGOs who are not present in detention facilities on a daily basis. Some parts of detention centres are not equipped with phones so applicants may not reach legal assistance in time. UNHCR visits detainees on a regular basis and may refer applicants wishing to appeal to NGOs, but this remains random and not comprehensive. Moreover, access to detention was denied for several months in 2020 due to Covid-19 (including to UNHCR), as a result many applicants were not in capacity to exercise their right to appeal.

Processing times at the appeal stage vary significantly. No data was provided for 2020, but the majority of cases are usually examined under the accelerated procedure which provides for a three-day review for all decisions deemed inadmissible or manifestly unfounded by IPA. The decisions taken through the regular procedure following a hearing and assessment can take up to several years. So far the time limits provided by the new Act do not show any effect in practice.

Moreover, in 2020, applicants channelled through the regular procedure saw their waiting times seriously increase due to the Covid-19 pandemic and the related shut down of the IPAT for several months, between March and July 2020.

Usually, the appeal takes the form of written submissions to the IPAT. However, the Tribunal can, where appropriate, hold an oral hearing.<sup>104</sup> As a result, asylum seekers can be heard in practice at the appeal stage but only on a discretionary basis. Some Chambers systematically call for hearings in all cases whilst others appoint hearings on specific cases. The past few years have shown an increase in the number of oral hearings held by the Board, and lengthier decisions referring to EU and national legal norms, country of origin information and jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). Hearings of the IPAT are not public and its decisions are

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<sup>102</sup> Art 7.7 International Protection Act.

<sup>103</sup> Art 23 and 24 International Protection Act.

<sup>104</sup> Regulation 5(1)(h) RAB Procedures Regulations.

communicated only to the applicant concerned, their legal representative, if known, the IPA, the Minister concerned, and UNHCR.<sup>105</sup> However, the new International Protection Act foresees the possibility for the Tribunal to authorise the hearing to be public after the request by one of the parties or if the Tribunal so deems fit.<sup>106</sup>

There is no information available on the number of oral hearings that have been held in 2020.<sup>107</sup> NGOs' experience suggests that most appellants treated through the regular procedure have oral hearings conducted by the chambers. However, due to the Covid-19 situation, lawyers assisting asylum-seekers at appeal stage noticed a decrease in the number of oral hearings held this year.

The hearings held by the Tribunal are very informal, mostly unprepared and proceed differently from one Chamber to another. Where some Chambers systematically call for hearings, they do so only to consider information subsequent to the negative decision or inquire about new developments. Therefore, members of the Board do not ask any specific questions to the applicant or his/her representative. Where other Chambers call for hearings for selected cases, they conduct more in-depth questioning with the applicant.

The IPA is now submitting written observations on selected cases, replying to lawyers' argumentations in support of their decision. The Board usually grants the IPA a six-week period to submit the observations. Appellants should receive these IPA submissions prior to the Board's hearings and are usually allowed to comment on them. However, procedural rules are mostly lacking before the IPAT, giving scope to legal uncertainty and varying practices. Therefore, rules are unclear regarding the submissions of observations by IPA, which are sometimes received by the applicant after the hearing, in breach of the principle of equality of arms. It remains unclear if counter-observations submitted by the applicant are permitted *de jure*. The new Act only specifies that the IPAT shall regulate its own procedure. Yet the Act does not stipulate a timeline within which this procedure must be adopted by the Tribunal. According to NGOs, the fact that the Act also does not require that the procedure be publicly available, and that it also conforms to national, European, and international standards on asylum procedure best practice, remains an issue.

In 2019, the IPA started to attend oral hearings. Some case workers attended hearings and provided some comments on the cases. No information is available for 2020.

One of the main concerns expressed by NGOs over the years regarding the appeal stage remains the lack of asylum-related training and capacity of the Board Members. The quality of the decisions also varies substantially amongst Chambers, with some being more effective than others and little coordination amongst them all. The consequences include inconsistency in procedures, process, and decisions, as well as the lack of coherent case law.<sup>108</sup> While some decisions include a comprehensive examination of the elements of fact and law of the case, others do not include any reasoning at all, rejecting the case on the basis of one sentence. The new Act now foresees that Chairpersons shall be chosen amongst "persons of known integrity" and be qualified "by reason of having had experience of, and shown capacity in matters deemed appropriate for the purpose".<sup>109</sup> The law also requires for at least one member of the Tribunal shall be a person who has practised as an advocate in Malta for at least seven years. NGOs promptly criticised the reform for not listing any specific qualification for eligibility for all members of the Tribunal.

In the majority of cases, the decision given by the IPAT is binding on the parties and they will not remit it back to the IPA to take a new decision. In 2019, less than 1% of the decisions taken by the IPAT granted refugee status and less than 3% granted subsidiary protection. No data is available for 2020.

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<sup>105</sup> Regulation 5(1)(n) RAB Procedures Regulations.

<sup>106</sup> Art 7.5 International Protection Act.

<sup>107</sup> Information provided by the Refugee Appeals Board, January 2019.

<sup>108</sup> UN General Assembly, *Report by the Special Rapporteur on the human rights of migrants*, François Crepeau, December 2014.

<sup>109</sup> Art 5.1 International Protection Act.



## 1.4.2. Judicial review

An onward appeal is not provided in the law in case of a negative decision from the IPAT. However, judicial review of the decisions taken by the Board is possible within six months and several cases to this effect have been filed in the past couple of years. No information on judicial reviews is available for 2019. Unfortunately, judicial review does not deal with the merits of the asylum claim but only with the manner in which the concerned administrative authority reached its decision. Moreover, such cases would not automatically have suspensive effect. Judicial review is a regular court procedure, assessing whether administrative decisions comply with required procedural rules such as legality, nature of considerations referred to and duty to give reasons. Applicants could be granted legal aid if eligible under the general rules for legal aid in court proceedings.

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

National legislation states that at first instance an applicant is allowed to consult a legal adviser at his or her own expense. However, in the event of a negative decision at first instance, free legal aid shall be granted under the same conditions applicable to Maltese nationals.<sup>110</sup> In the case of Maltese nationals, legal aid is available for all kinds of cases. However, legal aid for civil cases is subject to a means test whilst legal aid for criminal cases is not.<sup>111</sup> According to the office responsible for the provision of free legal assistance within the relevant Ministry, such legal assistance is usually not subject to a means test for asylum seekers. In practice, the appeal forms the applicants fill in and submit to the IPAT contain a request for legal aid. Unless an applicant is assisted by a lawyer working with an NGO or a private lawyer, this request is forwarded to the Ministry for Home Affairs, National Security and Law Enforcement which will distribute the cases amongst a pool of asylum legal aid lawyers. One appointment with the applicant is then scheduled. To date, legal aid in Malta for asylum appeals has been financed through the State budget.<sup>112</sup>

In 2018, responsibility for legal aid for appellants was shifted to Legal Aid Malta, who assigned legal aid lawyers from the government pool, but this shifted back to the Ministry in 2019. The reason for this shift is not known. According to lawyers assisting migrants, such shift was seen as a negative move due to the large caseloads that the lawyers have, generally consisting of criminal and civil cases. The legal aid pool of lawyers is not specifically trained or knowledgeable in migration or refugee issues, whereas the legal aid lawyers chosen by the Ministry is usually chosen on the basis of an open call to provide specific migration and asylum related legal services. The contracts of service are awarded after interviews conducted by Ministry officials. Therefore, the legal aid pool from the Ministry is focused on the provision of asylum and migration related legal services.

The free legal assistance available to asylum seekers at first instance is mainly that provided by lawyers working with NGOs. These services are regularly provided by a small group of NGOs as part of their on-

<sup>110</sup> Regulation 7(1)-(2) Procedural Regulations.

<sup>111</sup> The Judiciary Malta, *Frequently Asked Questions*, available at: <http://bit.ly/1FJWCug>.

<sup>112</sup> *Ibid.*

going services and are funded either through project-funding or through other funding sources. It is to be noted that funding limitations could result in the services being reduced due to prioritisation. Generally, such lawyers provide legal information and advice both before and after the first instance decision, including an explanation of the decision taken and, in some cases, interview preparation. They can also attend personal interviews whenever the asylum seeker requests their presence. However, this is at the discretion of the Refugee Commissioner and their contribution throughout the interview is limited.<sup>113</sup> The main obstacle regarding access to this kind of assistance is that there are a limited number of NGO lawyers who are able to provide such a service in relation to the number of asylum seekers requiring it. However, the Faculty of Laws, University of Malta, has a Law Clinic where supervised law students offer *pro bono* legal assistance and where asylum seekers could benefit from the assistance provided.

In 2019, UNHCR provided trainings to eight lawyers at the legal aid clinic.<sup>114</sup>

Legal assistance at the appeal stage is not restricted by any merits test or considerations, such as that the appeal is likely to be unsuccessful. There are, however, some practical and logistical obstacles involved in effectively representing asylum seekers at the appeal stage.

According to a local legal aid lawyer, the annual allowance paid to legal aid lawyers as per the general legal aid system, is not enough to cover the work involved in preparing and submitting an asylum appeal, including attending the oral hearing. Furthermore, meetings with appellants who are in detention can be particularly problematic for practical and logistical reasons that can be of detriment to both the appellants and the lawyers. For instance, at the entrance of the detention centres, legal aid lawyers have to show their identity cards and be given a pass. Sometimes this is a cumbersome procedure because the lawyer's name could not be on the list of people authorised to enter the detention centre. The provision of interpreters for legal aid lawyers is also problematic, as this needs to be organised and paid for by the lawyer, if at all available. As a result, the financial remuneration does not compensate the amount of work provided. Inadequate remuneration remained an issue in 2020.

The recurring problem of there being inadequate space for the legal aid lawyers to discuss the case with his or her client in detention has also been noted, a problem which persisted throughout 2020 and exacerbated by Covid-19 related measures.

The law states that access to information in the applicants' files may be precluded when disclosure may jeopardise national security, the security of the entities providing the information, and the security of the person to whom the information relates.<sup>115</sup> Moreover, access to the applicants by the legal advisers or lawyers can be subject to limitations necessary for the security, public order or administrative management of the area in which the applicants are kept.<sup>116</sup> In practice, however, these restrictions are rarely, if ever, implemented. Usually, the appeal takes the form of written submissions to the Board by a stipulated time. Thus, it is not a very complicated procedure in practice. Nevertheless, the assistance of a lawyer is essential for an effective appeal.

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<sup>113</sup> Regulation 7(4) Procedural Regulations.

<sup>114</sup> Information provided by UNHCR Malta, January 2020.

<sup>115</sup> Regulation 7(2) Procedural Regulations.

<sup>116</sup> Regulation 7(3) Procedural Regulations.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2020

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	630	320	Total	983	45
Take charge	410	-	Take charge	238	-
Germany	140	126	Greece	68	20
France	113	118	France	60	10
Spain	81	2	UK	28	-
Ireland	16	3	Belgium	15	-
Italy	14	28	Germany	14	8
Take back	220	-	Take back	745	-
Italy	147	-	France	351	-
Greece	22	-	UK	201	-
Germany	21	-	Germany	67	-
The Netherlands	3	-	Belgium	45	-

Source: Dublin Unit, February 2021.

Outgoing Dublin requests by criterion: 2020	
Dublin III Regulation criterion	Requests sent
<b>“Take charge”: Articles 8-15:</b>	<b>410</b>
Article 8 (minors)	1
Article 9 (family members granted protection)	1
Article 10 (family members pending determination)	2
Article 11 (family procedure)	-
Article 12 (visas and residence permits)	20
Article 13 (entry and/or remain)	8
Article 17(2) “Take charge” humanitarian clause	378

There is no specific legislative instrument that transposes the provisions of the Dublin Regulation into national legislation. The procedure relating to the transfers of asylum seekers in terms of the Regulation is an administrative procedure, with reference to the text of the Regulation itself. The IPA is the designated head of the Dublin Unit and, since 2017, is implementing the procedure in practice.

In 2017, changes were brought about to the Dublin procedure in Malta. As a result of these changes and the increased capacity of the Dublin Unit, applicants have better access to information on their cases and procedural safeguards are better respected. The Immigration Police is still in charge of the Eurodac checks but the rest of the procedure, including transfer arrangements, is now handled by the Dublin Unit of the Office of the International Protection Agency.<sup>117</sup> Within this more coordinated procedure, access to

<sup>117</sup> Information provided by the Dublin Unit, February 2021.

information regarding an applicant's status is generally less complicated and, overall, the entire process operates in a more organised manner.

As indicated, EASO started providing support to IPA in the Dublin procedure in October 2019 in the form of Member State expert deployment within the Dublin Unit. Their support consists of deploying 6 caseworkers and is limited to outgoing requests and support to relocation exercises.

The EASO deployed staff is in charge of examining which asylum applications are subject to a Dublin procedure or not, drafting take charge/back requests or info requests for applications in a Dublin procedure and drafting the decision documents or office note following the final reply from Member States.<sup>118</sup>

Regarding the relocation exercise, in addition to the same tasks as the ones for the outgoing cases, EASO personnel deployed at the Dublin Unit are also responsible for notifying the applicant of the Dublin transfer decision, drafting the transfer exchange form, creating their *laissez passer*, and updating the internal records.<sup>119</sup>

This support measure is being renewed for 2021.

### Application of the Dublin criteria

According to NGOs' experience, there is no clear rule on the application of the family unity criteria as it usually depends on the particulars of the individual case. The Maltese Dublin authorities do not apply DNA tests but tend to rely on the documents and information immediately provided by the applicant. In some cases which regard children, the authorities can request additional information from UNHCR, IOM or AWAS when no documents are provided. All of the information available is usually put together as evidence. Matching information between members of the family can be relied on and may be enough for determining family links.

The family unity criterion is the most frequently used in practice for outgoing requests. For incoming requests, the most frequently used criteria are either the first EU Member State entered,<sup>120</sup> or the EU Member State granting a Schengen visa.<sup>121</sup>

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?  
 Yes  No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?  
Not available

All those who apply for asylum are systematically fingerprinted and photographed by the Immigration authorities for insertion into the Eurodac database. Those who enter Malta irregularly are immediately taken to detention and they are subsequently fingerprinted and photographed. Asylum seekers who are either residing regularly in Malta or who apply for international protection prior to being apprehended by the Immigration authorities, are also sent to the Immigration authorities to be fingerprinted and photographed immediately after their desire to apply for asylum is registered.

<sup>118</sup> Information provided by the Dublin Unit, February 2021.

<sup>119</sup> Information provided by the Dublin Unit, January 2021.

<sup>120</sup> Article 13 Dublin III Regulation.

<sup>121</sup> Article 12 Dublin III Regulation.

According to the authorities, no force or coercion is required to take the fingerprints of asylum seekers.<sup>122</sup> When migrants make attempts to avoid their fingerprints being taken by various means such as applying glue to the fingertips, a note is taken and the migrant is recalled for fingerprinting at a later stage when the effects of the glue would have subsided. When persons have damaged fingerprints, measures, such as repeated attempts, are taken to ensure that a good copy is available.

In registering their desire to apply for international protection, asylum seekers are also asked to fill in a “Dublin questionnaire” wherein they are asked to specify if they have family members residing within the EU. Should this be the case, the examination of their application for protection is suspended until further notice. It is up to the IPA to then contact the asylum seeker to request further information regarding the possibility of an inter-state transfer, such as the possibility of providing documentation proving familial links.

Information is usually provided to the lawyer representing the applicant upon request. Where an applicant is detained, it is inherently more difficult for the individual to follow up on the Dublin case with information being obtained solely through the lawyer.

### Individualised guarantees

No information is provided by the Dublin Unit on the interpretation of the duty to obtain individualised guarantees prior to a transfer, in accordance with the ECtHR’s ruling in *Tarakhel v. Switzerland*.<sup>123</sup> Yet lawyers report that since 2018 there were a number of cases wherein the IPAT commented that it is not its duty to explore the treatment the appellant would be subjected to following the Dublin transfer.

In September 2019, an asylum-seeker filed an application for a warrant in front of the Civil Court to stop a Dublin transfer to **Italy** before individual guarantees are actually provided by the Italian authorities. The Court declared itself competent to review the application without entering into the merits of the case. It did not find there was an obligation for the Italian authorities to present individual guarantees before executing an accepted transfer. It held that the socio-economic conditions of the applicant in Italy are irrelevant to the matter of the case and that in case of further issues to be raised in Italy, the applicant could address them to the Italian judicial system. As a consequence, the Court rejected the application.<sup>124</sup>

### Transfers

In practice, no official statistics are available regarding the length of time it takes for a transfer to be effectuated after another Member State would have accepted responsibility. According to the authorities, the transfer arrangements start immediately if the person accepts to leave. In the case of appeals, the transfer is implemented when a final decision is reached. NGOs have reported that in practice transfers can be implemented several weeks or several months after the final decision taken by the Refugee Appeals Board, now IPAT.

The length of the Dublin procedure remains an issue since applicants are kept waiting for months, sometimes more than a year, before receiving a decision determining which Member State is responsible for their application. In 2018, there were a number of cases where Malta was required to assume responsibility for applicants due to delays in processing the transfer, including in cases of possible chain *refoulement*.<sup>125</sup> In 2020 there were applicants who were not transferred within the Regulation’s deadlines, yet who were not taken up by the IPA as falling under its responsibility.

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<sup>122</sup> European Migration Network, *Ad-Hoc Query on EURODAC Fingerprinting*, 22 September 2014, available at: <http://bit.ly/1PBRfaP>. This practice remains valid as of the end of 2017.

<sup>123</sup> ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

<sup>124</sup> Civil Court First Hall, *EnasMhana vs Hon Prime Minister, Minister for Home Affairs and National Security, Attorney General and the Office of the Refugee Commissioner*, 2019/118742, 18 October 2019, available at: <https://bit.ly/2XE0t06>.

<sup>125</sup> *HavvalGamshid v the Commissioner of Police and the Attorney General*, 15/2013, 27 January 2016.

Moreover, asylum seekers in a Dublin procedure are not informed of delays in receiving responses from the responsible Member State. The number of outgoing transfers implemented in 2020 was 320.

Dublin transfers were suspended in Malta for three months between mid-March and mid-June 2020 as a result of COVID-19. During this period, Malta continued to issue and send requests. The responsibility of applicants shifted back to Malta in cases where the transfer was not carried out within six months unless the applicant was recorded as having absconded.<sup>126</sup>

It is important to mention that when a Dublin decision is confirmed in appeal, applicants usually see their Asylum-Seeker document withdrawn since a transfer to another Member State is to be conducted. However, as already mentioned, such transfers can take some time to be carried out. In case of delayed transfer, IPA does not extend the documentation, stating that following a final Dublin decision (either because the time limit to appeal the Dublin transfer decision has lapsed, or because the IPAT upholds the decision taken by the Dublin Unit), the person is no longer to be considered as an applicant for international protection in Malta, seemingly contradicting legislation and CJEU jurisprudence in this regard.<sup>127</sup>

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

Upon notification that an asylum seeker might be eligible for a Dublin transfer, he or she will be called by IPA operating the Dublin Unit to verify the information previously given and will be advised to provide supporting documentation to substantiate the request for transfer. These interviews always take place at the Dublin Unit premises.

Dublin interviews are always carried out in person. They were suspended for two months from 18 March until 18 May 2020 as result of COVID-19. As from May, interviews were carried out again in a face-to-face format.<sup>128</sup>

### 2.4. Appeal

#### Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?
  - Yes  No
  - Judicial  Administrative
  - ❖ If yes, is it  Yes  No
  - ❖ If yes, is it suspensive  Yes  No

<sup>126</sup> Information given by the Dublin Unit, February 2021.

<sup>127</sup> Information provided by the IPA Legal Unit, November 2020.

<sup>128</sup> Information provided by the Dublin Unit, February 2020.

Following an amendment to the Refugees Act in April 2017, appeals against decisions taken under the Dublin Regulation are now possible through the filing of an appeal before the Refugee Appeals Board,<sup>129</sup> now IPAT, which has taken over responsibility from the Immigration Appeals Board.

The provisions of the amended Refugees Act, now International Protection Act, indicate that the appeal must be filed within two weeks from notification of the decision.<sup>130</sup> The Act does not specify whether such appeals have suspensive effect or otherwise. In practice, such appeals do have a suspensive effect.

There is no specific appeal procedure for Dublin cases, leaving such applications pending for several months with the Tribunal. Moreover, access to the files is problematic as NGOs assisting applicants report difficulties accessing the different documents, such as the transfer requests or Eurodac documents, because of the lack of clarity as to the authority in charge.

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
  - Yes                       With difficulty                       No
  - ❖ Does free legal assistance cover:
    - Representation in interview
    - Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
  - Yes                       With difficulty                       No
  - ❖ Does free legal assistance cover
    - Representation in courts
    - Legal advice

Following the transfer of jurisdiction from the Immigration Appeals Board to the Refugee Appeals Board, now International Protection Appeals Tribunal, applicants appealing a Dublin transfer are now entitled to legal assistance. According to the International Protection Act, legal assistance is provided under the same conditions applicable to Maltese nationals,<sup>131</sup> although the modalities, eligibility assessment, and application procedure are not publicly available.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
  - Yes                       No
  - ❖ If yes, to which country or countries?

Following the ECtHR's judgment in *M.S.S. v. Belgium and Greece*,<sup>132</sup> Malta suspended the transfers of asylum seekers to **Greece** although the police will still assist with the transfer should an asylum seeker voluntarily ask to be returned to Greece. When transfers are suspended, Maltese authorities then assume responsibility for the examination of the application and the asylum seeker is treated in the same way as any other asylum seeker who would have lodged the asylum application in Malta.

However, as of 15 December 2018, Dublin procedures to Greece of non-vulnerable asylum seekers were resumed. It appears that no transfers were carried out in 2019 and 2020.<sup>133</sup>

<sup>129</sup> Article 7(1) International Protection Act.

<sup>130</sup> Article 7(2) Refugees Act, as amended by 4(c) Act XX of 2017.

<sup>131</sup> Article 7(5) International Protection Act.

<sup>132</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application 30696/09, Judgment of 21 January 2011.

<sup>133</sup> Information provided by Dublin Unit, Office of the Refugee Commissioner, January 2019.



Apart from this, Malta has not suspended transfers as a result of an evaluation of systemic deficiencies in any EU Member State.

## 2.7. The situation of Dublin returnees

The main impact of the transfer on the asylum procedure relates to the difficulties in accessing the procedure upon return to Malta. If an asylum seeker leaves Malta without permission of the Immigration authorities, either by escaping from detention or by leaving the country irregularly, the IPA will usually consider the application for asylum to have been implicitly withdrawn, in pursuance of Regulation 13 of the Procedural Regulations, transposing the provisions of the recast Asylum Procedures Directive. Consequently, an asylum seeker who is transferred back will, in almost all cases, find that his or her asylum application has been implicitly withdrawn leaving him susceptible to return by the immigration authorities.

Indeed, in 2019 and 2020, NGOs assisting migrants reported that most Dublin returnees who flee Malta were detained upon return. They are usually detained under the Reception Conditions Directive as the authorities consider that elements of their claim could not be gathered without enforcing detention due to the risk of absconding.

Furthermore, persons travelling from Malta in an irregular manner – namely using false documents – run the risk of facing criminal charges upon being returned, on the basis of the Immigration Act. Upon return, the person would probably be arrested and brought before the Court of Magistrates (Criminal Jurisdiction) to face charges. During this time, pending the case, the asylum seeker would be remanded in custody at **Corradino Correctional Facility** for the entire duration of the criminal proceedings, which generally last for about one to two months from the date of institution of proceedings. The asylum seeker will be entitled to request the appointment of a legal aid lawyer, or to avail him or herself of a private lawyer should he or she have access to one. If found guilty, the Court may sentence the asylum seeker to either a fine of not more than around €12,000 or a maximum imprisonment term of two years, or for both the fine and imprisonment. It is noted that decisions are largely unpredictable, as some individuals have also been sentenced to imprisonment yet with a suspended sentence for a number of years.

## 3. Admissibility procedure

### 3.1. General (scope, criteria, time limits)

The new International Protection Act provides for a new definition of “inadmissible applications”. The following grounds allow for deeming an asylum application inadmissible:<sup>134</sup>

- (a) Another Member State has already granted the applicant international protection;
- (b) The applicant comes from a [First Country of Asylum](#);
- (c) The applicant comes from a [Safe Third Country](#);
- (d) The applicant has lodged a [Subsequent Application](#) presenting no new elements;
- (e) A dependant of the applicant has lodged a separate application after consenting to have his or her case made part of an application made on his or her behalf; and
- (f) The applicant has been recognised in a third country and can avail him or herself of that protection or otherwise enjoys sufficient protection from *refoulement*, and can be readmitted to that country.

It is important to note that coming from a safe country of origin is no longer a ground for the application to be deemed inadmissible. The definition of inadmissible in national legislation is now in line with the Asylum Procedure Directive.

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<sup>134</sup> Article 24 International Protection Act.



According to the International Protection Act, inadmissibility is a ground for an application to be processed under the [Accelerated Procedure](#).

As the law mentions the inadmissibility of an application for recognition of refugee status, only the International Protection Agency can decide upon the admissibility of the application.<sup>135</sup> According to NGOs' experience, applications submitted by individuals having lodged a subsequent application presenting no new documents or already benefiting from the protection of another MS are considered inadmissible and usually processed under the accelerated procedure.

NGOs started to express concerns over the application of inadmissibility procedures in 2018 since this procedure does not provide for an effective remedy but only a three-day review with the International Protection Appeals Tribunal which does not allow the applicant to provide written submissions or to be heard. The decisions are found to be a mere confirmation of the first administrative decision without any examinations of points of facts or law (see below).

In 2020, 196 applications were considered inadmissible (172 on the basis that applicants had already a protection in another Member State and 22 in the context of subsequent applications where no new elements were provided).<sup>136</sup> By way of comparison, 388 applications were deemed inadmissible in 2019.

### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?  
 Yes  No  
❖ If so, are questions limited to identity, nationality, travel route?  Yes  No  
❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

According to Article 24.3 of the new International Protection Act, the IPA shall allow applicants to present their views before a decision on the admissibility of an application is conducted. In practice, applicants coming from a first country of asylum or a safe third country are usually heard during an interview. Interviews for applicants already granted protection in another MS are usually limited to a preliminary interview. Applicants submitting a subsequent application with no new elements are usually not given the opportunity of a personal interview.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?  
 Yes  No  
❖ If yes, is it  Judicial  Administrative  
❖ If yes, is it suspensive  Yes  No

The International Protection Act foresees that inadmissible applications are channelled through the accelerated procedure. In terms of appeal, it means that the decision "shall immediately be referred to the

<sup>135</sup> Court of Appeal, *Paul Washimba v Bordtal-Appellidwarir-Rifugjati*, 28 September 2012.

<sup>136</sup> Information provided by the IPA, April 2021

Chairperson of the IPAT who shall examine and review the decision of the IPA within three working days".<sup>137</sup>

Indeed, the decision taken by the IPA does not mention the possibility for the applicant to challenge the inadmissibility decision. Therefore, applicants do not have the possibility to send any submissions to the IPAT or raise any arguments to support an appeal. Moreover, applicants sometimes receive two simultaneous rejections (i.e., the IPA decision dismissing the application as inadmissible and the IPAT's decision confirming the IPA decision) or receive the rejections within a timeframe that makes an appeal against the inadmissibility decision impossible.

Moreover, the review conducted by the IPAT is not a full and *ex nunc* examination of both facts and points of law, as the decision is not motivated and consists of a simple statement confirming the IPA's recommendation. According to the UNHCR's observations, the Tribunal tends to automatically confirm the IPA's recommendation.<sup>138</sup> Furthermore, the term "shall immediately" in Article 23(3) lacks legal precision so the actual mandatory duration of the procedure is unclear.

In 2019, the majority of decisions taken by the IPAT (55%) were review decisions (contrary to appeal decisions) made in the accelerated procedure which consist of a mere confirmation of inadmissibility decisions made in the first instance without any further assessment. These decisions are usually taken the day after receiving the IPA's decision and are only signed by the Chairperson. They do not include any examination of all points of facts and law as required by the Asylum Procedures Directive. No data was provided for 2020.

Such procedure is foreseen under the national law, which incorrectly transposes the recast Asylum Procedures Directive when it comes to the right to an effective remedy. As a consequence, practitioners and the UNHCR<sup>139</sup> do not consider this review to constitute an effective remedy as laid out in Article 46 of the recast Asylum Procedures Directive. Nevertheless, the 2017 amendment of the Refugees Act confirmed by the amendments in the new International Protection Act included a provision which specifies that "the review conducted by the Chairperson of the IPAT shall be deemed to constitute an appeal".<sup>140</sup>

The incorrect transposition of the recast Asylum Procedures Directive in respect of an effective remedy was subject to a legal challenge before the civil court in the case of a Palestinian asylum seeker who was not allowed to appeal his inadmissible decision. In this case, the applicant claimed that Malta's asylum legislation violates the recast Asylum Procedures Directive and that, as a consequence of this, his procedural rights were violated.<sup>141</sup> This being one of Malta's first ever cases relating to state liability for incorrect transposition of EU asylum law, the court (and Government) was unsure how to proceed, inviting the parties to explain whether this case is one of judicial review or one of damages.

The civil court finally rejected the case on the basis that it concluded it was a judicial case, and, therefore, time-barred, as opposed to an action for damages on the basis of an incorrect transposition of EU law.<sup>142</sup> An appeal was filed and remains pending. In the course of the proceedings, the Office of the Attorney General confirmed that the Ministry was in dialogue with the EU Commission with a view to revising the accelerated procedure. The 2020 amendments to the Act did nothing to bring this procedure in line with the Directive.

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<sup>137</sup> Art 23.3 and 24 International Protection Act.

<sup>138</sup> Information provided by UNHCR, January 2019.

<sup>139</sup> Information provided by UNHCR, January 2019.

<sup>140</sup> Article 7(1A)(a)(ii) International Protection Act.

<sup>141</sup> Case no. 909/2018GM filed on 16 February 2018.

<sup>142</sup> Civil Court, First Hall, CHEHADE MAHMOUD vs L-AVUKAT GENERALI E, 909/2018, 28 January 2020, available at: <https://bit.ly/2Vqn2CT>.

### 3.4. Legal assistance

#### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes                       With difficulty                       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?  
 Yes                       With difficulty                       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

Article 7(3) of the International Protection Act provides for the right to free legal aid for all appeals submitted to the IPAT. However, as the recommendation deeming an application inadmissible is automatically and systematically referred to the Tribunal, the appellant is not able to effectively participate in the review or to be represented.

### 4. Border procedure

There is no border procedure in Malta.

### 5. Accelerated procedure

#### 5.1. General (scope, grounds for accelerated procedures, time limits)

Article 23 and 24 of the International Protection Act provides that applications should be examined under accelerated procedures where the application is manifestly unfounded.<sup>143</sup>

The definition of “manifestly unfounded applications” reflects the grounds for accelerated procedures laid down by Article 31(8) of the recast Asylum Procedures Directive. An application is considered manifestly unfounded where the applicant:<sup>144</sup>

- (a) In submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination as to whether such applicant qualifies as a beneficiary of international protection;
- (b) Is from a safe country of origin;
- (c) Has misled the authorities by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision;
- (d) Is likely, in bad faith, to have destroyed or disposed of an identity or travel document that would have helped establish his identity or nationality;
- (e) Has made clearly inconsistent, contradictory, false, or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making the claim clearly unconvincing in relation to whether they qualify as a beneficiary of international protection;
- (f) Has introduced a subsequent application for international protection that is not inadmissible in accordance with article 24(1)(e);
- (g) Is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his removal;

<sup>143</sup> Article 23(1), (8) and (9) Refugees Act.

<sup>144</sup> Article 2(k) Refugees Act.

- (h) Has entered Malta unlawfully or prolonged his stay unlawfully and, without good reason, has either not presented himself to the authorities or has not made an application for international protection as soon as possible, given the circumstances of his entry;
- (i) Refuses to comply with an obligation to have his or her fingerprints taken in accordance with the relevant legislation;
- (j) May, for serious reasons, be considered a danger to the national security or public order, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

Article 23(2) provides that if the IPA is of the opinion that an application is manifestly unfounded, they shall examine the application within three working days and the recommendation shall immediately be referred to the International Protection Appeals Tribunal, who will then also examine this within three working days.

Comprehensive statistical information is not available, as the IPA does not keep statistical data in relation to applications that have been processed under the accelerated procedure. However, NGOs assisting asylum seekers reported an increase in the number of cases processed under the accelerated procedure since 2018.

In 2020, 196 applications were considered inadmissible and therefore channelled through the accelerated procedure

In 2020, lawyers assisting asylum-seekers noticed that the vast majority of **Bangladeshi, Moroccan, or Ghanaian** applicants were channelled to the accelerated procedure while they were detained as their claim was almost automatically considered manifestly unfounded. They were therefore not allowed to appeal the negative decision. The IPA indicated that in 2020, 238 cases received a decision as rejected since manifestly unfounded.

## 5.2. Personal interview

### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker - in most cases - conducted in practice in the accelerated procedure?
 

<input checked="" type="checkbox"/> If so, are questions limited to nationality, identity, travel route?	Not available
<input checked="" type="checkbox"/> If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

No information is available regarding the IPA policy on personal interviews in case of accelerated procedures. However, applicants deemed to be coming from safe countries of origin are usually interviewed on the merits.

Their claim is then usually assessed to be lacking evidence of a risk of persecution in case of return. It is only mentioned in conclusion of the assessment that the case is manifestly unfounded as the applicant is coming from a safe country of origin.

### 5.3. Appeal

#### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?
- |                              |   |
|------------------------------|---|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No  |
| ❖ If yes, is it              | <input type="checkbox"/> Judicial       |
|                              | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive   | <input type="checkbox"/> Yes            |
|                              | <input type="checkbox"/> No             |

Articles 23(2) and 23(3) of the International Protection Act provide that if the IPA is of the opinion that an application is manifestly unfounded, he shall examine the application within three working days and refer his recommendations immediately to the International Protection Appeals Tribunal, who is, in turn, provided three working days to examine the application. No further appeal is allowed.

Yet under Regulation 22 of the Procedural Regulations the applicant is able to appeal against a decision of inadmissibility on the basis of the safe third country if he or she is able to show that return would subject him or her to torture, cruel, inhuman or degrading treatment or punishment. In practice, this provision is not implemented.

In practice, all applications deemed inadmissible or manifestly unfounded are examined without a proper appeal because such cases are simply reviewed by the Tribunal without an opportunity for applicants to present their views.

This is particularly problematic considering the possible misuse of the manifestly unfounded concept. The vast majority of applicants coming from a safe country of origin are rejected as manifestly unfounded.

### 5.4. Legal assistance

#### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
- |                                     |  |  |
|-------------------------------------|--|--|
| <input type="checkbox"/> Yes        | <input type="checkbox"/> With difficulty             | <input checked="" type="checkbox"/> No |
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Representation in interview |  |
|                                     | <input type="checkbox"/> Legal advice                |  |
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
- |                                    |   |  |
|------------------------------------|---|--|
| <input type="checkbox"/> Yes       | <input type="checkbox"/> With difficulty          | <input checked="" type="checkbox"/> No |
| ❖ Does free legal assistance cover | <input type="checkbox"/> Representation in courts |  |
|                                    | <input type="checkbox"/> Legal advice             |  |

Article 7(5) of the International Protection Act provides for the right to free legal aid for all appeals submitted to the Refugee Appeals Board. However, as the recommendation deeming an application to be manifestly unfounded is automatically and systematically referred to the International Appeals Board, the appellant is not effectively able to participate in the review or to be represented.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  For certain categories  No  
❖ If for certain categories, specify which: Unaccompanied children
2. Does the law provide for an identification mechanism for unaccompanied children?  Yes  No

National legislation literally transposes the recast Reception Conditions Directive regarding the definition of vulnerable applicants and provides that “an evaluation by the entity responsible for the welfare of asylum seekers, carried out in conjunction with other authorities as necessary shall be conducted as soon as practicably possible”.<sup>145</sup>

#### 1.1. Screening of vulnerability

The screening of vulnerability was previously conducted upon arrival when asylum-seekers were disembarked in Malta and accommodated at the Initial Reception Centre. According to the current practice, all asylum-seekers arriving irregularly in Malta are automatically and systematically detained without any form of assessment.<sup>146</sup> Therefore, there is no systematic screening of vulnerability anymore.

AWAS is the agency in charge of conducting such screenings. They accept referrals for assessment from any and all the entities that come in contact with migrants. Referrals could be made on various grounds, including:

- Serious chronic illness;
- Psychological problems, stemming from trauma or some other cause;
- Mental illness;
- Physical disability; and
- Age (where the individual concerned is over 60).

These referrals are done mainly by IPA or NGOs visiting people in detention or reception centres, by filing a form (basic information, reason for referral, type of vulnerability) to send to AWAS.

In 2020, EASO deployed experts in order to support AWAS with vulnerability screenings. The ‘vulnerability assessment response team’ assesses potential vulnerable applicants both in reception and detention centres. EASO deployed a total of 14 vulnerability assessors throughout 2020, out of which 11 were still present on 14 December 2020. According to information provided by EASO, a total of 206 vulnerability assessments of asylum applicants were conducted from September to December 2020.<sup>147</sup>

The team operates both in reception centres and in detention centres, under the supervision of AWAS.

Assessors use new and updated tools created by EASO.

Vulnerability is assessed on 4 levels:

- 1 being a very urgent support needed,
- 2 being in need of medical support,
- 3 being in need of medical but not urgent,
- 4 being a need in terms of housing and education.

<sup>145</sup> Regulation 14 Reception Regulations.

<sup>146</sup> Only women and obvious minors will not be taken to detention centres.

<sup>147</sup> Information provided by EASO, 26 February 2021.

Following the assessment, a report is produced and a recommendation is made. If the assessment concludes the person is vulnerable, he/she should be automatically released from detention (if applicable) and transferred to the IRC where he/she is seen by the Therapeutic Unit. They are eventually transferred to an open centre. AWAS usually accommodates them close to the Administration Block so that they can receive better support.

This team started to operate in September 2020 and conducted 136 assessments in detention. An additional 84 assessments were conducted at the end of the year in the reception centres.

According to AWAS, plans are made to create more space dedicated to vulnerable people and space accessible for disabled.<sup>148</sup>

Like the Age Assessment Procedure discussed below, the Vulnerability screening is not regulated by clear and publicly available rules. Where a referral is rejected, the individual concerned is not always informed of the decision; where the decision is communicated, it is rarely communicated in writing and no reasons are given to the individual concerned. Where the case is being followed by a social worker, it is usually possible for the said professional to request and obtain information regarding the reasons for rejection on the client's behalf.

There is no possibility to challenge such assessments.

The length of time taken to conclude assessment procedures varies. As a rule, cases concerning referrals on grounds of mental health or chronic illness are likely to take longer to determine than cases where vulnerability is immediately obvious, e.g., in the case of physical disability.

In 2019 and 2020, all applicants rescued at sea and disembarked in Malta have been automatically detained without any form of assessment on the need to detain them under the Reception Conditions Directive. Therefore, vulnerable applicants, including minors are still *de facto* detained. Referrals to AWAS are possible by NGOs visiting detention and vulnerability assessments can be conducted by the AWAS/EASO team. Depending on the availability of space in open centres, vulnerable applicants can be released from detention.

Asylum seekers arriving regularly, and therefore not accommodated in the IRC, may never be assessed and their vulnerability may never be identified.

A further concern is that, following their identification as vulnerable, individuals receive little or no support as they are required to access mainstream, and, therefore, non-specialised, support services as a matter of national policy.

The International Protection Agency recently set up a fast-track procedure for vulnerable persons.<sup>149</sup> The purpose of this fast-track process is to have the possibility to prioritise and quickly process applications for international protection submitted by particularly vulnerable individuals, who may be at risk of further psychological or other harm if their asylum determination procedure is protracted for a period of time.

According to IPA, a vulnerable applicant can be a minor, an elderly person, a pregnant woman, single parents with minor children, victims of human trafficking, persons with serious illnesses or medical conditions, persons with disabilities, persons with mental health issues or mental disorders, survivors of torture or rape, female genital mutilations survivors, persons who have been subjected to other serious forms of psychological, physical or sexual violence, and LGBTIQ persons.

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<sup>148</sup> Information provided by AWAS, February 2021.

<sup>149</sup> Information provided by the IPA, October 2020.

To be considered vulnerable and to benefit from this fast-track procedure, an asylum-seeker must be referred to IPA by AWAS or by external entities such as EASO, UNHCR, NGOs or lawyers. Such referrals must be accompanied by a medical, social, psychological, or psychiatric report signed by a professional attesting the applicant's vulnerability.

Approval for the fast-tracking must be given by the Chief Executive Officer, who reserves the discretion not to grant approval and process the case through the regular procedure.

In case the case is fast-tracked, the applicant will:

- Receive information in a manner which is sensitive and relevant to his/her needs;
- Be offered referral for free legal assistance to relevant NGOs or lawyers;
- Be offered the possibility for a support person to accompany them and be present during the personal interview;
- Be informed of the personal interview date well in advance;
- Be interviewed over more than one time if needed;
- Be assessed by a case worker and an interpreter duly briefed about the applicant's individual situation;
- Be offered the possibility to choose the gender of the case worker and interpreter whenever possible;
- In the event that the applicant is an unaccompanied minor, the interview will be conducted in a child-friendly manner taking into account the individual experiences and circumstances of the applicant;
- In case of an unaccompanied minor under 16 years old, effort shall be made to fast-track the processing of the application after a legal representative is formally appointed;
- The personal interview shall be prioritised and the examination of the application shall be concluded within two weeks from the date of the personal interview, the decision shall be taken within four weeks following the personal interview.

The IPA indicated that 8 persons were fast-tracked through this internal procedure in 2020. However, lawyers assisting asylum-seekers in these cases noticed that decisions were not taken within the time limits indicated in the policy.

## 1.2. Age assessment of unaccompanied children

Unaccompanied asylum seekers who declare that they are below the age of 18 upon arrival or during the completion of their Application Form are referred to AWAS for age assessment.

The age assessment procedure was developed and implemented with a view to assess claims of children. Although there are some references to this procedure in legal and in policy documents, the procedure itself is not regulated by law.

The only references to age assessment procedures in law are found in Regulation 17 of the Procedural Regulations, which deals with the use of medical procedures to determine age, within the context of an application for asylum and Article 21(5) of the Minor Protection Act<sup>150</sup> wherein the Director responsible for child protection may refer the minor to appropriate agencies to verify whether the person is in fact an unaccompanied minor.

According to the policy, irregular migrants who are undoubtedly children shall immediately be treated as such without recourse to any age assessment procedures. Age assessment shall be undertaken in all other cases.<sup>151</sup>

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<sup>150</sup> Minor Protection (Alternative Care) Act, CAP 602 of the Laws of Malta, 2020, available at: <https://bit.ly/3tweoUJ>.

<sup>151</sup> Strategy Document, November 2015, 11.



The age assessment procedure was reviewed in late 2014, introducing a number of positive improvements by focusing on a holistic approach. It includes a greater integration of the benefit of the doubt in decision-making and reduces the timeframe of the procedure. No real changes have taken place in practice since the reform, however.<sup>152</sup>

The first age assessment phase consists of an interview conducted jointly by an AWAS staff member and a transcultural counsellor.<sup>153</sup> For persons visibly under the age of 14, AWAS begins this first phase on the day immediately following their arrival. For other claims, AWAS begins two working days later and this phase must be completed by the sixth working day. Under the new procedure, there is no obligation to take into consideration any documentation provided by the person. At the end of the first phase, if the panel recommends that the person is a minor, the minor is referred to the Director responsible for child protection for a legal guardianship application to be filed before the Courts.

If the assessment is not conclusive at the end of the first phase, the person is referred for a further age assessment. This second phase consists of a more-in-depth interview with a team of three transcultural counsellors. This interview must be completed by the eighth working day after referral. Following the interview, the panel submits its recommendations, which are then presented to a Chairperson. The last phase consists of the decision taken by the Chairperson, after an examination of the recommendations and a reasoned analysis of the team. This determination must come by the tenth working day after referral. If the person is found to be a minor, they are referred to the Director responsible for child protection for a legal guardianship application to be filed before the Courts.

At the end of this last phase, if the assessment is still not conclusive, the Chairperson can either refer the person for a second age assessment or for a bone density test, conducted by the Ministry of Health.<sup>154</sup>

Under the amended procedure, a 'Social Report' is prepared by AWAS including the findings and the outcome of the assessment, this document is shared with the Department of Social Welfare Standards and then sent to the Ministry for Family and Social Solidarity.

The AA procedure now takes place in the **Marsa** Centre.

The Age Assessment Procedure has been improved but it is still plagued by a lack of adequate procedural guarantees, including a lack of information about the procedure. Moreover, since all people disembarked in Malta are automatically detained, minors who are not undoubtedly children are also detained pending age assessment which can be conducted months after their arrival. Minors receive very little information about the procedure and they are not supported by anyone during the process. NGOs assisting asylum-seekers in detention noticed that when assessed as adults, applicants are usually not notified of the outcome of the assessment and of the decision, leaving them thinking the procedure is still open. AWAS acknowledged some issues with the notification process and indicated that it is being reviewed.<sup>155</sup>

Moreover, minors are usually not informed of the possibility to appeal age assessment decisions and do not receive any legal support to appeal. Such appeals are to be filed before the Immigration Appeals Board within three days. Such conditions usually do not allow them to make use of this legal remedy.

The procedure also raises a conflict of interest as age assessments are carried out by AWAS which is also the responsible authority for providing accommodation and support to unaccompanied minors.<sup>156</sup>

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<sup>152</sup> Information provided by AWAS, 24 January 2017.

<sup>153</sup> The transcultural counsellors consist of a team of recent university graduates trained by JRS. They are not official AWAS employees but they fall under its supervision and responsibility.

<sup>154</sup> aditus foundation, *Unaccompanied minor asylum-seekers in Malta: a technical report on age assessment and guardianship procedures*, October 2014, available at <http://bit.ly/1W5MOPq>.

<sup>155</sup> Information provided by AWAS, January 2021.

<sup>156</sup> Information provided by JRS, January 2019.

As already mentioned, UNHCR confirmed that authorities failed to apply the benefit of the doubt to persons declaring to be minors upon arrival (with very few exceptions), resulting in them being treated as adults until the age assessment outcome, which entailed detention together with other adult asylum seekers.<sup>157</sup> The UNHCR Representative in Malta reiterated her concerns in February 2021, stating that “children are (still) being held in closed centres”.<sup>158</sup>

The ECtHR criticised the length of the age assessment procedure in *AbdullahiElmi v. Malta*, holding that the number of alleged minors per year put forward by Malta does not justify an age assessment procedure duration of more than seven months; in this case, the applicants were detained for eight months pending the outcome of the procedure.<sup>159</sup> In 2019, there have been significant delays in conducting age assessments with unaccompanied minors being kept in detention in the closed section of the IRC and Safi barracks for several weeks whilst waiting for such assessments to be conducted. The age assessment procedure was extended to last a maximum of 21 days but with the large number of applicants and alleged unaccompanied minors (UAM), the procedure is currently taking much longer. When space is available for minors who are recognised as such, AWAS tries to accommodate them in a dedicated centre.

Moreover, significant delays in the transfer to open centres of persons found to be minors and in the issuance of ‘Care Orders’ were observed.<sup>160</sup> One of the main issues in 2020, beyond the waiting time to conduct an age assessment, is the delay in appointing legal guardians (see [Legal representation of unaccompanied children](#)).

The Minor Protection (Alternative Care) Act was recently amended and came into force on 1 July 2020. It replaced earlier legislation on the protection of children in need of care and support, including unaccompanied minors and/or separated children. The Act establishes the position of the Director (Protection of Minors) within the Foundation for Social Welfare Services, Malta’s welfare entity, who is responsible for protecting minors. It introduces the duty for all persons to report any minor who is at risk of suffering or being exposed to significant harm and establishes various forms of protection orders the Juvenile Court may impose, including care orders.

In relation to UAMs, the Act introduces a judicial procedure where the Director files an application for the issuing of a care order. It is also the Court that appoints a legal guardian and a child advocate, in order to secure the child’s best interests. Age assessments may be requested by the Director as part of the Court application process. Being the Act’s first year of implementation, 2020 saw a number of practical challenges. The vast majority of minors did not have any legal guardian appointed to them, mainly due to shortcomings in the new judicial procedure. This resulted in minors having their asylum procedures put on hold, as well as the issuing of documentation attesting their status as asylum-seekers.

In 2020, AWAS indicated that 580 people claimed to be minors upon arrival. 430 age assessments were conducted, 161 applicants were declared adults, 101 were declared minors and 165 were finally declared to be adults as they changed their declaration during the procedure.

Reports were received by lawyers that persons claiming to be minors were told by Government officials to declare themselves as adults during the age assessment, in order to enter or facilitate the relocation scheme.

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<sup>157</sup> UNHCR - Left in Limbo, UNHCR study on the implementation of the Dublin III Regulation, August 2017, available at: <https://bit.ly/2TQRLas>, 68.

<sup>158</sup> The Times of Malta, Migrant detention numbers shrink, fears about child detainees remain, 7 February 2021, available at: <https://bit.ly/3cP8Mwj>.

<sup>159</sup> ECtHR, *AbdullahiElmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

<sup>160</sup> Information provided by JRS, January 2019.

In 2020, AWAS established a UAM Protection Service in order to better assist UAMs in reception centres. No more information is available at that stage as it was created very recently.<sup>161</sup>

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?  Yes  For certain categories  No
- ❖ If for certain categories, specify which:

### 2.1. Adequate support during the interview

According to the law, the IPA shall assess applications from those in need of special procedural guarantees within a reasonable period of time and ensure that such applicants are provided with adequate support throughout the whole procedure.<sup>162</sup>

As mentioned above, the IPA put in place a special fast-track procedure for applicants identified as vulnerable and in need of special procedural guarantees. Substantiated referrals may be made by any entity, following which the IPA will assess the alleged vulnerability and proceed accordingly.

### 2.2. Exemption from special procedures

The accelerated procedure shall not be applied in case it is considered that an applicant requires special procedural guarantees as a consequence of having suffered torture, rape, or other serious form of psychological, physical, or sexual violence.<sup>163</sup>

Special guarantees are also foreseen for unaccompanied children. For example, it shall be ensured that minors are provided with legal and procedural information, free of charge on their application for international protection, and the interview is to be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.<sup>164</sup>

Moreover, the Refugees Act provides that unaccompanied children may only be subject to the accelerated procedure where:

- (a) they come from a safe country of origin;
- (b) have introduced an admissible subsequent application; or
- (c) present a danger to national security or public order or have been forcibly expelled for public security or public order reasons.<sup>165</sup>

## 3. Use of medical reports

### Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  Yes  In some cases  No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  Yes  No

<sup>161</sup> Information provided by AWAS, February 2021.

<sup>162</sup> Regulation 7 Procedural Regulations.

<sup>163</sup> Regulation 7 Procedural Regulations.

<sup>164</sup> Regulation 18 Procedural Regulations.

<sup>165</sup> Article 23A International Protection Act.

The law does not mention the submission of medical reports in support of an asylum seeker's claim. When these are presented, the Refugee Commissioner treats them as documentary evidence presented by the applicant. Practitioners who have assisted a number of asylum seekers at first instance note that medical reports are taken into consideration, especially with regard to applicants with mental health problems. In these cases, reports provided by medical professionals are given considerable weight in the evaluation of the applicant's need for protection. Medical reports documenting torture and other violence are not routinely provided by asylum applicants.

The Refugee Commissioner noted in 2018, that it has very rarely requested an applicant to undergo a medical examination. Where it does occur, the examination is paid for from public funds. No such request was made in 2018,<sup>166</sup> and there is no information available for 2019 or 2020.

Medical or professional reports are nonetheless necessary for a referral to the fast-track procedure for vulnerable applicants.

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes  No

As already mentioned, a new Minor Protection (Alternative Care) Act came into force in July 2021 replacing earlier legislation on the protection of children in need of care and support, including unaccompanied minors and/or separated children. The Act establishes the position of the Director (Protection of Minors) within the Foundation for Social Welfare Services, Malta's welfare entity, who is responsible for protecting minors. It introduces the duty for all persons to report any minor who is at risk of suffering or being exposed to significant harm and establishes various forms of protection orders the Juvenile Court may impose, including care orders.

In relation to UAMs, the Act introduces a judicial procedure where the Director - altered to an UAM - files an application for the issuing of a care order. It is also the Court that appoints a legal guardian and a child advocate, in order to secure the child's best interests. Age assessments may be requested by the Director as part of the Court application process. Being the Act's first year of implementation, 2020 saw a number of practical challenges. The vast majority of minors did not have any legal guardian appointed to them, mainly due to shortcomings in the new judicial procedure. This resulted in minors having their asylum procedures put on hold, as well as the issuing of documentation attesting their status as asylum-seekers.

According to the Procedural Regulations, as soon as possible and no later than 30 days from the issue of the 'Care Order', unaccompanied minors shall be represented and assisted by a representative during all the phases of the asylum procedure.<sup>167</sup> The assigned legal guardian is an AWAS staff member, usually a social worker, and the Regulations provide that he shall have the necessary knowledge of the special needs of minors.

The legal guardian shall inform the unaccompanied child about the meaning and consequences of the personal interview and prepare the child for the interview. Moreover, the representative attends the status determination interview and may ask questions during the procedure. In practice, although the legal guardian does attend the interview together with the child, information and advice regarding the asylum procedure is provided by NGOs upon referral by the children's guardians.

<sup>166</sup> Information provided by the Refugee Commissioner, January 2019.

<sup>167</sup> Regulation 18 Procedural Regulations.

According to NGOs assisting migrants, some unaccompanied minors, *de facto* detained, reported acts of violence including sexual violence perpetrated against them by other detainees.<sup>168</sup> When informed and when space is available, AWAS tries to accommodate them in centres dedicated for vulnerable applicants such as **Dar-il-Liedna** or **Balzan** open centre. In 2020 a specific space for minors was created in **Hal Far Tent Village**.

## E. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications?  Yes  No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No

An asylum seeker whose claim has been rejected may submit a subsequent application to the International Protection Agency.<sup>169</sup> A person may apply for a subsequent application if he or she can provide elements or findings that were not presented before – subject to strict interpretation – at first instance. This evidence would have to be proof of which the applicant was either not aware of or which could not have been submitted earlier. Such new elements need to be presented within 15 days of receiving the information.

The IPA will first assess the admissibility of the subsequent application and if the application is deemed admissible, the applicant may be called for an interview, at the discretion of the Agency. Once the application is evaluated, a decision on the case is communicated to the appellant in writing. Since there is no free legal aid at this stage of the proceedings, asylum seekers are almost entirely dependent on NGOs.

There is no limit as to the number of subsequent applications lodged, as long as new evidence is presented every time. Second, third, and other subsequent applications are generally treated in the same manner.

The International Protection Agency created a standard form that applicants or their representatives need to fill in order to file a subsequent application. This form is meant to facilitate the filing of such applications by exempting applicants to draft submissions.

Removal orders are only suspended once the applicant has formally been confirmed to be an asylum seeker by the IPA, since this confirmation triggers the general protection from *non-refoulement* guaranteed to all asylum seekers.

In the eventuality that a subsequent application is deemed admissible but is not accepted on the merits, there is the possibility of appealing this decision to the International Protection Appeals Tribunal within 15 days, in the same way as with the regular procedure.<sup>170</sup>

<sup>168</sup> Information provided by JRS Malta, aditus foundation, 2020.

<sup>169</sup> Articles 7A and 4 International Protection Act.

<sup>170</sup> Article 7(1A)-(2) International Protection Act.

In case the subsequent application is deemed inadmissible when no new elements were found, the decision is immediately forwarded to the IPAT for a review, which does not allow for the applicant to appeal properly as provided by the Asylum Procedures Directive.

There are two main obstacles faced by asylum seekers in respect of subsequent applications. The first is a lack of information. Information on the possibility to lodge a subsequent application is never communicated to asylum seekers whose appeal at the IPAT has been rejected. The second obstacle is the lack of free legal assistance when submitting a subsequent application. The only alternative for asylum seekers is to approach JRS, which is the main NGO offering a free legal service in the field of asylum.

In 2020, 60 applicants have lodged a subsequent application (out of which 17 applications were lodged by Syrian nationals, 9 by Libyan nationals, 5 by Pakistani nationals and 5 by Nigerian nationals).

## F. The safe country concepts

Indicators: Safe Country Concepts		
1. Does national legislation allow for the use of “safe country of origin” concept?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Is there a national list of safe countries of origin?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Is the safe country of origin concept used in practice?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Does national legislation allow for the use of “safe third country” concept?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Is the safe third country concept used in practice?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3. Does national legislation allow for the use of “first country of asylum” concept?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

### 1. Safe country of origin

According to Article 2 of the International Protection Act, a safe country of origin means a country of which the applicant is a national or, being a stateless person, was formerly habitually resident in that country and the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his particular circumstances.

The Act also provides, by way of a Schedule, the list of countries of origin considered as safe. The Minister responsible for Home Affairs is competent to amend the list of countries and may review the list whenever necessary by means of an administrative act. The last amendment to the list is dated 2020 when it included Bangladesh and Morocco. Currently the list of safe country of origin includes: Australia, Benin, Botswana, Brazil, Canada, Cape Verde, Chile, Costa Rica, Gabon, Ghana, India, Jamaica, Japan, New Zealand, Senegal, United States of America, Uruguay, Member States of the European Union and EEA countries. The criteria as to which countries are listed/removed is unclear.

The concept of safe country of origin can be used to consider an application manifestly unfounded. This would, in turn, render the accelerated procedure applicable.<sup>171</sup>

As already mentioned, it looks like this concept is now implemented speedily to reject applications, especially from nationals of **Bangladesh**, **Morocco**, and **Ghana**. It also concerns applicants having claims within scope of the refugee or subsidiary protection definition who might see their applications deemed manifestly unfounded and, as a consequence, denied the possibility to appeal. On the basis of application of this principle, they would immediately receive a return decision/removal order once the IPAT confirms the application as being manifestly unfounded.

<sup>171</sup> Articles 8(1)(h) and 23 International Protection Act.



In 2020, 210 applications were rejected as manifestly unfounded on the basis that the applicants were coming from a safe country of origin. As already mentioned, 100% of the applications filed by Bangladeshis (with the exception of 1 THP status) or Moroccans applicants were rejected.

## 2. Safe third country

A safe third country means a country of which the applicant is not a national or citizen and where:

- (a) Life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) The principle of *non-refoulement* in accordance with the Convention is respected;
- (c) The prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;
- (d) The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention;
- (e) The applicant had resided in the safe country of origin for a meaningful period of time prior to his entry into Malta.

Under the International Protection Act, the concept of a safe third country can be used to determine if an application should be considered under the accelerated procedure as inadmissible.<sup>172</sup>

According to IPA, depending on the particular circumstances of the case, it could be determined that the concept of safe third country could apply.<sup>173</sup> However, no specific information was provided as regards the actual interpretation and application of the safe third country concept by the IPA. The latter confirmed that no decision in 2020 was taken on the basis of this concept.

## 3. First country of asylum

The concept of first country of asylum is defined as a country where the applicant has been recognised as a refugee or otherwise enjoys sufficient protection, including respect of the *non-refoulement* principle, and maybe readmitted thereto. This is also mentioned as a ground for inadmissibility.<sup>174</sup>

No information is available about the application of this concept. According to the IPA this provision may apply “on a case-by-case basis”.

According to NGOs assisting applicants, the concept of first country of asylum was used in 2017 and 2018 for cases involving **Palestinian** applicants benefitting from the United Nations Relief and Works Agency (UNRWA) refugee status in Lebanon. Such cases were deemed inadmissible even though the applications were examined on the merits. Such cases were immediately referred to the Refugee Appeals Board and no appeal could be submitted by the applicant to challenge the decision. the IPA indicated that, in 2020, no cases was rejected on that basis.

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<sup>172</sup> Articles 8(1)(g), 23 and 24(1)(c) Refugees Act.

<sup>173</sup> Information provided by the Refugee Commission, 12 January 2018.

<sup>174</sup> Article 24(1)(b) Refugees Act.

## G. Information for asylum seekers and access to NGOs and UNHCR

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  Yes  With difficulty  No
- ❖ Is tailored information provided to unaccompanied children?  Yes  No

The provisions in the law regarding information to asylum seekers are Regulation 3(3) of the Declaration Regulations and Regulation 4(1) of the Procedural Regulations. The latter states that asylum seekers have to be informed, in a language that they understand, or they may reasonably be supposed to understand, of, among other things, the procedure to be followed and their rights and obligations during the procedure. It also states that asylum seekers have to be informed of the result of the decision in a language that they may reasonably be supposed to understand, when they are not assisted or represented by a legal adviser and when free legal assistance is not available. The amended provision also covers the information about the consequences of an explicit or implicit withdrawal of the application, and information on how to challenge a negative decision. This provision does not, however, state in which form such information has to be provided except for the decision that, by virtue of Regulation 14 of the Procedural Regulations, has to be provided in a written format. In practice, information is provided both by the Immigration Police and personnel working for the Refugee Commissioner. In the case of the Immigration Police, information on the rights and obligations of asylum seekers is provided almost immediately in the form of a booklet that is available in English, French, and Arabic.

In 2019 and 2020, information was no longer provided by the IPA to detained applicants, i.e. all applicants who entered Malta irregularly. The only information provided to applicants in detention was delivered by UNHCR Malta, which visits detention centres regularly, and by NGOs on a case-by-case basis. When applicants are registered and interviewed by EASO operating on behalf of the IPA, they do receive information about the asylum procedure and are given a leaflet. However, this appointment usually happens months after their arrival.

Consequently, most applicants detained upon arrival were not informed about the ground for their detention, nor about their rights as asylum-seekers. Some applicants were detained under the Health Regulation and the very basic document provided to them does not mention any kind of information and is generally not provided in a language the applicant can understand. The vast majority was *de facto* detained without being provided with any document and thus did not receive any information for months.

It is worth noting that the EASO operating plan with Malta for 2020 foresaw the development of information material “covering the various procedural steps with simple and clear content, appropriate for the age and level of understanding of the applicants, in a language that the applicant is reasonably supposed to understand and using appropriate dissemination tools”.<sup>175</sup>

Moreover, both NGOs and UNHCR were denied access to detention for several months in 2020 due to the COVID-19 pandemic, leaving hundreds of asylum-seekers with no information or assistance.

Information provided to persons who are not detained is also a concern as the asylum system is not structured for asylum seekers arriving regularly and, therefore, those who are not taken to the IRC within a controlled environment. There is no systematic and structured way to provide comprehensive information to asylum seekers outside detention. They only receive basic information about the asylum procedure but not about their rights regarding reception. For example, they do not have access to

<sup>175</sup> EASO Operating Plan 2020, December 2019, available at: <https://bit.ly/2XxYx9K>.



information about access to healthcare or education, while asylum seekers in detention see their basic needs covered.

Alternative sources of information are available in practice mostly through NGOs and UNHCR. For instance, staff of the Jesuit Refugee Service (JRS) Malta visit the IRC after each boat arrival to provide an information session on the asylum procedure as well as on the rights and obligations pertaining to such procedures. JRS Malta is also available to provide information sessions to asylum seekers who are not kept in detention. However, that is only possible if the asylum seekers concerned come to the attention of the said organisation.

### Information on the Dublin procedure

With respect to the Dublin Regulation, some information is provided to asylum seekers with a document that is given to each person by the Immigration authorities upon their arrival. The information is contained in a few short paragraphs and is written in English. It does not include information on the consequences of continuing to travel to another EU Member State or absconding from a transfer. As a result, the information provided cannot be considered sufficient for asylum seekers to fully understand the way in which the Dublin system functions as well as its consequences. According to legal practitioners operating in the field, it appears that Dublin-related information leaflets for adults and unaccompanied children, as included in Annexes X and XI of the Commission Implementing Regulation No 118/2014, are not distributed to asylum seekers.<sup>176</sup>

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No

National legislation provides that UNHCR shall have access to asylum applicants, including those in detention and in airport or port transit zones.<sup>177</sup> Moreover, the law also states that a person seeking asylum in Malta shall be informed of his right to contact UNHCR.<sup>178</sup> There is no provision in the law with respect to access to asylum applicants by NGOs, however, it states that legal advisers who assist applicants for asylum shall have access to closed areas such as detention facilities and transit zones for the purpose of consulting the applicant.<sup>179</sup> Thus, NGOs have indirect access to asylum applicants through lawyers who work for them. In practice, however, asylum seekers located far from the centre or in closed centres do not face major obstacles in accessing NGOs and UNHCR.

Access to the IRC is regulated by AWAS and is not granted to family members or NGOs on grounds of the medical clearance conducted in this facility. However, access to the open section of the IRC is granted to UNHCR and NGOs requesting access in order to provide services.

<sup>176</sup> See Commission Implementing Regulation (EU) No 118/2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ 2014 L 39/1.

<sup>177</sup> Regulation 16(a) Procedural Regulations.

<sup>178</sup> Regulation 3(3)(c) Declaration Regulations.

<sup>179</sup> Regulation 7(3) Procedural Regulations.

Since all applicants arriving irregularly in Malta were detained, access to detention became a priority for UNHCR and NGOs. In 2019, access was revoked after two leading NGOs filed *Habeas Corpus* cases which led to the acknowledgment of the unlawfulness of detention and the release of several applicants.<sup>180</sup> Access was subsequently denied for NGOs for several weeks without any explanation. In 2020, access was denied again for several months to NGOs but also UNHCR, officially as a result of the Covid-19 pandemic. Access was authorised again in July 2020 before being denied again from August until October 2020.

In 2020, group sessions for NGOs with applicants were no longer authorised. Meetings were only possible with individual clients, limiting the monitoring activities of visiting NGOs and lawyers.

## H. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  Yes  No
  - ❖ If yes, specify which: Syria, Libya
2. Are applications from specific nationalities considered manifestly unfounded?<sup>181</sup>  Yes  No
  - ❖ If yes, specify which: Jamaica, Brazil, Japan, Canada, US, Cape Verde, New Zealand, Child, Senegal, Costa Rica, Gabon, Ghana, Uruguay, and EU/EEA

### 1. Syria

In 2020, a total of 209 decisions on Syrian cases were taken. This refers to 45 refugee status, 107 subsidiary protection and 57 rejections (among them 53 were inadmissible) This means that the majority of Syrians continue to receive subsidiary protection in Malta.

By way of comparison, 429 Syrian nationals had applied for international protection in Malta in 2019. The vast majority were granted subsidiary protection (261) while 24 were recognised as refugees. 77 applications were rejected but that number includes implicit and explicit withdrawals.

### 2. Libya

In 2019, the Refugee Commissioner received 258 applications from Libyan nationals. 50 were granted subsidiary protection while 12 were recognised refugees. 24 applications were rejected but that also includes explicit and implicit withdrawals.

The IPA did not share statistics on Libyan nationals in 2020, but according to Eurostat the large majority of them obtained subsidiary protection (70 persons), none of them received a refugee status, and only 5 Libyan applicants were rejected. This confirms that, where nationality is established, Libyan national continue to be systematically granted international protection.

<sup>180</sup> Court of Magistrates, 7 October 2019, Mohammed Abdallah Mohammed 19O-030, available at: <https://bit.ly/2V6lVcs>; Court of Magistrates, Zeeshan Saleem 19N-24, 8 October 2019, available at: <https://bit.ly/3b7iLea>.

<sup>181</sup> Whether under the “safe country of origin” concept or otherwise.

## Reception Conditions

### Short overview of the reception system

The Agency for the Welfare of Asylum-Seekers (AWAS) is in charge of the reception system for asylum-seekers in Malta. The Agency manages the reception centres and provides welfare services to asylum-seekers and some beneficiaries of international protection (since protection beneficiaries are entitled to access mainstream services).

Officially, the reception system in Malta is still governed by the 2015 Strategy for the Reception of Asylum-seekers and irregular migrants.<sup>182</sup> This policy is based on the transposition into national legislation of the Reception Conditions Directive and the Return Directive. According to the policy, all applicants arriving irregularly by boat are sent to an Initial Reception Centre where checks and assessments (age assessment, vulnerability assessment, need to detain) are conducted before being referred to detention or reception centres.

However, this policy suddenly stopped from being applied in the summer of 2018 due to a significant increase in the number of asylum-seekers arriving by boat. The whole Maltese reception system, not sufficiently equipped to deal with such high numbers, was found to be under extreme pressure. Due to lack of space available in overcrowded reception centres, the authorities decided to automatically detain all applicants arriving irregularly in Malta or rescued at sea.

Therefore, the reception procedure currently depends on the space available to accommodate applicants. AWAS regularly informs the authorities and Detention Services about how many places are available.

Families, UAMs, and vulnerable applicants are prioritised and, according to the authorities, should not be detained. However, applicants may stay for prolonged periods of time in detention before they undergo an assessment and it is established that they are a minor or vulnerable.

Applicants are usually released in chronological order depending on date of arrival. A place in a reception centre does not depend on the status of their application but only on the space available.

Once admitted, families and vulnerable applicants can be accommodated for one year while single males are given a six-month contract. People are asked to leave at the end of their contract irrespective of their status and even if their application for international protection is still pending.

The Maltese reception system consists of several reception facilities, divided mainly between one large scale area in **Hal Far** (composed of several centres), an Initial Reception Centre in **Marsa**, and several apartments.

In 2020, overcrowding, poor conditions, and shortages of trained staff in reception facilities were reported. Homelessness is increasing because asylum applicants are required to leave open centres after a short period of time as space for quarantining is needed, and as a result of job losses and difficulties in finding stable work. Delays in providing asylum-seekers with documentation have also impacted access to employment, education, and basic social support.

Despite available EU funding, the planned new open centre in **Hal Far** that would increase residential capacity by 400 persons is yet to be built, and offshore reception/detention has been introduced.<sup>183</sup>

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<sup>182</sup> AWAS, Migration Policy, 'Strategy for the reception of asylum seekers and irregular migrants' available at: <https://bit.ly/3f4YE5s>.

<sup>183</sup> FRA, 'Migration: Key fundamental rights concerns, Quarterly Bulletin, Nov 2020', available at: <https://bit.ly/3cblrdC>.

## A. Access and forms of reception conditions

### 1. Criteria and restrictions to access reception conditions

#### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions available to asylum seekers in the following stages of the asylum procedure?
- |                           |   |  |                             |
|---------------------------|---|--|-----------------------------|
| ❖ Regular procedure       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Dublin procedure        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Accelerated procedure   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Appeal                  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Subsequent application  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes  No

Maltese law does not distinguish between the various procedures to determine entitlement to reception conditions, nor does it establish any distinction in the content of such conditions linked to the kind of procedure. Relevant legislation simply refers to “applicant”, defined as a person who has made an application for international protection.<sup>184</sup> No reference is made to the duration of entitlement to reception conditions.

Material reception conditions shall be available for applicants from the moment they make their application for international protection. According to the law, reception conditions are available for “applicants [who] do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence”.<sup>185</sup> Applicants with sufficient resources or who have been working for a reasonable amount of time may be required to contribute to the cost of material reception conditions. However, no specific indication is provided as to the level of personal resources required, and it is unclear how this is determined, and by whom. It is also unclear as to whether an assessment of the risk of destitution is actually carried out. Asylum seekers are not formally required to declare any resources. The vast majority of applicants in Malta arrive irregularly by boat and do not have any resources. Applicants arriving regularly, or who were already present in Malta, can ask for a space in a reception centre which can only be afforded upon availability.

Regulation 16 of the Reception Regulations states that asylum seekers who feel aggrieved by a decision relating to the Regulations may be granted leave to appeal before the Immigration Appeals Board, established by the Immigration Act.

Whilst the Reception Regulations apply to all asylum seekers, in practice, reception conditions may not be offered to asylum seekers who might have benefitted from them earlier and subsequently departed from the open centre system. This would apply, then, to persons who have submitted subsequent applications. As a matter of policy, persons departing from the open centre system are not generally authorised to re-enter it, consequently leading to a lack of provision of reception modalities. However, AWAS has indicated that some individuals may be authorised to return to reception centres, although this is rarely the case. Usually, those persons are asked to come to AWAS’ office to apply for accommodation. An assessment is then made by a social worker who first tries to refer the person to the mainstream services. No formal criteria exist to decide on why certain persons can be reintegrated in reception centres, but AWAS indicated that vulnerability is taken into account as a priority.<sup>186</sup>

<sup>184</sup> Regulation 2 Reception Regulations.

<sup>185</sup> Regulation 11(4) Reception Regulations.

<sup>186</sup> Information provided by AWAS, January 2019.

Considering the current situation and the lack of space for newly arrived applicants, reintegration in the reception system is extremely rare.

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2020 (in original currency and in €): €130

The Reception Regulations cover the provision of “material conditions”, defined as including “housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance”.<sup>187</sup>

In practice, asylum seekers in open centres are provided with accommodation and a daily food and transport allowance whereas asylum seekers in detention are provided with accommodation, food, and clothing in kind.

The Reception Regulations generally specify that the level of material reception conditions should ensure a standard of living adequate for the health of the asylum seekers, and capable of ensuring their subsistence. However, legislation neither requires a certain level of material reception conditions, nor does it set a minimum amount of financial allowance provided to detained asylum seekers. Asylum seekers living in open centres are given a small food and transport allowance, free access to state health services and in cases of children under sixteen, free access to state education services. They are not entitled to social welfare benefits. Asylum seekers in detention enjoy free state health services, clearly within the practical limitations created by their presence within a detention centre.

Asylum seekers living in open centres experience difficulties in securing an adequate standard of living. The daily allowance provided is barely sufficient to provide for the most basic of needs, and the lack of access to social welfare support exacerbates these difficulties. Social security policy and legislation precludes asylum seekers from social welfare benefits, except those benefits which are defined as “contributory”. With contributory benefits, entitlement is based on payment of a set number of contributions and on meeting the qualifying conditions, which effectively implies that only a tiny number of asylum seekers would qualify for such benefits, if any.

AWAS provides different amounts of daily allowance, associated with the asylum seeker’s status:

- € 4.66 for asylum seekers; € 130.48 per 28 days
- € 2.91 for persons returned under the Dublin III Regulation; and
- € 2.33 for children (including unaccompanied minors) until they turn 17.

People living outside of reception centres are usually not entitled to any form of allowance. However, in 2019, due to the lack of space in overcrowded reception centres and the impossibility to accommodate new arrivals, AWAS decided to also provide this allowance to people left outside of the reception system upon request. According to AWAS, any applicant duly registered with RefCom and holding the asylum-seeker certificate can apply to receive the allowance. NGOs indicated that all people referred to AWAS were provided with the allowance. However, since no information is provided to applicants about this possibility, and since NGOs have limited resources, many applicants were left outside of the reception system and did not benefit from allowances for lack of information or documentation. Moreover, due to major delays in the registration process with RefCom, applicants often waited weeks or even months for their certificate and, therefore, to receive the *per diem*. At the end of the year, it was noticed that applicants registered with the IPA, but not yet holding the Asylum Seeker Document provided by IPA when the application is finally registered, were still granted the *per diem*.

<sup>187</sup> Article 2 Reception Regulations.

AWAS indicated that 350 applicants at the end of 2020 were receiving such *per diem*.<sup>188</sup> AWAS also indicated that failed asylum-seekers residing in centres and considered vulnerable might still be entitled to the *per diem*. The same applies to rejected asylum-seeker pending removal if considered vulnerable. This remains to be confirmed in practice.

Asylum seekers in detention receive less favourable treatment than nationals with regard to material support, due to the fact that they are detained. Persons living in open centres are treated less favourably than nationals in relation to access to social welfare support, as they are denied access.

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
 Yes  No
2. Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes  No

The Reception Regulations state that reception conditions may be withdrawn or reduced where the asylum seeker abandons their established place of residence without providing information or consent or where they do not comply with reporting duties, requests to provide information, or to appear for personal interviews concerning the asylum procedure, and finally when an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.<sup>189</sup>

The Regulations state that such decisions shall be taken “individually, objectively and impartially and reasons shall be given” with due consideration to the principle of proportionality.

According to AWAS, cases of termination when failing to comply with rules are very rare and implemented in extreme cases. AWAS indicated that less than 5 persons were evicted in 2020 for such reason.

If a resident has not signed for 3 weeks, their place is reclaimed at the centre.<sup>190</sup>

Asylum seekers may appeal these decisions before the Immigration Appeals Board, in accordance with the Immigration Act. When these decisions are taken regarding reception conditions in detention, it is the Detention Service taking them, whilst AWAS would take these decisions in relation to residents of its open centres. It is unclear how reception conditions of asylum seekers living in the community, and not in any AWAS-coordinated centre, are regulated because relevant legislation does not provide this information and no such situation has ever arisen.

Appeals to the Immigration Appeals Board are particularly problematic for asylum seekers who are detained, as no information is provided on how to access the Board and its procedures. This was also highlighted by the ECtHR in its Article 5 ECHR cases against Malta.<sup>191</sup>

#### Evictions

In order to deal with the afflux of applicants and the lack of capacity of the reception system, the authorities revised their policy regarding length of stay in the reception system.

<sup>188</sup> Information provided by AWAS, January 2021.

<sup>189</sup> Regulation 13, Reception Regulations.

<sup>190</sup> Information provided by AWAS, January 2021.

<sup>191</sup> ECtHR, *LouledMassoud v. Malta*, Application No 24340/08, Judgment of 27 July 2010; *Aden Ahmed v. Malta*, Application No 55352/12, Judgment of 23 July 2013; *Suso Musa v. Malta*, Application No 42337/12, Judgment of 23 July 2013.



Single men are now allowed to remain in the reception centres for no more than six months, while families still benefit from a one-year contract. AWAS indicated that it is working closely with the communities to find alternative accommodation for applicants.

Residents receive a written reminder to leave, six weeks before the end of their contract. AWAS indicated that the list of people evicted is always reviewed by the psychosocial team.

People are entitled to challenge that eviction with AWAS, and the decision shall be reviewed by a care team, although no formal procedure is in place. According to NGOs, AWAS might reconsider such decisions on a case-by-case basis depending on the vulnerability of the applicant.<sup>192</sup>

Families are requested to leave after a year and upon assessment and if needed they can receive financial assistance for the first three more months.

Upon arrival, applicants are briefed about the reception rules and the length of their stay in the reception centre.

Nevertheless, such evictions remain a major problem in Malta where accommodation is very hard to secure due to high prices in a largely unregulated private rental market and due to the fact that landlords are usually extremely reluctant to rent accommodation to asylum-seekers. Moreover, in 2020, the Covid-19 crisis also made the situation more difficult with many applicants not being able to work for several months. Thus, these evictions often result in homelessness.<sup>193</sup>

Several media outlets reported in 2020 that people were sleeping in the streets outside of the capital city following evictions from reception centres.<sup>194</sup>

Moreover, due to the delays in processing asylum applications, individuals are usually evicted while they are still considered applicants for international protection holding only a three-month renewable asylum-seeker document. This makes it difficult for them to find employment and accommodation, with the monthly € 134 allowance not being sufficient to find a place to rent.

Moreover, NGOs reported that it is now difficult for asylum-seekers to have access to shelters and centres run by Appoġġ, the National Agency for children, families, and the community. Appoġġ offers services to children, families, and adults in vulnerable situations and/or at risk of social exclusion, and communities. They also run several shelters and centres to accommodate people in need. In the past, some vulnerable asylum-seekers could be accommodated in such places when no other solution was available for them. NGOs noticed that, due to the current situation, Appoġġ no longer appears to accept asylum-seekers.<sup>195</sup>

In 2020, authorities have constantly and publicly stated that Malta has no more capacity to welcome migrants. The Foreign Affairs minister stated in May 2020 that “centres are full and we have no place for more migrants”. However, it was pointed out by NGOs on several occasions that Malta failed to build the expected new centre mainly funded by the EU.<sup>196</sup>

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<sup>192</sup> Information provided by JRS Malta 2020.

<sup>193</sup> Times of Malta, ‘Migrants end up homeless as centres overflow’, 2 July 2020, available at: <https://bit.ly/3tDzPkS>.

<sup>194</sup> Maneul Delia Blog, ‘Evicted Hal Far residents sleeping rough without money for food’, 24 June 2020, available at: <https://bit.ly/2NEjPQg>; See also, African Media Association Malta, ‘Migrants’ beds in open air Valetta’, 15 July 2020, available at: <https://bit.ly/3vInlu6>.

<sup>195</sup> Information provided by JRS Malta, 2020.

<sup>196</sup> The Shift, ‘Malta risks losing €5 million EU funds for “unbuilt” migrant centre, PM to detain migrants offshore’, 4 September 2020, available at: <https://bit.ly/3vOpIf4>.

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
 Yes  No
2. Does the law provide for restrictions on freedom of movement?  Yes  No

Asylum seekers residing in open centres enjoy freedom of movement around the island(s). All persons living in an open centre are required to regularly confirm residence through signing in three times per week. These signing procedures also confirm eligibility for the *per diem* (see [Forms and Levels of Material Reception Conditions](#)) and to ensure the continued right to reside in the centre. Residents who are employed, and who, therefore, might be unable to sign three times a week, are not given the *per diem* for as long as they fail to sign. AWAS indicated that they are currently working on a new entry/exit system to manage access to the centres using cards that residents could scan on a daily basis. No more information is available at this stage.

Malta does not operate any dispersal scheme, since residence in open centres remains voluntary. Nonetheless, placement in a particular open centre generally implies a limited possibility to change centre, although such decisions could be taken on a case-by-case basis. Moreover, legislation foresees that transfers of applicants from one accommodation facility to another shall take place only when necessary, and applicants shall be provided with the possibility of informing their legal advisers of the transfer and of their new address.<sup>197</sup> Beyond individual situations, movement between centres is sometimes affected by space considerations. Asylum seekers might be moved from one centre to another in order to maintain security and order within particular centres, however this is rare.

Residing in an open centre brings with it entitlement to a financial *per diem*, intended to cover food and transportation costs. Persons living outside the open centres did not usually receive this *per diem*. However, given the current situation and the difficulty to accommodate asylum-seekers due to the lack of space in reception centres, AWAS is now granting this *per diem* to applicants living outside of the reception system upon request.

As already mentioned, asylum seekers arriving irregularly are now automatically detained until space is available in open centres.

Due to the Covid-19 pandemic, residents of open centres were forcibly quarantined for several weeks in **Hal Far**. The decision was taken to quarantine the centre after 8 persons were found positive in April 2020. The residents who positive were put in self-isolation and those who were in a medically vulnerable state were transferred out of the centre to be cared for in a more controlled environment.<sup>198</sup> The army was called to ensure such quarantine was adhered to.<sup>199</sup>

Cooking areas were also closed because of the pandemic and remain closed to this day.<sup>200</sup>

Throughout 2020, AWAS reported a limited number of positive cases but no serious problem due to the pandemic.

<sup>197</sup> Regulation 13 Reception Regulations.

<sup>198</sup> Malta Today, 'Coronavirus: Hal Far migrant open centre placed under quarantine', 5 April 2020, available at: <https://bit.ly/3cWQpFF>.

<sup>199</sup> Mata Today, 'Hal Far migrant open centre under lockdown', 6 April 2021, available at: <https://bit.ly/3f4DCnl>.

<sup>200</sup> Information provided by JRS Malta, February 2021.



## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>201</sup> 7
2. Total number of places in the reception centres: around 2,800
3. Total number of places in private accommodation: around 200
4. Type of accommodation most frequently used in a regular procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other
5. Type of accommodation most frequently used in an accelerated procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other

There are seven reception centres in Malta (down from eight in 2017). Of these, five are run by AWAS and the remaining two by NGOs. The latter do, however, fall within AWAS' overall reception system.

Since the revision of the reception system in Malta, the IRC is now used partly as a closed centre for newly arrivals. The other part remains an open centre.

The 7 open reception centres and their respective capacities are as follows:

Open centre	Maximum capacity
Tent Village Hal-Far	1,232
Hal-Far Open Centre	670
Hal Far Hangar	128
Migrants Commission (apartments)	140
Dar il-Liedna	58
Balzan Open Centre	150
Initial Reception Centre Marsa	431
<b>Total capacity</b>	<b>2,809</b>

Source: AWAS, January 2021.

The total reception capacity of the centres is approximately 2,800 places (up from 1,500 in 2018). No new centre was built but capacity of existing ones was further increased. At the end of 2020, around 2,000 persons were accommodated in open centres.<sup>202</sup>

At the end of 2020, around 150 persons were accommodated in the IRC; 1,064 in **Hal Far Tent Village**; 41 at **Dar il-Liedna**; 447 at **Hal Far Open Centre**; 119 in **Hal Far Hangar**; 114 at **Balzan Open Centre**; and 140 in apartments run by Migrants Commission.

**Hal Far Tent Village**, the largest reception centre, is now divided into two sections, with the larger part dedicated to adult men and a smaller separate section reserved for UAMs. The latter section is not accessible to adults who cannot enter without authorisation.

The Hal Far Hangar Centre hosts families. Hal Far Open Centre has two sections, one for adult men and the other for single women without children and for families. These two sections of the centres are separated, and men cannot enter the section for women and families.

<sup>201</sup> Both permanent and for first arrivals.

<sup>202</sup> Information provided by AWAS, February 2021.

Unaccompanied children are generally accommodated alone, or in a centre where families are also accommodated, although the spaces are kept separate. They now mainly live in the designated part of HTV or at **Dar il-Liedna**. Regulation 15 of the Reception Regulations specifies that unaccompanied children aged 16 years or over may be accommodated with adult asylum seekers, and, in practice, this has been the case for UAMs living in **Hal Far**.

AWAS indicated that vulnerable applicants and UAMs are usually accommodated near the Administration Block of each centre in order for them to have an easier access to the staff and services offered.

Apart from the above considerations (age, family composition), there are no clear allocation criteria on the basis of which persons are accommodated in specific centres. There does not seem to be a contingency plan for situations of severe over-crowding.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres? 9-12months
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

Conditions in the open centres vary greatly from one centre to another. In general, the centres provide sleeping quarters either in the form of rooms housing between four (the centres for unaccompanied children) to 24 people (**Initial Reception Centre**), or mobile metal containers sleeping up to eight persons per container (**Hal-Far Open Centre** [HFO], and **Hal Far Tent Village** [HTV]). Small common cooking areas are provided but already made meals are provided three times a day to all residents. Such areas were closed due to Covid-19 in 2020. There are also common showers and toilets. The large number of persons accommodated in each centre inevitably results in severe hygiene and maintenance problems.

Despite the large numbers of residents, the majority of open centres are run by small teams that are responsible for the centres' daily management and also for the provision of information and support to residents. Individuals are also referred to AWAS' social welfare team as necessary.

Around 200 AWAS staff are currently working in several reception centres which represents a significant increase compared to past years.<sup>203</sup>

According to the authorities, AWAS significantly increased its capacity by putting in place two coordinators in each centre, one being in charge of the welfare of residents. They also established a Migrant Advise Unit in order to provide information to residents. EASO is said to be supporting this initiative by providing information material and interpreters. AWAS indicated that there is now an info point available in each centre (with interpreters) for people to go either by appointment or drop-in. AWAS acknowledges that this system is just beginning as it was put in place in November 2020 and will be developed in the coming years with the support of EASO.

Despite this increased presence, most residents still report lack of information and access to services. They are accommodated in the centres after months spent in detention and are usually in need of assistance.

<sup>203</sup> Information provided by AWAS, January 2021.

AWAS reported having improved the conditions in AWAS centres throughout 2020,<sup>204</sup> by increasing its capacity and setting up a quality assurance department, introducing Internet access in all AWAS centres, and initiating two pilot community projects.<sup>205</sup>

However, despite these improvements, the living conditions in the open centres, save for a few exceptions, remain extremely challenging. For example, poor hygiene levels; severe over-crowding; a lack of physical security; the location of most centres in remote areas of Malta; poor material structures; and the occasional infestation of rats and cockroaches are the main general concerns expressed in relation to the open centres. According to NGOs regularly visiting the centres, the situation has not improved in recent years and the living conditions in the reception centres remained deplorable in 2020, especially in the **Hal Far** centres.<sup>206</sup> Sanitary facilities are run down and quickly become unsanitary due to the number of people. Cabins are very cold in winter and very hot in the summer. Residents are not allowed to have fridges in their cabin or cook their own food which leads to intense frustration. Food is provided daily but residents often mention the poor quality and lack of variety of food.<sup>207</sup>

The UN Working Group on Arbitrary Detention visited the **Hal Far** Open Centre in 2015 and expressed concerns about the situation in the prefabricated container housing units. It is reported that residents are suffering uncomfortable living conditions, given inadequate ventilation and high temperatures in the summer months and inadequate insulation from cold temperatures in the winter, in addition to the overcrowded conditions in each unit.<sup>208</sup> Little has changed in the years since this visit.

In 2020, the conditions in the reception centres continued to deteriorate significantly, due to over-crowding and the Covid-19 pandemic. Issues include a lack of cleaning of facilities, difficulty accessing bathrooms, limited hot water or air conditioning, and heating not being available.

Refugees are entitled to apply to the Maltese Housing Authority program for alternative accommodation known as "Government Units for Rent", provided they have been residing in Malta for 12 months and have limited income and assets. Refugees are also entitled to all of the schemes offered by the Housing Authority, such as a rent subsidy scheme.

The majority of centres offer limited options for activities for residents. On the contrary, it is largely NGOs that provide certain activities, such as free language classes in English or Maltese. However, due to the Covid-19 situation, such classes are difficult to organise. According to the Maltese NGO Kopin, which provides services in reception centres, parents had not received enough information about Covid-19-related restrictions and online teaching material. Due to a lack of volunteers, recreational activities run by NGOs for children were stopped.<sup>209</sup> AWAS indicated that the Agency offers social, psychosocial, and mental health support upon request. They also indicated working with JobPlus to offer basic English or Maltese courses in view of employment. They also mentioned that music sessions and barber sessions are being organised as well as crafts for children and football in Marsa.

Recreational areas for UMAS are in the process of being upgraded, however due to other maintenance projects being carried out across all AWAS reception facilities, the work is still to be finalised. The aim is to have parts of the common rooms set up with recreational games, where residents can spend some time playing games from the varied collection received during the festive season, collectively and equally.<sup>210</sup>

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<sup>204</sup> FRA, Migration: key fundamental rights concerns, Quarterly bulletin, 2020, available at: <https://bit.ly/3tIH6jt>.

<sup>205</sup> Ibid.

<sup>206</sup> Information provided by JRS social workers who visit reception centres on a regular basis, 2020.

<sup>207</sup> Information provided by JRS Malta 2021.

<sup>208</sup> Human Rights Council, *Report of the Working Group on Arbitrary Detention on its follow-up mission to Malta*, June 2016, available at: <http://bit.ly/25gRQ76>.

<sup>209</sup> FRA, Migration: key fundamental rights concerns, Quarterly bulletin, 2020, available at: <https://bit.ly/319Dhrc>.

<sup>210</sup> Information provided by AWAS, February 2021.

## C. Employment and education

### 1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers? ❖ If yes, when do asylum seekers have access the labour market?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 9 months
2. Does the law allow access to employment only following a labour market test?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Does the law only allow asylum seekers to work in specific sectors? ❖ If yes, specify which sectors:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Does the law limit asylum seekers' employment to a maximum working time? ❖ If yes, specify the number of days per year	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Are there restrictions to accessing employment in practice?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Asylum seekers are entitled to access the labour market, without limitations on the nature of employment they may seek. In terms of the Reception Regulations this access should be granted no later than nine months following the lodging of the asylum application. In practice, asylum-seekers are authorised to work immediately.

Malta issues 'employment licences' for asylum seekers, the duration of which varies from three months for asylum seekers whose applications are initially rejected, and up to six months for those whose applications are still pending. Fees are payable for new licences (€58) and for every renewal (€34).

In practice, employers are deterred from applying for the permits because of their short-term nature and the administrative burden associated with the application, particularly in comparison to the employment of other migrants.<sup>211</sup>

Asylum seekers who are not detained face a number of difficulties, namely: language obstacles, limited or no academic or professional background, intense competition with refugees and other migrants, and limited or seasonal employment opportunities. Asylum seekers from sub-Saharan Africa or Asia are especially vulnerable to exploitation and abuse. Issues highlighted include low wages, unpaid wages, long working hours, irregular work, unsafe working conditions, and employment in the shadow economy.<sup>212</sup>

A 2019 report from UNHCR Malta highlighted the challenges encountered by migrants in employment.<sup>213</sup> The lack of clarity or information and administrative challenges when applying for work permits is said to constitute a significant obstacle, along with the difficulties associated with recognition of qualifications and skills, as well as language and cultural barriers. Furthermore, the report documented the situation of beneficiaries with protection in another Member State, especially Italy, who come to Malta and who are denied the possibility to work. The report also confirmed that, amongst beneficiaries of international protection, female participation in the labour market is considerably low.

<sup>211</sup> European Commission, *Challenges in the Labour Market Integration of Asylum Seekers and Refugees*, EEPO Ad Hoc Request, May 2016, available at: <http://bit.ly/2kX5NsN>.

<sup>212</sup> *Ibid.*

<sup>213</sup> UNHCR Malta, *Working together*, a UNHCR report on the employment of refugees and asylum seekers in Malta, December 2019, available at: <https://bit.ly/3ajDk6P>.

UNHCR also noted that many service-providers such as unions, recruitment agencies, and employers' associations, are extending their services to refugees and have recognised the importance of reaching out to them.

A number of vocational training courses are available to asylum seekers, some also targeting this specific population group. In recent years JobsPlus, the national employment agency, implemented an AMIF project targeting asylum-seekers and protection beneficiaries and focusing on language training and job placement. Organisations such as KOPIN or Hal Far Outreach<sup>214</sup> try to offer support with CV Writing and Job Search support. JRS also organised an empowerment workshop in 2020, specifically looking at skills for employability.<sup>215</sup>

Due to the Covid-19 crisis, many migrants lost their jobs or remained unable to work for several months.

## 2. Access to education

### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children?  Yes  No
2. Are children able to access education in practice?  Yes  No

Article 13(2) of the Refugees Act states that asylum seekers shall have access to state-funded education and training. This general statement is complemented by the Reception Regulations, wherein asylum-seeking children are entitled to access the education system in the same manner as Maltese nationals, and this may only be postponed for up to three months from the date of submission of the asylum application. This three-month period may be extended to one year “where specific education is provided in order to facilitate access to the education system”.<sup>216</sup> Primary and secondary education is offered to asylum seekers up to the age of 15-16, as this is also the cut-off date for Maltese students. Access to state schools is free of charge. These rules apply to primary and secondary education.

Access to education for unaccompanied children was significantly hindered as a consequence of delays in the registration of asylum applications.<sup>217</sup>

Depending on the educational activity, UAMs need to have a legal guardian to get enrolled to courses offered to young people. This is problematic as, as already explained, very few minors are appointed a legal guardian.

The Ministry for Education and Employment established a Migrant Learners' Unit which seeks to promote the inclusion of newly arrived learners into the education system. They provide guidance and information about the Maltese educational system to assist migrants.

The location of centres might be problematic as the transport provided by the schools (public or private) is not free of charge. In practice, children do attend school. Children with particular needs are treated in the same manner as Maltese children with particular needs, whereby a Learning Support Assistant (LSA) may be appointed to provide individual attention to the child. Yet it is noted that in the situation of migrant or refugee children, language issues are not appropriately provided for, with possible implications on the child's long-term development.<sup>218</sup>

<sup>214</sup> See Hal Far Outreach, available at: <https://bit.ly/3cadCFp>.

<sup>215</sup> Information provided by JRS Malta 2021.

<sup>216</sup> Proviso to Regulation 9(2) Reception Regulations.

<sup>217</sup> Information provided by JRS, January 2019.

<sup>218</sup> Neil Falzon, Maria Pisani and Alba Cauchi, *Research Report: Integration in Education of Third Country Nationals*, aditus foundation, 2012, available at: <http://bit.ly/1Kuqe6M>.

Adults and young asylum seekers are eligible to apply to be exempted from fees at state educational institutions - including the University of Malta - vocational training courses, language lessons, and other adult education classes. Vocational training courses offered by **JobsPlus**, the State-run job placement service, are also accessible to asylum seekers.

It is to be noted, (see below) that beneficiaries of protection are increasingly making use of these educational services, primarily since information on their availability is becoming available to the various communities through NGO activities and increased openness by the relevant governmental authorities.

Several NGOs also offer free language classes in English or Maltese within reception centres.

Moreover, the government introduced, in 2018, the “I belong” Programme, an initiative run by the Integration Unit. The initiative consists of English and Maltese language courses and basic cultural and societal orientation as part of an integration process. It is open to all persons of migrant background, meaning asylum-seekers are able to benefit from it.

In 2020, JRS offered two trainings courses on Gender Based Violence prevention and protection in collaboration with Migrant Women Association Malta,<sup>219</sup> to women living in Hal Far Open Centre.<sup>220</sup>

## D. Health care

Indicators: Health Care			
1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum seekers have adequate access to health care in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input checked="" type="checkbox"/> No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

Article 13(2) of the International Protection Act states that asylum seekers shall have access to state medical care, with little additional information provided. The Reception Regulations further stipulate that the material reception conditions should ensure the health of all asylum seekers, yet no specification is provided as to the level of health care that should be guaranteed. The Regulations specify that applicants shall be provided with emergency health care and essential treatment of illness and serious mental disorders.<sup>221</sup>

Asylum seekers outside of detention centres may access the state health services, with the main obstacles being mainly linked to language difficulties. However, institutional obstacles also prevent effective recourse to the mainstream health services when required, including in cases of emergencies. These are: limited transport availability, the absence of full-time medical staff in the detention centres, and informal transactions for medicine, etc.

As with vulnerable persons, detained asylum seekers suffering from mental health problems face the practical difficulty of not being identified, owing to the absence of a formal identification process or of full-time specialists within the detention centres. Once identified, they are generally transferred to **Mount Carmel**, the main public mental health facility in Malta, for treatment.

<sup>219</sup> See Migrant Women Association Malta, available at: <https://bit.ly/3tCaqlq>.

<sup>220</sup> Info provided by JRS Malta 2021.

<sup>221</sup> Regulation 11(2) Reception Regulations.



No specialised services exist in Malta for victims of torture or trauma, primarily owing to the lack of such capacity on the island.

Decisions to reduce or withdraw material reception conditions would not affect access to health care.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
 Yes  No

National legislation literally transposes the recast Reception Conditions Directive regarding the definition of applicants with special needs and provides that “an evaluation by the entity responsible for the welfare of asylum seekers, carried out in conjunction with other authorities as necessary shall be conducted as soon as practicably possible”.<sup>222</sup>

However, upon arrival, alleged unaccompanied minors, and other manifestly vulnerable persons are now immediately detained either in pursuance of the Health Regulations, or under the national Reception Conditions Regulations or most of the time without any legal basis and without any form of assessment.

As mentioned in [Identification](#), AWAS is responsible for implementing government policy regarding persons with special reception needs and is in charge of these assessments that are now mainly conducted in detention.

When someone will be deemed to be vulnerable, he or she will be released and should be immediately accommodated in open centres or centres for unaccompanied minors, depending on availability. However, even if AWAS claims that age assessments are conducted immediately, practice shows that it can take weeks or months for assessments to be conducted, resulting in minors staying in detention for a long time pending assessment. Moreover, if the assessment concludes the individual is an adult, he or she has the right to appeal but is not released or considered minor before a final decision is taken.

Regarding vulnerable applicants, they are assessed only upon referral by anyone visiting asylum-seekers in detention. Such assessments are now conducted by people deployed by EASO under the supervision of AWAS. As already mentioned, the team consists of 15 assessors, all deployed by EASO, and translators are also now available. The team operates both in the reception centres and the detention centres.

AWAS indicated that in addition to the vulnerability assessments conducted in detention, the agency conducted 84 assessments in **Hal Far Tet Village** at the end of 2020, based on a dry-screening exercise.

Beyond the general principle, specific measures provided by law for vulnerable persons are as follows: the maintenance of family unity where possible;<sup>223</sup> and particular, yet undefined, attention to ensure that material reception conditions are such to ensure an adequate standard of living.<sup>224</sup>

Families are usually accommodated in **Hal Far** Hangar. Single women are accommodated at Hal Far Open Centre and unaccompanied minors are generally accommodated in a section of HTV or in a dedicated reception centre (**Dar il-Liedna**) where they receive a higher level of support than that available in the other, larger centres. The centre has an official capacity of 58 persons and is staffed by care workers from AWAS.

<sup>222</sup> Regulation 14 Reception Regulations.

<sup>223</sup> Regulation 7 Reception Regulations.

<sup>224</sup> Regulation 11(2) Reception Regulations.

There are no other facilities equipped to accommodate applicants with other special reception needs. All other vulnerable individuals are treated on a case-by-case basis by AWAS social workers, with a view to providing the required care and support.

With regard to ongoing monitoring, whilst no formal monitoring system exists within detention, vulnerable individuals may be referred to AWAS at any point of their stay in detention. Within open centres, no formal monitoring mechanism is established, yet vulnerable individuals may approach or be referred to open centre management and staff.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

The Reception Regulations require that within 15 days from lodging the asylum application, the Principal Immigration Officer ensures that all applicants are informed of reception benefits and obligations, and of groups and individuals providing legal and other forms of assistance.<sup>225</sup>

In 2018, the Office of the Refugee Commissioner, now the International Protection Agency ceased its visits to the IRC to provide information on the right to apply for international protection. UNHCR Malta visits applicants at the IRC in both the closed and open sections in order to provide information, whilst JRS Malta provides such information to asylum-seekers in the open section of the IRC. AWAS also provides information about the reception conditions, such as rules of the centre, *per diem*, etc.

According to AWAS, information is provided regarding asylum procedures (based on material prepared with EASO's support) but also education, employment, health, and housing. Some leaflets are distributed, and some info sessions were organised early in the year. However, these activities were discontinued due to Covid-19.<sup>226</sup>

Information is also given by AWAS to residents regarding the rules of the centres. Information is given to residents entering the centres about their rights and rules of the centres. AWAS also established an information point at the end of 2020, a space for information, either by appointment or drop in. This MAU Advisory Unit has an office in each centre and someone from AWAS is present on site on a daily basis.

These arrangements were put in place at the end of 2020 and their effectiveness remains to be observed at this point.

### 2. Access to reception centres by third parties

#### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes       With limitations       No

Access to the IRC is regulated by AWAS. Family members are not granted access and only a limited number of NGOs and the UNHCR are granted access.

Access to open centres is regulated by AWAS or MHAS, for which permission is also required. Criteria to be granted access to the centres are unclear. Permission is not easily granted to non-service-related visits, as is the case for academics, friends, research students, reporters, and so forth.

<sup>225</sup> Regulation 4 Reception Regulations.

<sup>226</sup> Information provided by JRS Malta 2021.



## **G. Differential treatment of specific nationalities in reception**

NGOs have not observed any form of preference given to particular nationalities.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2020: <sup>227</sup>	490, excl. <i>de facto</i> detainees <sup>228</sup>
2. Number of asylum seekers in detention at the end of 2020:	84 excl. <i>de facto</i> detention
3. Number of detention centres:	3 + IRC
4. Total capacity of detention centres:	Not available

Detention of asylum seekers is regulated by national law following the reform of the reception system in 2015. The Reception Regulations provide for the possibility to detain asylum seekers on six limited grounds, which are the ones listed in the recast Reception Conditions Directive.

With the 2015 changes, the main feature of the reception system was that detention was now no longer mandatory or an automatic consequence of the decision to issue a Removal Order.

At the end of 2018, the number of arrivals by sea rose significantly. Because of the unpreparedness of the authorities to deal with the high numbers of arrivals, the reception system was quickly incapacitated. In reaction to the new context, from summer 2018 onwards, all migrants rescued at sea – including asylum applicants to be relocated to other Member States – are *de facto* detained, either in the closed area of the IRC in **Marsa**, in **the** Safi Detention Centre, Lyster Barracks, or China House.

Depending on their nationalities, applicants are either detained under the Reception Conditions Directive, or the Health Regulations. In 2020, the vast majority of applicants were detained, without any legal ground, on the basis that there was no space available in reception centres.

Due to Covid-19, access by NGOs and legal practitioners was strictly limited since March 2020, resulting in a lack of basic information on the asylum procedure as well on available legal support provided to applicants. Asylum-seekers were often left in detention for several months without any information on the reason for their detention, and without any access to the outside world.<sup>229</sup>

Officially, minors and vulnerable applicants are not supposed to be detained. However, in 2020, since all applicants arriving irregularly were automatically detained without any form of assessment, vulnerable applicants and minors were detained for months before a proper assessment was conducted. In 2020, hundreds of vulnerable applicants and minors were left in detention for months.

NGOs have called relentlessly all year for the immediate release of persons held in detention without justification, reminding the authorities that arbitrary detention is unlawful.

In March 2021, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report following its visit to Malta in September 2020.<sup>230</sup> The report highlights the serious failures of the Maltese detention system in 2020, stressing that migrants are deprived of their liberty without any legal basis for arbitrarily long periods in conditions which appear “to be bordering on inhuman and degrading treatment as a consequence of the institutional neglect”. The

<sup>227</sup> Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

<sup>228</sup> The number does not include *de facto* detainees under the Health Regulation and the those detained without any legal grounds which concerns the vast majority of the people rescued at sea in 2020.

<sup>229</sup> FRA, 'Migration: Key fundamental rights concerns, Quarterly Bulletin, Nov 2020', available at: <https://bit.ly/3cblrdC>.

<sup>230</sup> 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 from 17 to 22 September 2020*, March 2021, available at: <https://bit.ly/3mPtelf>.

CPT considered that “certain of the living conditions, regimes, lack of due process safeguards, treatment of vulnerable groups and some specific Covid-19 measures undertaken are so problematic that they may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights”.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained:
 

❖ on the territory:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ at the border:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
  
2. Are asylum seekers detained in practice during the Dublin procedure?
 

<input checked="" type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input type="checkbox"/> Never
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3. Are asylum seekers detained during a regular procedure in practice?
 

<input checked="" type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input type="checkbox"/> Never
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According to the Reception Regulations,<sup>231</sup> the Principal Immigration Officer may order the detention of an applicant for the same grounds foreseen in the Reception Conditions Directive, namely:

1. In order to determine or verify his or her identity or nationality;
2. In order 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 of absconding on the part of the applicant;
3. In order to decide, in the context of a procedure, in terms of the Immigration Act, on the applicant's right to enter Maltese territory;
4. When the applicant is subject to a return procedure, in order to prepare the return or carry out the removal process, and the Principal Officer can substantiate that there are reasonable grounds to believe that the applicant is making the application merely in order to delay or frustrate the enforcement of the return decision;
5. When protection of national security or public order so require; or
6. In accordance with the Dublin III Regulation.

With regard to the second ground, the Court of Magistrates clarified in 2018 in the case of an asylum seeker returned to Malta under the Dublin Regulation, that a “risk of absconding” is not a self-standing ground for detention. Since the applicant had provided most of the elements needed for the determination of his asylum claim, his detention was deemed unlawful.<sup>232</sup>

According to law, the individual detention order shall be issued in writing, in a language that the applicant is reasonably supposed to understand, and it shall state the reasons of the detention decision. Information about the procedures to challenge detention and obtain free legal assistance shall be provided as well. A review by the Immigration Appeals Board shall be automatically conducted after seven days and every two months in case the individual is still detained.<sup>233</sup>

After a period of nine months, any person detained, if they are still an applicant for international protection, shall be released.<sup>234</sup>

<sup>231</sup> Regulation 6 Reception Regulations.

<sup>232</sup> Court of Magistrates, *Rana Ghulam Akbar v Kummissarjatal-Pulizija*, 26 February 2018.

<sup>233</sup> Regulation 6(3) Reception Regulations.

<sup>234</sup> Regulation 6(7) Reception Regulations.

In 2020, lawyers assisting people in detention noticed that asylum-seekers from **Bangladesh, Ghana, or Morocco** (considered as safe countries according to Malta), were usually detained under the first two criteria of the Regulations. In most cases, such detention orders were issued several weeks or months after arrival, meaning that asylum-seekers were often detained irregularly for long periods of time. Moreover, such detention orders are taken automatically, without any individual assessment, simply based on the nationality of the individual. In relation to review or appeal possibilities, although these detention orders could be challenged, this rarely happened due to the lack of information available and the restrictions in access for NGOs and lawyers.

However, in the majority of cases, the detention of asylum-seekers is not in line with the recast Reception Conditions Directive. Throughout 2020, Malta relied on national health legislation to deprive asylum-seekers of their liberty, on the ground that there is a reasonable suspicion that they might spread contagious diseases – Article 13 of the Prevention of Disease Ordinance (CAP. 36).<sup>235</sup> This article provides that “[w]here the Superintendent has reason to suspect that a person may spread disease he may, by order, restrict the movements of such person or suspend him from attending to his work for a period not exceeding four weeks, which period may be extended up to ten weeks for the purpose of finalising such microbiological tests as may be necessary”.

This article, therefore, authorises the Chief Medical Officer to restrict a person’s movements for up to four weeks, the period of which may be extended for up to ten weeks, on suspicion that a disease may be spread.

No form of assessment is conducted, and applicants are only provided with a document – often in a language the applicant does not understand – stating that they are detained for a period of four weeks that might be extended up to ten weeks under the Health Regulations.

NGOs immediately condemned this new detention regime and expressed a series of concerns, namely:

- The suspicion that a disease may be spread is not a valid ground for detaining asylum-seekers under international, EU and national law;
- Even in such situation, the authorities should not be entitled to deprive someone of his/her liberty, as the Health Regulations do not authorise detention, but merely a restriction of free movement;
- No effective legal remedy is available, and the applicants have no way to challenge such decision.

UNHCR also condemned this new policy, describing the reintroduction of automatic detention as a big “setback”, commenting on the very poor conditions of the detention centres and underlining the fact that UAMs were being unlawfully detained with adults.<sup>236</sup>

Furthermore, in 2020, the vast majority of people disembarked in Malta and immediately placed in detention were detained without any form of legal basis. People were simply placed in detention without any assessment and without being given any document or information on the reasons for their detention.

No data has been made available on the number of applicants detained under this new policy in 2020.

According to official data provided by the Immigration Police, 490 asylum seekers were issued detention orders in 2020, out of which 84 were still detained at the end of 2020.<sup>237</sup> However, this number does not include the asylum seekers detained under the Health Regulation and those who are *de facto* detained. Since 2,280 persons were disembarked in Malta in 2020, one can only assume that the number of people

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<sup>235</sup> Cap. 36 of the Laws of Malta, 1908, available at: <https://bit.ly/2E9u73v>.

<sup>236</sup> The Times of Malta, ‘1400 migrants detained illegally at Marsa and Safi - UNHCR’, January 2020, available at: <https://bit.ly/2JbWIXp>.

<sup>237</sup> Information provided by the Immigration office of the Malta Police Force, February 2021.

detained is approximately the same number, minus those cases such as women and children whose age cannot be disputed.

Moreover, it was observed that applicants would not be released even after they were medically screened and cleared. Instead, individuals would only be released when a place is made available in the open centres.

Detained persons do not receive information about their status. No information regarding the reason for their detention is provided, neither on the expected duration of the detention nor their rights. Information about the asylum procedure is provided by EASO and the IPA, but only during the registration of their application, often several weeks after arrival. In the meantime, applicants rely on UNHCR, the officials of which visit the centres regularly and provide general information as well as on NGOs, such as JRS Malta and aditus foundation, also visiting detention and providing information and legal advice. In 2020, access to detention was restricted for several months for NGOs and UNHCR, which prevented asylum seekers from receiving any information or legal support.

Over the course of 2019 and 2020, detainees held a number of demonstrations at **Safi** to protest against their indefinite incarceration (see [Conditions of detention](#)), the absence of information, and the conditions in which they were being kept.<sup>238</sup>

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
 Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions
2. Are alternatives to detention used in practice?  Yes  No

According to the Reception Regulations, when a detention order of an asylum seeker is not taken, alternatives to detention may be applied for non-vulnerable applicants when the risk of absconding still exists.<sup>239</sup> These alternatives to detention foreseen in the Regulations are the same as the ones listed in the Directive, namely the possibility to report to a police station, to reside at an assigned place, to deposit or surrender documents or to place a one-time guarantee or surety. These measures would not exceed nine months.<sup>240</sup>

Following the transposition of the recast Reception Conditions Directive, concerns were expressed by NGOs that alternatives to detention could be imposed when no ground for detention is found to exist.<sup>241</sup> The wording of the legislation and the Strategy Document seem to imply that alternatives to detention may apply in all those cases where detention is not resorted to, including those cases where there are no grounds for the detention of the asylum seeker. This goes against the letter and the spirit of the Directive where alternatives to detention should only be applied in those cases where there are grounds for detention. These concerns remained valid in 2020 as most asylum seekers released from detention were imposed “alternatives to detention” arrangements, even though there was never any ground to detain them in the first place.

<sup>238</sup> ECRE, Malta Charges Five Rescued Migrants with ‘Terrorist Activities’ while Facts Remain Unclear, 5 April 2019, available at: <https://bit.ly/33HDTVd>.

<sup>239</sup> Strategy Document, November 2015, 26.

<sup>240</sup> Regulation 6(8) Reception Regulations.

<sup>241</sup> aditus foundation, et al., NGO *Input on the Draft Strategy Document: Strategy for the Reception of Asylum-Seekers and Irregular Migrants*, November 2015; available at: <http://bit.ly/2kX6K4j>.

According to the authorities, 1,762 asylum seekers in 2020 were released from detention and placed under alternatives to detention (ATD). They were requested to reside at an assigned place, and to notify the Principal Immigration in case of change of residence.<sup>242</sup>

NGOs reported that there is no clear pattern on the reason, when and why ATD are applied to asylum seekers. However, it transpires very clearly from the policy that alternatives to detention are seen by the authorities not as an alternative but as a natural continuation of the status post-detention, with said detention often being ordered without legal basis.

Following release from detention, applicants face difficulties retrieving the possessions the Immigration Police would have confiscated from them immediately following their arrival. These possessions include money, jewellery, and mobile phones. Applicants are often required to rely on the intervention of NGOs to reclaim their possessions, at time months after their release from detention. This was exacerbated in 2020, as so many people were detained and released throughout the year. Police informed that an investigation is conducted following every boat arrival and that possessions can only be retrieved at the end of the said investigation, which can take more than a year.

Asylum-seekers are never informed or requested to consent that their phones and personal belongings will be searched and investigated and are never informed when items are ready for collection.

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
 Frequently    Rarely    Never
- ❖ If frequently or rarely, are they only detained in border/transit zones?    Yes    No
2. Are asylum seeking children in families detained in practice?  
 Frequently    Rarely    Never

With regard to vulnerable applicants, including minors and alleged unaccompanied minors, the amended legislation, along with the new policy, prohibit their detention. Reception Regulations state that “whenever the vulnerability of an applicant is ascertained, no detention order shall be issued or, if such an order has already been issued, it shall be revoked with immediate effect”.<sup>243</sup>

On 22 November 2016, the European Court of Human Rights (ECtHR) delivered its judgment in *Abdullahi Elmi and Aweys Abubakar v. Malta* concerning the eight-month detention of two asylum-seeking children pending the outcome of their asylum procedure and, in particular, the age assessment procedure employed. The ECtHR found a violation of Article 3 of the Convention as the conditions complained of amounted to degrading treatment. The Court also found a violation of Article 5(4) of the Convention as the applicants did not have an effective and speedy remedy under Maltese law by which to challenge the lawfulness of their detention.<sup>244</sup>

Upon arrival at the border, families and children whose age is undisputed are taken to the closed section of the IRC for necessary checks before being accommodated in reception centres.

However, alleged unaccompanied minors and other vulnerable persons are immediately detained waiting for assessments to be conducted.

<sup>242</sup> Information provided by Immigration Office of Malta Police Force, February 2021.

<sup>243</sup> Regulation 14(3) Reception Regulations.

<sup>244</sup> ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

According to the Regulations, whenever the vulnerability becomes apparent at a later stage, assistance and support is provided from that point onwards.

In order to give effect to this policy, two procedures are in place to assess 'vulnerability' in individual cases: the Age Assessment Procedure and the VAAP (see section on [Identification](#)). Both procedures are officially implemented by AWAS.<sup>245</sup>

UNHCR and NGOs regularly visiting detention facilities have the possibility to refer people for a vulnerability assessment.

As already mentioned, EASO deployed staff in 2020 to support AWAS with the vulnerability screening. The "vulnerability assessment response team" assesses potentially vulnerable applicants. The team consists of 15 assessors, all deployed by EASO, and translators are also available.

The team operated both in the reception centres and the reception centres, under the supervision of AWAS.

Assessors use new and updated tools created by EASO.

Vulnerability is assessed on 4 levels:

- 1 being a very urgent support needed;
- 2 being in need of medical support;
- 3 being in need of medical but not urgent;
- 4 being a need in terms of housing and education.

Following an assessment, a report is drawn up and a recommendation is made. If the assessment concludes the person is vulnerable, he/she is automatically released from detention in case she/he is detained and transferred to the IRC where he/she is seen by the Therapeutic Unit. They are eventually transferred to an open centre. AWAS usually accommodates them close to the Administration Block so that they can receive better support.

This team started to operate in September 2020 and conducted 136 assessments in detention: 84 assessments were conducted at the end of the year in the reception centres.

In practice, asylum seekers entering Malta irregularly by plane are also immediately detained and not sent to the open section of the IRC. There is, thus, the possibility that vulnerability will not be identified.

NGOs reported that unaccompanied minors are detained pending age assessments and, in many cases, following on from confirmation of their minor status where space for their accommodation is not available in any of the open centre spaces.

The CPT confirmed in its report that, "in practice, many children, including those awaiting age-assessment results, are being deprived of their liberty both in Marsa IRC and in Safi and Lyster".<sup>246</sup>

The report highlights that "due to space constrictions, children were held in the same cramped space together with related and non-related adults. In Marsa IRC, children of all ages – including infants – were locked on all of the units in very poor conditions together with unrelated single male adults".

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<sup>245</sup> Strategy Document, November 2015,15.

<sup>246</sup> 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 from 17 to 22 September 2020*, March 2021, available at: <https://bit.ly/3uXeCD1>.



The delegation mentioned that children have no access to any activities, education, or even the exercise yard to play games, and notes the lack of any psycho-social support or tailored programmes for children and other vulnerable groups.

UNHCR Malta and NGOs firmly condemned the detention of children. Furthermore, the University of Malta expressed its concerns that children waiting to have their age assessed are kept in detention with adults, reminding the authorities that “any decision to place children aged 16 and 17 with adults violates the legal obligation to consider children as persons under the age of 18.”<sup>247</sup>

Moreover, at **Marsa** IRC, the CPT noticed that other vulnerable groups, including breast-feeding mothers and pregnant women, were also deprived of their liberty along with their other young children. They were being held in the same space as unrelated male adults, with no privacy, and had not seen a midwife or doctor for their pregnancies. According to the delegation, such persons were held at Marsa IRC for many months (for periods ranging from 3 to 7 months).

The Immigration Police officially reports that no minor or vulnerable people are detained in Malta and indicated that, in 2020, no vulnerable or minor asylum-seekers were detained.

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |                               |
|--|-------------------------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 9 months                      |
| 2. In practice, how long in average are asylum seekers detained?           | Several months <sup>248</sup> |

National law specifies a time limit for the detention of asylum seekers which is limited to nine months. According to the Reception Regulations “any person detained in accordance with these regulations shall, on the lapse of nine months, be released from detention if he is still an applicant”.<sup>249</sup>

In the past, applicants formally detained in line with the grounds of the Reception Conditions Directive were usually released after two or three months and placed under alternatives to detention. However, this policy changed in 2020 as most asylum-seekers detained under the RCD were those applicants coming from safe countries of origin, such as **Bangladesh, Ghana, or Morocco**. They were no longer released after the mandatory period of time. They remained in detention until their case was processed through the accelerated procedure since considered manifestly unfounded, often taking up to six months to finalise. In most cases seen by lawyers, these applicants ended up receiving their rejection from IPA, followed almost immediately by the automatic review from the IPAT, the removal order, and return decision. Therefore, they remain in detention awaiting potential return.

Applicants detained under the Health Regulations and *de facto* detainees are kept in detention until there is space available in open centres. Therefore, applicants may remain in detention for several months even though they have been medically cleared and no valid grounds for their detention remains, or ever even existed.

The Immigration Police officially indicated that the average duration of detention for asylum-seekers is two months.<sup>250</sup> However, this is not in line with numerous reports by the CPT, NGOs, and lawyers assisting

<sup>247</sup> Open letter to the Social Solidarity Minister and the Child Commissioner, signed by 81 academics of the University of Malta, 24 October 2019, available at: <https://bit.ly/3a6aBBA>.

<sup>248</sup> Migrants coming from a safe country of origin are usually detained for the full nine months detention period permitted by law and following this period of time, the detention is automatically prolonged until a removal is possible. Migrants coming from other countries are usually detained several months until a place is available in a reception centre.

<sup>249</sup> Regulation 6(7) Reception Regulations.

<sup>250</sup> Information provided by the Immigration Office of the Malta Police Force, February 2021.



asylum seekers in detention. The UNHCR Representative also indicated that if “the length of time asylum seekers spent in detention varied in 2020 but many had been detained eight months or longer”.<sup>251</sup>

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

There are currently four detention centres: **Safi barracks, (which include several facilities), Lyster Barracks,** and China House.

No official data is available, but the capacity of detention has been increased regularly since 2018 to accommodate the new policy of systematic and automatic detention.

A section of the Initial Reception Centre also became a *de facto* detention centre in 2018 when the authorities decided to automatically detain all asylum seekers arriving irregularly in Malta. Another section of the IRC remains open and accommodates families, among others.

AWAS indicated that in 2020, the closed section of the IRC represents around 10% of the centre and is used to accommodate disembarked families for the necessary checks before accommodating them in reception centres. However, the CPT noted in their report that at the time of their visit, that the centre was mostly closed, detaining families, UAMs, women and pregnant women, and persons with disabilities waiting to be transferred to an open centre but also those awaiting medical clearance and those tested positive with Covid-19.

### 2. Conditions in detention facilities

#### Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice?  Yes  No  
❖ If yes, is it limited to emergency health care?  Yes  No

#### 2.1. Overall living conditions

According to Regulation 6A of the Reception Regulations, applicants for international protection shall be detained in specialised facilities and they shall be kept separate, insofar as possible, from third country nationals who are not asylum-seekers. They shall also have access to open-air spaces. Separate accommodation for families shall be put in place in order to guarantee adequate privacy as well as separate accommodation for male and female applicants. The policy document published at the end of 2015 following the transposition commits to improve the quality of living conditions in the detention centres. The document foresees that detention facilities shall comprise of, or have access to, a clinic, medical isolation facilities, telephone facilities, an office for the delivery of information by the IPA, rooms for interviews with the IPA and NGOs, facilities for leisure, and the delivery of education programmes as well as a place of worship.

<sup>251</sup> Times of Malta, 'Migrant detention numbers shrink, fears about child detainees remain', 7 February 2021, available at: <https://bit.ly/2NJkd00>.

The detention centres are managed by the Detention Service (DS), a government body that falls under the Ministry for Home Affairs, National Security and Law Enforcement. The DS was set up specifically “to cater for the operation of all closed accommodation centres; provide secure but humane accommodation for detained persons; and maintain a safe and secure environment”<sup>252</sup> within detention centres. The DS is neither established nor regulated by a specific law. It is made up of personnel seconded from the armed forces and civilians specifically recruited for the purpose, many of whom are ex-security personnel. DS staff receive some in-service training, however people recruited for the post of DS officer or seconded from the security services are not required to have particular skills or competencies. The situation deteriorated further in 2020 with increased overcrowding. Asylum seekers were also left detained for months without being given any information, without the possibility to contact anyone, and without being supported by anyone since access to detention was restricted for UNHCR and NGOs for several months.

Despite the entry into force of the Regulations in 2015, NGOs visiting detention on a regular basis have not noticed any improvement since the reform. Detention conditions remain very difficult and precarious and have deteriorated greatly in 2018 and 2019 due to overpopulation.<sup>253</sup>

Asylum seekers and other third-country nationals, who have over-stayed their visa, are detained in the military barracks, which offer inadequate sanitation and hygiene facilities and allow no privacy for the detainees. Whilst detainees are provided with a bed each, there is little space in between the beds and no place where they may store their personal possessions. Detainees are provided with cleaning materials and are expected to take care of the cleaning of the centre. Although detainees are issued with basic items of clothing upon arrival, there is no systematic or consistent practice for the distribution of clothes which are weather-appropriate. Most of the clothing which is provided to detainees is donated on a charitable basis to the detention service management and is then distributed accordingly. Moreover, there is little to no heating or ventilation, exposing migrants to extreme cold and heat.

In 2020, NGOs visiting detention were not allowed to enter the living premises and could only meet with detainees in containers outside the buildings. No monitoring of the detention conditions is tolerated. However, detainees regularly report terrible living conditions with severe overcrowding and unsanitary conditions, caused by the limited availability of shared toilets and showers. Some buildings are known to have one shower for hundreds of detainees. In some buildings of the detention centres, detainees may enjoy limited time in the open, while in other parts - such as China House - detainees are simply not allowed to go out of the building and have no access to fresh air or sunlight.

Most detainees report the lack of appropriate clothes or shoes but also lack of sheets and blankets. Lawyers assisting detainees report seeing their clients only wearing underpants and open sandals even in winter.

As previously mentioned, the CPT report of March 2021 highlights that living conditions in detention are overall deplorable, with migrants deprived of their liberty and kept in overcrowded units, with nothing to do and very minimal contact with the outside world for prolonged periods.

The CPT reported after their visit of the different detention facilities that shower facilities were filthy and did not always function; showerheads were missing; and the sanitary area would constantly flood. The delegation noticed that mould was present on the walls and ceilings and that detainees often used their lunchboxes to wash themselves from the wash basin tap due to the dysfunctional showers. They noted that detainees only possess one set of clothes (generally the ones that they had arrived in), so they must borrow clothes from other migrants when they wash their clothes.

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<sup>252</sup> For more information see Ministry for Home Affairs, *Detention services*, available at: <http://bit.ly/1M7HMkS>.

<sup>253</sup> Information provided by Katrine Camilleri, Director of JRS Malta, January 2018.

In **Lyster**, the CPT noted that the material conditions in Zone D were “dilapidated”, with a lack of upkeep and walls covered in graffiti and mould. The dormitories were severely overcrowded with 20 to 30 persons held in 40m<sup>2</sup>, leaving less than 2m<sup>2</sup> of living space to each detainee. They also mentioned that migrants had no access to outdoor space or to any activity of any kind. In China House, the delegation also noted that no activity was offered to detainees who are spending 24 hours per day locked in their units with nothing to do for several months.

The CPT delegation also shared concerns that the tap water was non-potable and that no bottled water was provided to remedy such situation.

In September 2020, local media shared a video seemingly shot by detainees themselves at **Safi** detention centre. The video showed asylum-seekers detained for a year, begging to be sent home and sharing their experience “of living in overcrowded dormitories where they say a lack of hygiene, medical attention and nutritious food has led to deteriorating mental and physical health as well as suicide attempts”.<sup>254</sup>

The newspaper also highlighted that concerns of subnormal living conditions and human rights abuse are not a first for the **Safi** detention centre.

The Home Affairs Minister addressed the situation, simply stating that Malta is facing disproportionate pressure from irregular migration for years and that the prevention of migrant arrivals and the return of as many irregular migrants as possible remains the priority.<sup>255</sup>

Later that month, a delegation from the UN Human Rights Office visited Malta for a week-long mission. At the end of the visit, the delegation stated that migrants living in detention centre in Malta are reported to be held in severely overcrowded conditions with little access to daylight, clean water, and sanitation. The UN High Commissioner added that “the pressures on the reception system in Malta have long been known but the pandemic has clearly made an already difficult situation worse”.<sup>256</sup>

As already mentioned, unaccompanied minors are detained before an age assessment is conducted. This means that they are detained together with adults due to the fact that detention centres are overcrowded and very limited attention is given to them.

Moreover, reading and leisure materials are not provided, and detainees rely on NGO staff visiting detention, as well as friends and family on the outside, to bring them books, magazines, and other basic recreational items. Depending on the detention centre, detainees may not have access to phones, not to mention television or Internet access.

The Malta Chamber of Psychologists reacted to media reports on the detention condition by stating that “many residing in detention centres in Malta passed through traumatic experiences that made them deserving of the highest level of care”, adding that “being subjected to further undignified conditions in detention might be beyond what they could cope with”. They urged for detention centres to provide detainees with humane conditions”.<sup>257</sup>

In recent years there have been a number of incidents within the centres which have raised concerns because of allegations of excessive use of force, as well as the lack of any systematic review of DS

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<sup>254</sup> The Times of Malta, ‘Watch: Migrants in covert video beg to be sent back home’, 6 September 2020, available at: <https://bit.ly/3f4ebSJ>.

<sup>255</sup> The Times of Malta, ‘Watch: Migrants in covert video beg to be sent back home’, 6 September 2020, available at: <https://bit.ly/3f4ebSJ>.

<sup>256</sup> Times of Malta, ‘UN slams “shocking” conditions for migrants in Malta’, 2 October 2020, available at: <https://bit.ly/3cZeRGj>.

<sup>257</sup> Times of Malta, ‘Human rights cannot be ignored, Chamber of Psychologists insists’, 10 September 2020, available at: <https://bit.ly/3si3i3O>.

conduct and of any effective remedies to provide redress wherever abuse or ill-treatment by DS staff is alleged.

The use of excessive force and other questionable forms of punishment remains an issue primarily in contexts such as protests or escapes from detention, when force is used in an attempt to assert control or, at times, to discipline detainees, as is evident from the recent protests in 2019 and 2020.

This led to several protests by detainees over the course of the year.

In January 2020, detainees started a protest which led to the intervention of the police who arrested 19 people who were believed to have planned the protest.<sup>258</sup> Only a few days after that riot at Safi detention centre, twenty-two migrants were convicted to a nine-month prison sentence for having “insulted and threatened public officials, violently resisting arrest and slightly injuring five detention officers”. They were also accused of “taking part in a rioting mob and failing to disperse when ordered to, conspiracy to commit a crime, voluntary damage, disturbing the peace, disobeying lawful orders, threatening public officers and throwing stones at private property”.<sup>259</sup>

NGOs reacted in a press statement on the “shameful treatment of arrested migrants” by the Malta Police Force. NGOs exposed the way migrants were brought to Court, tied together in pairs and displayed to the general public, contrary to standard practice. They qualified this behaviour as inhumane treatment and prejudicial to the principle of presumption of innocence. Moreover, they emphasised that minors were among the accused and should therefore have been awarded specific protections throughout criminal proceedings.<sup>260</sup>

In February 2021, five young migrants were sentenced to prison after pleading guilty to participating in a riot at Safi detention centre which occurred in September 2020. Two were sentenced to 30 months imprisonment while the other three, minors at the time, received an 18-month sentence.<sup>261</sup>

Throughout the year, several migrants tried to escape the detention centres.<sup>262</sup> In September, five migrants tried to escape Safi during a riot. A security guard then shot at one of the migrants who sustained light injuries. The escaping migrants were later caught and taken to Court together with 27 other detainees accused of causing damages. The Police stated that seven officers were injured during the riot. A spokesperson for the Home Affairs Ministry stated that guards are not allowed to carry firearms in closed centres.<sup>263</sup>

In the aforementioned CPT report, the Committee reported having received several allegations of excessive use of force by Detention Service staff and private security staff following riots. According to migrants reporting to the CPT, staff purposely shook the fence while some detainees were climbing it, causing them to fall to the ground where they were subjected to baton blows.

The CPT also reported the unwarranted use of pepper spray by custodial staff against detained migrants.

On 2 September 2020, a dramatic incident happened at **Lyster** detention centre where an asylum seeker died after he fell while trying to escape. The individual fell at 5am and received assistance by nurses on

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<sup>258</sup> Lovin Malta, ‘19 People Arrested In Late Night Protest At Hal Safi Detention Centre’, 7 January 2020, available at: <https://bit.ly/3rjYYjf>.

<sup>259</sup> The Independent, Safi detention centre, available at: <https://bit.ly/2Jes67C>.

<sup>260</sup> Press Statement available at: <https://bit.ly/2UfVpx7>.

<sup>261</sup> Lovin Malta, ‘Five Migrants Sentenced to Jail For Rioting At Safi Detention Centre’, 19 February 2021, available at: <https://bit.ly/2QwVvkv>.

<sup>262</sup> Newsbook, ‘Asylum seekers escape from Safi detention centre’, 25 July 2020, available at: <https://bit.ly/3scKoew>.

<sup>263</sup> Malta Today, ‘Safi detention centre riot: Private security guard shot migrant who tried to escape’, 18 September 2020, available at: <https://bit.ly/3c7fNtc>.

site but was only transferred to hospital hours later where he was certified dead at 11am. An inquiry is still on going.<sup>264</sup> The CPT investigated said incident and “cannot reassure itself that staff, including health-care staff, had reacted sufficiently promptly when crucial help was needed to attempt to save this young man’s life from the effects of suspected internal bleeding over a period of at least three hours”.<sup>265</sup>

It was also reported in the media that migrants in detention might have been mistreated and/or tortured. EASO confirmed this in January 2021, having received several reports from migrants detained at Lyster and Safi detention centre, particularly mentioning physical torture, beatings, solitary confinement, denial or delay of medical care, and also electrocution. Addressing the issue, EASO stated that the Agency is taking such allegations very seriously and immediately brought them to the attention of the responsible Maltese authorities. It added that such issues are raised with the national authorities on several occasions.<sup>266</sup>

It was also reported anonymously from the European agency, that they receive reports of systematic abuse and violence, and that the agency noticed a high number of referrals to the psychiatric hospital because of frequent attempted suicide.<sup>267</sup>

The UNHCR Representative in Malta also indicated that her office received reports of some physical and verbal abuse against detained asylum seekers as well as suicide attempts in closed centres.<sup>268</sup>

The Home Affairs Ministry stated that “no form of physical abuse is tolerated inside the detention centres, including scuffles between the detainees themselves. Detention Services officials are requested to report on each and every incident arising inside the centres. There have not been reports of torture and such instances would be referred to the police immediately”. They also admitted that “there have been instances where migrants had to be referred to a psychiatrist, however, only few of such cases were confirmed to be mental-health illnesses. In such cases, the migrants are provided the necessary care by Mount Carmel Hospital.”<sup>269</sup>

In March 2021, the ECtHR found violations of articles 3, 5(1), and 34 of the European Convention on Human Rights in the case of a Nigerian national placed in immigration detention pending deportation for fourteen months.<sup>270</sup> The applicant’s complaints concerned the conditions of his detention; not being given the opportunity to correspond with the Court without interference by the prison authorities; and being denied access to materials intended to substantiate his application.

Regarding article 3, the Court considered several aspects of his detention and concluded, overall, that conditions were inadequate in particular because of the time spent in isolation without exercise (he was kept in a container seventy-five days without access to natural light or air). The Court also noted that he was later unnecessarily detained with individuals under Covid-19 quarantine, a measure that did not comply with basic sanitary requirements. The Court concluded unanimously that the conditions of his detention were a violation of the applicant’s article 3 rights.

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<sup>264</sup> Times of Malta, ‘Man dies after trying to escape migrant detention centre’, 2 September 2000, available at: <https://bit.ly/31av9a5>.

<sup>265</sup> 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 from 17 to 22 September 2020, March 2021, available at: <https://bit.ly/3mPtelf>.

<sup>266</sup> The Times of Malta, ‘Detained migrants have reported being tortured in Malta’, 31 January 2021, available at: <https://bit.ly/318IX64>.

<sup>267</sup> Ibid.

<sup>268</sup> The Times of Malta, ‘Migrant detention numbers shrink, fears about child detainees remain’, 7 February 2021, available at: <https://bit.ly/3vPfwD4>.

<sup>269</sup> The Times of Malta, ‘Detained migrants have reported being tortured in Malta’, 31 January 2021, available at: <https://bit.ly/3f5rZMX>.

<sup>270</sup> ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, Judgment 11 March 2021.

The Court found a violation of article 34, considering that the Maltese authorities had not guaranteed the applicant's right to apply before the Court since they tampered with his correspondence and did not guarantee adequate legal representation. Regarding the correspondence with the Court, it was concluded that, firstly, the applicant had not been provided with copies of documents he needed to substantiate his claim before the Court; and secondly, that the confidentiality of his correspondence was not respected. According to the Court, the authorities' failures amounted to an unjustified interference with his right of individual petition. Regarding his right to legal representation, the Court considered that the legal aid lawyer appointed by the authorities failed to keep contact with the applicant and abandoned her mandate without informing him and without making any submissions when requested. Informed of the situation, the Government did not take any action to remedy the situation. In the circumstances, those failings had amounted to ineffective representation in special circumstances which incurred the State's liability under the Convention.

Finally, the Court also held unanimously that there had been a violation of Article 5(1) since the authorities were not diligent enough in processing his deportation and that the applicant's detention therefore ceased to be lawful.

## 2.2. Health care in detention

All detainees are usually seen by a doctor in the first week after their arrival. The services of a doctor are available in the detention centres two to three mornings a week. However, there is no systematic medical screening in place for every newly arrived detainee, nor is there any screening to identify possible victims of torture. Communication with health professionals is very often difficult, if not impossible, as the services of a translator or cultural mediator are not provided. In emergencies, the detainees are usually taken to the nearest health centre. Migrants and asylum seekers requiring more specialised care are referred to the general hospital for an appointment.

Practical difficulties arise for asylum seekers who are detained, as the detention system seriously hinders their access to health services. Although health services are provided in the detention centres, these are not sufficient to meet the entirety of needs in the centres.

NGOs visiting detainees in 2019 reported that migrants faced particularly long waiting times, up to several weeks, before having access to a doctor when requested.

The majority of applicants are now detained under Health Regulations or *de facto* detained and must undergo a medical examination (consisting of X-rays) to check for tuberculosis.

No other medical examination is carried out. However, even when medically checked and cleared, applicants might not be released since release is decided as and when space is available in reception centres.

Lawyers assisting people in detention report that asylum seekers are very often in a poor state of health due to prolonged detention in atrocious conditions. It was noticed on several occasions that many detainees had scabies.

The medical team present in detention struggles to cope with the demands, and many detainees report that nurses only provide paracetamol.

As already mentioned, many detainees are regularly sent to the psychiatric hospital after suicide attempts. In January 2021, a nurses' union claimed that detainees were "purposely self-harming to get themselves transferred out of detention centres" and asked for the hospital to refuse admissions of such people.<sup>271</sup>

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<sup>271</sup> Times of Malta, 'Union claims migrants are "purposely self-harming" to enter Mount Carmel', 29 January 2021, available at: <https://bit.ly/3scNO0Q>.



Such a statement left the NGOs shocked at this lack of sensitivity. They explained that their experience in detention confirmed the severe psychological harm caused by prolonged detention in undignified conditions. The NGOs stated that self-harm and suicide attempts were not abuses of the system but the “extremely worrying effects of a policy that entirely dehumanises people”. They stressed the need for all people to receive appropriate treatment for their mental health conditions without discrimination.<sup>272</sup>

It is reported that, in 2020, 93 detainees were taken to the psychiatric hospital (60 in 2019 and 17 in 2018) in order to be treated for self-harm or suicide attempts. Times of Malta, reporting about the issue in March 2021, spoke to a former employee of the **Safi** detention centre who claimed that migrants with mental health issues were deprived of adequate care. She told the newspaper that emergency services were called in none of the cases of attempted suicide she knew of.<sup>273</sup>

No specific information is available about how the authorities are managing the Covid-19 situation in detention, but lawyers visiting detention report that most DS staff do not wear facemasks, nor do they respect social distancing measures. No information is provided about the number of people infected with Covid-19, but people are regularly put in isolation in different parts of the detention centre.

The CPT noted that serious efforts were undertaken by the public health team to screen and detect Covid-19 in detention centres with swab testing programs. Nevertheless, during its visit, the delegation found several people who had tested positive and who were never separated from other detainees. In the IRC in Marsa in particular, the CPT found “an establishment in disarray, which has allowed a dangerous, and potential fatal, environment for detained migrants and its own staff to develop and is symptomatic of the institutional neglect referred to above. (...) [T]his situation of disarray, negligence and the dangerous environment created by knowingly locking Covid-19 positive migrants together with non-positive migrants for long periods of time, may well raise issues not only under Article 3 of the ECHR but also as regards Malta’s positive obligation to protect life under Article 2 of the ECHR”.<sup>274</sup>

It is important to mention that in 2020 migrants were regularly blamed for Covid-19 in the public discourse. For instance, the Prime Minister himself explained in August 2020 that the drastic spike of Covid-19 cases during the summer was due to the inclusion in official statistics of rescued migrants who had tested positive.<sup>275</sup> The Medical Association of Malta promptly reacted and claimed the Prime Minister’s comments were unfair adding that “the government’s decision to allow mass events like parties, despite the expert advice of the superintendent for public health, was the only cause of this spike since migrants have been quarantined immediately.” The NGO Repubblika also condemned the Prime Minister’s use of language, suggesting it could incite racial prejudice.<sup>276</sup>

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<sup>272</sup> aditus foundation, ‘Press statement from the Malta Refugee Council, network of Maltese NGOs working for the promotion of the fundamental human rights of persons in forced migration’, 29 January 2021, available at: <https://bit.ly/3tOrj2r>.

<sup>273</sup> Times of Malta, ‘More detainees treated for self-harm, suicide attempts’, March 2021, available at: <https://bit.ly/3abuYjt>.

<sup>274</sup> 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 from 17 to 22 September 2020, March 2021, available at: <https://bit.ly/3mPtelf>.

<sup>275</sup> Times of Malta, ‘Isolated migrants to blame for spike in reported COVID-19 cases - Robert Abela’, 3 August 2020, available at: <https://bit.ly/3cXH9kD>.

<sup>276</sup> FRA, ‘Migration: Key fundamental rights concerns, Quarterly Bulletin, Nov 2020’, available at: <https://bit.ly/3cblrdC>.



### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to:

❖ Lawyers:	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ NGOs:	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ UNHCR:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ Family members:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No

Legislation provides for the possibility for detainees to receive visits from family members and friends up to once per week. The Detention Service administration shall determine dates and times once the Principal Immigration Officer (PIO) approves such visits.<sup>277</sup>

In practice, the possibility for family members and friends to visit detainees remains very difficult and totally discretionary as people need to request permission to the Detention Service administration which does not always reply and grant appointments. When authorisation is granted, lack of privacy for visits remains an issue.<sup>278</sup> Therefore, no formal procedures exist for friends and family members to visit detained persons and practice is erratic and largely discretionary. When such visits are allowed, logistical modalities are also extremely erratic and discretionary with no clear procedures and rules. In 2020, such visits were not allowed.

Representatives of the media may be given access to Detention Centres subject to authorisation by the Minister for Home Affairs, National Security and Law Enforcement. However, no journalist was allowed to enter the premises in 2020. Times of Malta and independent journalists reported that its journalists have been repeatedly denied access to Safi detention centre.<sup>279</sup>

There is no published policy position regarding visits by politicians, but politicians have visited the detention centres on occasion.

UNHCR, legal advisers and NGOs were usually allowed access at any time in order for them to provide their services to detained persons. No specific criteria applied, except possibly the provision of services or support to detained asylum seekers. Persons in detention centres encounter difficulties communicating with legal advisers, UNHCR, and NGOs primarily due to the fact that little or no information is provided on the existence and means of contacting these entities, and actual contact is only possible to a limited extent and due to the limited means available to NGOs and UNHCR.

However, following the change in the detention policy and the tensions within the detention centre, access to detention was limited at times during 2019 and 2020.

For instance, access was revoked after some NGOs filed *Habeas Corpus* cases leading to the release of several applicants in October 2019. Access was denied to NGOs for several weeks without any explanation before being resumed. Access was suspended in March 2020, when the pandemic first reached Malta. It was then authorised in July for a very limited 3 hours a week.<sup>280</sup>

In September 2020, access was denied again for several weeks without any explanation. It was restored again in October 2020.

<sup>277</sup> Regulation 6A Reception Regulations.

<sup>278</sup> Information provided by Katrine Camilleri, Director of JRS Malta, January 2017.

<sup>279</sup> Times of Malta, 'UN slams "shocking" conditions for migrants in Malta', 2 October 2020, available at: <https://bit.ly/2NHS4qb>; Malta Today, 'Manuel Delia demands access to detention centres, prison', 21 February 2020, available at: <https://bit.ly/2NHSeOj>.

<sup>280</sup> Times of Malta, 'NGOs denied access to Safi migrant centre since August', 11 September 2020, available at: <https://bit.ly/3tFmgBm>.

At the time of writing, the new Detention Services Director committed to granting full access to NGOs. In practice, regular visits are somewhat problematic due to logistical challenges.

A lack of or restricted access for NGOs results in the absence of basic information on the asylum procedure, as well as information on the available legal support for detainees. The backlog of asylum applications, confirmed by the International Protection Agency, leaves applicants in limbo without access to basic services, according to these NGOs.<sup>281</sup>

Moreover, the authorities are limiting the possibility for NGOs to provide information to large groups of people. Lawyers or social workers are only allowed to meet with specific clients but cannot provide information sessions within Safi and Lyster detention centres. This situation is highly problematic as NGOs have limited resources and cannot provide information to all the persons in need on an individual basis. The conditions to meet asylum-seekers in detention are particularly challenging as lawyers meet individuals in bare containers not equipped with furniture.

The CPT report confirms that the migrants they met were never provided with information about contact details of NGOs, consular assistance, lawyers, or UNHCR. They noted that, for example, at **Safi** Detention Centre, only one visit from a lawyer was recorded between June and September 2020 and none between March to June 2020 at Warehouse 2 (one of the premises of the detention centre and hosting hundreds of detainees).

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

- |   |   |  |
|---|---|--|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed?    | 7 days, then 2 months                   |  |

#### 1.1. Review of asylum detention under the Reception Regulations

The amended law foresees possibilities to review the lawfulness of the detention and this review would be automatically conducted by the Immigration Appeals Board (IAB) after seven working days from the detention order, which may be extended by another seven working days.<sup>282</sup> If the applicant is still detained, a new review would be conducted after periods of two months thereafter. When the IAB would rule that detention is unlawful, the applicant would be released immediately. Free legal assistance would be provided for this review according to the Regulations.

From the practice observed in recent years, review of detention is usually now done after the first seven days. Lawyers assisting asylum-seekers in detention report that hearings with the IAB are extremely short and the Board usually never questions the detention itself.

Parallel to this automatic review, the new Reception Regulations provide for the possibility to challenge the detention order before the IAB within three working days from the order. In practice, it is practically impossible to challenge the detention order itself as asylum seekers do not have the capacity to submit such an appeal on such short notice as there is not enough time to seek the assistance of a lawyer. In 2020, due to lack of access to detention for NGOs for several months, detainees did not receive legal

<sup>281</sup> FRA, 'Migration: Key fundamental rights concerns, Quarterly Bulletin, Nov 2020', available at: <https://bit.ly/3cblrdC>.

<sup>282</sup> Regulation 6(3) Reception Regulations.

support and were never able to challenge their detention orders. These difficulties were also highlighted by the European Court of Human Rights in the cases brought against Malta by detained asylum seekers.<sup>283</sup>

The majority of migrants are now detained in application of Health Regulations or *de facto* detained. This is not a formal detention regime where applicants are issued with a detention order. Therefore, they do not benefit from effective remedies and are not entitled to appeal against the decision, in contravention of the Reception Conditions Directive.

Nevertheless, in October 2019, aditus foundation and JRS Malta assisted six migrants who had been detained for more than ten weeks under the above-mentioned Health Regulation to challenge their detention by filing *Habeas Corpus* proceedings. Lawyers raised several arguments to prove the detention unlawful:

- They indicated that these individuals, upon arrival, were only provided with a document titled 'Restriction of Movement for Public Health Reasons' signed by the Superintendent of Public Health. In this document applicants were not identified by their name but merely by their Immigration Number and no interpreter was present during their interview with the Malta Police Force to explain the contents of the document provided.
- Furthermore, at no stage were the applicants informed as to what elements pertaining to their specific individual situation led to the conclusion by the Superintendent that "they may spread disease" in terms of Health Regulations.
- The applicants were escorted to a Health Centre to undergo medical screenings almost immediately following their arrival in detention but were never provided with the results, even months after.
- On the basis of the fact that they are wholly impeded from any form of free movement, it cannot be said that their movements are being merely 'restricted'. On the contrary, they were entirely deprived of their personal liberty.
- These applicants had been detained for more than ten weeks.

The Court declared the ongoing deprivation of personal liberty unlawful and ordered their immediate release.<sup>284</sup>

The six asylum-seekers were released the same day but left with no support or accommodation provided by the authorities, relying entirely on NGOs and the community for immediate assistance. As a consequence, NGOs have refrained from initiating similar proceedings for other applicants.

However, several similar cases were filed in 2020 when applicants could be accommodated by friends or relatives.

On 29 October 2020, the Maltese Court of Magistrates ordered the immediate release of an Ivorian national on medical grounds, stating that his detention had no basis in law. The Court underlined that it had encountered several cases in which people were detained without a legal basis and expressed its concern regarding the impact of such detention on the rule of law.<sup>285</sup>

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<sup>283</sup> ECtHR, *Louled Massoud v. Malta*, Application No 24340/08, Judgment of 27 July 2010; ECtHR, *Suso Musa v. Malta*, Application No 42337/12, Judgment of 9 December 2013; ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

<sup>284</sup> Court of Magistrates, 7 October 2019, Mohammed Abdallah Mohammed 19O-030, available at: <https://bit.ly/2V6lVcs>; Court of Magistrates, Zeeshan Saleem 19N-24, 8 October 2019, available at: <https://bit.ly/3b7iLea>.

<sup>285</sup> EDAL, Malta: Court orders release of a migrant who was detained on the basis of medical reasons, 29 October 2020, available at: <https://bit.ly/3rbIIr8>.

In November 2020, four men were released by a Maltese Court, with the magistrate declaring the detention unlawful. The magistrate also condemned the policy of systematic detention due to the lack of reception space as “abusive and farcical”. These four men were disembarked in Malta in June 2020 and were put in detention without being given any official document justifying their detention.<sup>286</sup>

## 1.2. Review of pre-removal detention under the Returns Regulations

Since the transposition of the Returns Directive, the law provides for the possibility to institute proceedings to challenge the lawfulness of detention before the Immigration Appeals Board.

In addition to the fact that the extent to which this Act applies to detained asylum seekers, who by definition cannot be subject to removal proceedings, is questionable, from the text of the law it would appear that migrants arriving by boat who are apprehended at sea or upon arrival and migrants who are refused admission into Malta are exempt from the benefits of this provision, as Regulation 11(1) states that:

“The provisions of Part IV shall not apply to third country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by sea or air of the external border of Malta and who have not subsequently obtained an authorisation or a right to stay in Malta”.

This said, in one case the Board held that the benefits of this provision are indeed applicable to detained asylum seekers, however it ceases to apply once their application is no longer pending.

To date, the remedy has not proved particularly speedy, with few applications decided prior to the applicant’s release from detention in terms of Government policy. Moreover, it remains to be seen how the Board will interpret the concept of “lawfulness”.

According to lawyers assisting migrants served with a removal and detention order, the automatic review conducted by the IAB never questions the lawfulness of detention or its validity. The Board never questions the police about arrangements being made to return the individual as it considers the detention always necessary when a removal order is taken. Hearings last generally a few minutes and a removal/detention order will only be questioned by the Board if a subsequent application is filled.

In 2020, most people coming from safe countries of origin were detained and have seen their asylum application rejected as manifestly unfounded, denied appeal, and automatically served with a removal and detention order. These individuals have been detained for sometimes more than two years while awaiting a potential return.

As already mentioned, the European Human Rights Court recently found a violation of article 5(1) of the Convention (right to liberty and security).<sup>287</sup> The case was about a Nigerian national detained pending removal. The Court considered that the entire period of detention, fourteen months in total, cannot be justified for the purpose of deportation since the authorities insufficiently pursued concrete arrangements for his return. Therefore, the Court concluded that the ground for his detention could not be considered valid for the full duration of his detention.

## 1.3. Other remedies

Although there are a number of remedies available to detainees to challenge their detention, in addition to the remedy introduced in 2014, the ECtHR clearly stated in *LouledMassoud v. Malta*, in *AbdullahiElmi*

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<sup>286</sup> Malta Today, ‘Magistrate blasts ‘abusive and farcical’ migrant detention practice’, 30 November 2020, available at: <https://bit.ly/3r9hjiz>.

<sup>287</sup> ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, Judgment 11 March 2021.

*and Aweys Abubakar v. Malta* and in *Suso Musa v. Malta* that three of these remedies do not qualify as “speedy, judicial remedies” in terms of Article 5(4) ECHR.<sup>288</sup>

### **Human rights action before the national courts**

This remedy, which allows a detainee to challenge the lawfulness of his or her detention in terms of the ECHR and the Constitution of Malta, has failed the Article 5(4) ECHR test as, although it is clearly judicial, it is far from speedy.

In addition to the length of time for the delivery of judgments, constitutional proceedings are virtually inaccessible to detainees as in practice most asylum seekers do not have access to a lawyer who could file a court case on their behalf. In fact, to date most cases have been filed by lawyers working in collaboration with NGOs assisting asylum seekers. In such cases there is no waiver of court fees, as there would be if the applicant had been granted the benefit of legal aid.

### **Application under Article 409A of the Criminal Code**

This remedy too allows a detainee to challenge the lawfulness of detention before the Court of Magistrates and is based on an assessment of the legality of the person’s detention. Though this remedy is both speedy and judicial in nature, it failed the test because it does not allow for an examination of the lawfulness of detention in terms of article 5 ECHR, since the Courts interpreted their remit under this article as being strictly limited to provisions of Maltese law.

With the provision of grounds for detaining asylum seekers in national law, this remedy is now, however, relevant. As mentioned above, several successful applications were brought before the Courts throughout 2020, resulting in the immediate release of successful applicants.

### **Application under Article 25A of the Immigration Act**

In the terms of Article 25A of the Immigration Act, the Immigration Appeals Board is competent to:

“[H]ear and determine applications made by persons in custody in virtue only of a deportation or return decision and removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation. The Board shall grant release from custody where the detention of a person is, taking into account all the circumstances of the case, not required or no longer required for the reasons set out in this Act or subsidiary legislation under this Act or under the Refugees Act, or where, in the case of a person detained with a view to being returned, there is no reasonable prospect of return within a reasonable time-frame”.

This remedy too was deemed to be inadequate by the ECtHR for a number of reasons: the fact that the relevant legal provision is limited since a request for release from custody has no prospect of success in the event that the identity of the detainee, including his or her nationality, has yet to be verified, in particular where he or she has destroyed his or her travel or identification documents or used fraudulent documents to mislead the authorities; the fact that over the years there were only very few cases where this remedy was used successfully; and due to the duration of such proceedings.

Detainees who apply for asylum from detention are subject to the same asylum procedure as those who apply from the community. The Refugee Commissioner will proceed to examine the application of the detained asylum seeker in the same manner as those who are not deprived of their liberty. The main

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<sup>288</sup> ECtHR, *Louled Massoud v. Malta*, Application No 24340/08, Judgment of 27 July 2010; ECtHR, *Suso Musa v. Malta*, Application No 42337/12, Judgment of 9 December 2013 and ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

difference lies in that detainees are escorted to the Refugee Commissioner's offices and are not informed in advance of the date of their interview. They are usually informed on the day that their presence is required at the Office of the Refugee Commissioner. Detained asylum seekers do however face considerable difficulties in obtaining documents and compiling all the information which they might want to present in support of their application as their means of communication are severely restricted. Very often, detained asylum seekers rely on support from NGOs to obtain documentation and any other information which might be required.

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
 Yes  No
2. Do asylum seekers have effective access to free legal assistance in practice?  
 Yes  No

The Reception Regulations provide for the possibility for asylum seekers to be granted free legal assistance and representation during the review of the lawfulness of detention.<sup>289</sup> Free legal assistance and representation entails preparation of procedural documents and participation in any hearing before the Immigration Appeals Board. Despite this specification, the public entity coordinating the provision of legal aid for such reviews has confirmed that legal aid will only be made available for the first review by the IAB and not for subsequent reviews.

Regulation 11(5) of the Returns Regulations provides that within the context of an application to the Board to review decisions related to return, a legal adviser shall be allowed to assist the third-country national and free legal aid will be provided where the individual meets the criteria for entitlement in terms of national law. It is, however, questionable whether an application to the Board to review the lawfulness of detention would qualify as a request to review a decision relating to return, which is usually understood to include a decision to issue a removal order and/or a return decision.

In the case of the asylum procedure, while applicants may be represented by a lawyer at first instance, this is not available for free and they will have to bear all the costs involved.<sup>290</sup> Free legal aid is however provided at the appeal stage of the asylum procedure. JRS Malta and aditus foundation are the only two organisations providing free legal services to detainees, yet capacity is very much limited according to available resources.

The CPT report highlights that no registers of detention orders are kept in any detention centre and that management is generally not informed of who is detained on which grounds. This situation prevents the management of ensuring any oversight of the safeguards related to detention.

## E. Differential treatment of specific nationalities in detention

As already mentioned, the legal regime of persons detained depended significantly on their nationalities. Recently, a practice was noted whereby asylum seekers coming from a safe country of origin are usually detained under the Reception Conditions Directive. These applicants usually remain in detention during the whole asylum procedure since the automatic review of their detention, when conducted, never questions the lawfulness of their detention.

<sup>289</sup> Regulation 6(5) Reception Regulations.

<sup>290</sup> ECtHR, *Suso Musa v. Malta*, Application No 42337/12, Judgement of 9 December 2013, par. 61.

Applicants coming from other countries of origin are usually *de facto* placed in detention and may be released when space is available in reception centres or when a lawyer can file an *habeas corpus* when alternative accommodation becomes available.

It was noticed that detainees are usually kept together based on their nationalities. They are also regularly moved from one detention centre to another, without being given any information for such change, which creates anxiety among applicants. The Detention Service indicated that detainees are “housed according to their different protection and socio-political needs” and that moving is done “to prevent potential conflict between different cultures”.<sup>291</sup>

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<sup>291</sup> Information provided by Detention Service, January 2021.



### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

- |  |         |
|--|---------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? |         |
| ❖ Refugee status   | 3 years |
| ❖ Subsidiary protection  | 3 years |
| ❖ Humanitarian protection  | 1 year  |

According to the law, persons who are granted refugee status and subsidiary protection in Malta are issued a three years' residence permit which is renewable.<sup>292</sup>

Once international protection is granted by the IPA, the beneficiary is issued a residence permit by Identity Malta, the public agency in charge of matters relating to passports, identity documents, and work and residence permits for expatriates.

In practice, the issuance and renewal of the residence permits can raise some difficulties for many beneficiaries of protection, mainly due to the lack of provision of practical information, excessive administrative delays in processing applications, burdensome requirements, and a negative attitude by public officials towards beneficiaries.

Very little information is available for protection beneficiaries on the procedures and requirements relating to residence permits. Furthermore, the information provided by state officials is not always provided in a language understood by applicants. The procedure, including requirements, is not clearly indicated, written, or available online.

Usually, applicants are required to wait for a couple of months for their documentation (see below) to be provided. Although a receipt of their application form for residence is provided, this has no real legal value, resulting in persons being unable to access their basic rights due to a lack of possession of their residence papers.

Residence permit applicants are required to present evidence of their protection status, together with evidence of their current address. This latter requirement is particularly burdensome for protection beneficiaries as it is interpreted as requiring them to present a copy of their rent agreement together with a copy of the identification document of their landlords. In the majority of cases, Maltese landlords refuse to provide either rent agreements or personal documentation due to a fear of imposition of income tax on the income deriving for the rent.

Many protection beneficiaries report strong negative attitudes, comments, and behaviour towards them by public officials receiving and handling their residence permit applications. Many persons are ignored, rebuked, dismissed, or otherwise not handled respectfully.

The renewal of residence permits is automatic upon request.

In 2020, protection status documentation renewal was temporary suspended for several weeks with the IPA being closed for several weeks due to the Covid-19 pandemic. The IPA remained responsive over emails even when the office was closed for several weeks, providing standard information on all correspondence, providing guidance and practical information for beneficiaries. Upon request, the IPA

<sup>292</sup> Regulation 20 Procedural Regulations.

would confirm status via email and would inform the relevant authorities including health authorities about entitlement of protection status so individuals could have access to relevant services.

However, these temporary arrangements remained challenging for a number of beneficiaries who do not speak English and who are not in a capacity to access the Internet.

## 2. Civil registration

Individuals can register childbirth and marriage at the Public Registry office. There is only one location in the capital, **Valletta**, where such administrative requests can be made.

A child must be registered within 15 days following their birth. The person transmitting such notice has to present his or her identity card, and any documentation provided to him or her by the hospital.

The Marriage Registry, within the Public Registry office, receives requests for the Publication of Banns for marriages and civil unions taking place in Malta. Applications for the publication of Banns are received between three months and six weeks prior to the date of marriage or civil union. The Banns are published five to four weeks prior to the date of marriage or civil union.

Beneficiaries of international protection are also requested to inform the Office of the Refugee Commissioner about changes in their marital or parental situation.

In practice, beneficiaries of international protection may experience difficulties stemming from a lack of clear information on the procedure and documents required for civil registration.

## 3. Long-term residence

### Indicators: Long-Term Residence

- |   |               |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2020: | Not available |
|---|---------------|

National legislation provides for the possibility for third-country nationals residing regularly in Malta to access long-term residence.<sup>293</sup> The criteria are the same for all migrants: no special conditions are foreseen for beneficiaries of international protection.

To be able to apply for such permit, applicants must have to fulfil a long list of requirements:

1. They first need to have resided legally and continuously in Malta for five years immediately prior to the submission of the application;
2. Applicants are also requested to provide “evidence of stable and regular resources which have subsisted for a continuous period of two years immediately prior to the date of application and which are sufficient to maintain the applicant and his family without recourse to the social assistance system in Malta or to any benefits or assistance”.<sup>294</sup> The law provides that these resources have to be equivalent to the national minimum wage with an addition of another twenty percent of the national minimum wage for each member of the family;
3. An appropriate accommodation, regarded as normal for a comparable family in Malta, a valid travel document and a sickness insurance are also requested to be entitled to apply;
4. In addition, Regulations require language (Maltese) and integration conditions, including courses of at least 100 hours about the social, economic, cultural, and democratic history and environment of Malta recognised by an examination pass mark. These courses are provided by the Human Rights and Integration Directorate, as part of the ‘I Belong’ integration programme.

<sup>293</sup> Status of Long-Term Residents (Third Country Nationals) Regulations, Subsidiary Legislation 217.05, November 2006, available at: <http://bit.ly/2kX9hvu>.

<sup>294</sup> Regulation 5 Long-Term Residence Regulations.

The application for long-term residence has to be submitted in writing to the Director for Citizenship and Expatriate Affairs. The law provides for a time limit of six months after an application is lodged to receive an answer. If the Director fails to give a decision within this period specified, the application shall automatically be passed on for appeal to the Immigration Appeals Board.<sup>295</sup>

In practice, it is difficult for beneficiaries to access long-term residence as the threshold for income is high when people have families, and the language requirements are burdensome.

Long-term residence status applications cost around €130.

### **Specific Residence Authorisation Status**

On 15 November 2018, Malta issued a policy regularising a select group of failed asylum seekers, the Specific Residence Authorisation (SRA).<sup>296</sup> SRA was introduced to replace the former Temporary Humanitarian Protection New (THPN) status. SRA recognised the needs of failed asylum seekers who have been residing in Malta for a period of five years and who were actively contributing to Maltese society. To be eligible to apply, applicants needed to fulfil the following criteria:

- Applicant must have entered Malta irregularly prior to 1 January 2016 and been physically present in Malta for a period of 5 years preceding the date of application;
- Applicant must have his or her application for international protection finally rejected by the competent asylum authorities;
- Applicant must be of good conduct. Persons who have been convicted of serious crimes or are a threat to national security, public order or public interest are excluded from being granted SRA;
- Applicant must demonstrate that he or she has been in employment on a frequent basis (minimum of 9 months per year during the preceding 5 years);
- Applicant must present his or her integration efforts.

The SRA shall be valid for two years. The individual assessment was carried out by the public entity Identity Malta. SRA holders are entitled to a residence permit valid for two years with the possibility of renewal, access to core welfare benefits similar to beneficiaries of subsidiary protection, employment licence, travel document, and access to state education and medical care.

Persons who held a valid Temporary Humanitarian Protection New (THPN) were to be granted an SRA automatically, without any individual assessment. Upon renewal, an individual assessment is conducted by Identity Malta and the immigration authorities based on the criteria outlined above.

In 2020, the authorities received 258 applications for SRA and delivered 234 residence permits. 62 persons saw their SRA renewed in 2020 for two more years.<sup>297</sup>

In November 2020, Maltese authorities unexpectedly announced an update of the SRA policy. ID Malta confirmed that former THPN beneficiaries who were automatically granted SRA in 2018 will have their status renewed subject to the fulfilment of integration measures. Likewise, failed asylum seekers who were granted SRA on the basis that they entered Malta before 2016 and could prove stable employment would continue to be able to enjoy this status. The updated policy also foresees that the authorities shall provide to all unsuccessful SRA applicants assistance for voluntary return in their country of origin.

More importantly, the new policy specifies that new applications for the SRA will only be accepted until the end of December 2020, meaning that no new application will be permitted after this date. Existing

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<sup>295</sup> Regulation 7 Long-Term Residence Regulations.

<sup>296</sup> Ministry for Home Affairs, National Security and Law Enforcement, *Policy regarding Specific Residence Authorisation*, November 2018, available at: <https://bit.ly/2Svq8qA>.

<sup>297</sup> Information provided by ID Malta, January 2021.

holders of the SRA will still be able to renew their status in accordance with the revised policy but no new application will be allowed.<sup>298</sup>

Numerous NGOs promptly reacted to this unexpected new policy and expressed their “shock and disappointment”.<sup>299</sup> According to them, the revised SRA policy will result in people remaining undocumented and thus without access to basic services and the possibility to exercise basic rights.

They deplored the fact that contrary to the first policy which was the result of a “tense but rewarding” process of dialogue with the government, such revision was taken without any form of concertation. They stated that a one-month ultimatum to file such applications will leave many without the possibility to regularise their stay, that persons seeking removal will now run the risk of permanently reverting to an irregular immigration status. Moreover, the policy’s original family-oriented measures are now seriously restricted.<sup>300</sup>

#### 4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	10 years
2. Number of citizenship grants to beneficiaries in 2020:	Not available

The Citizenship Act foresees that foreigners or stateless persons may apply for citizenship in Malta.<sup>301</sup> The law makes no difference between beneficiaries of international protection and other third-country nationals but in practice **subsidiary protection beneficiaries’** applications are not usually considered.

The conditions to be able to apply include a residence in Malta throughout the 12 months immediately preceding the date of application and a residence in Malta for periods amounting in the aggregate to a minimum of four years, during the six years preceding the above period of 12 months. Applicants must also be of good character and have an adequate knowledge of the Maltese or the English languages.<sup>302</sup>

Prior to submitting an application, the person has to present a residence certificate issued by the Principal Immigration Office to the Identity Malta Agency. Once the Office confirms the eligibility of the applicant, additional documents have to be produced, including a birth certificate, passport, and police conduct.

There is no time limit foreseen for a decision and the law does not require the authorities to provide reasons for rejections of applications.

In practice, it is close to impossible for refugees to access citizenship by naturalisation as the procedure is entirely at the discretion of the Minister. Moreover, while no written policy is available, refugees are, in practice, only allowed to apply for citizenship after ten years of regular residence in Malta.

<sup>298</sup> Identity Malta, ‘Updating of the Policy regarding Specific Residence Authorisation’, 24 November 2020, available at: <https://bit.ly/3vTrImq>.

<sup>299</sup> A new policy that will lead to increased social exclusion and poverty, Press statement by aditus foundation, African Media Association Malta, Allied Rainbow Communities, Anti-Poverty Forum Malta, Azzjoni Kattolika Maltija, Blue Door English, Christian Life Communities in Malta, The Critical Institute, Dean of the Faculty of Education, Drachma, Great Oak Malta Association, Integra Foundation, Jesuit Refugee Service (Malta), KOPIN, Malta Emigrants’ Commission, Malta Humanist Association, Migrant Women Association Malta, Millennium Chapel, MOAS, Moviment Graffiti, People for Change Foundation, Repubblika, SOS Malta, SPARK15, Women’s Rights Foundation, 25 November 2020, available at: <https://bit.ly/3ab0MVO>.

<sup>300</sup> Ibid.

<sup>301</sup> Citizenship Act, Chapter 188, September 1964, available at: <http://bit.ly/2lz5z8H>.

<sup>302</sup> Article 10(1) Citizenship Act.

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure?  Yes  No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

The International Protection Act provides for the possibility of cessation of **refugee status**.<sup>303</sup> The grounds for cessation apply to cases where the refugee:

1. Has voluntarily re-availed himself of the protection of the country of his or her nationality, or, having lost his nationality, has voluntarily re-acquired it;
2. Has acquired a new nationality and enjoys the protection of this country;
3. Has voluntarily re-established him or herself in the country which he left or outside which he remained owing to fear of persecution;
4. Can no longer continue to refuse to avail himself of the protection of the country of his nationality because the circumstances in connection with which he has been recognised as a refugee have ceased to exist;
5. Is a person who has no nationality and, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, is able to return to the country of his former habitual residence.

The law provides for the possibility of an appeal against a cessation decision before the International Protection Appeals Tribunal within 15 days after notification.<sup>304</sup> The rules regulating appeals for cessation decisions are the same as the ones applicable to regular appeals.

Regarding beneficiaries of **subsidiary protection**, the situation is different according to the EU recast Qualification Directive as the law states that such protection “shall cease if the International Protection Agency is satisfied that the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required. Provided that regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.” The law further provides “that the provisions of this article shall not apply to a beneficiary of subsidiary protection who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence”.<sup>305</sup>

Appeals are possible against such decisions under the same conditions as the regular procedure.<sup>306</sup>

According to the authorities, cessation is not applied to individuals or specific groups of beneficiaries of international protection in Malta.<sup>307</sup> Moreover, there is no systematic review of protection status in Malta.

There is no information available on the number of cessation decisions that were taken for beneficiaries of international protection in 2020.

<sup>303</sup> Article 9 International Protection Act.

<sup>304</sup> Article 9(2) International Protection Act.

<sup>305</sup> Article 21 International Protection Act.

<sup>306</sup> Article 9(2) International Protection Act.

<sup>307</sup> Information provided by RefCom, 2 June 2016.

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure?  Yes  No
2. Does the law provide for an appeal against the withdrawal decision?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  
 Yes  With difficulty  No

According to the International Protection Act, a declaration of **refugee status** can be revoked by the International Protection Agency in the case where a person should have been excluded from being a refugee or where his misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.<sup>308</sup>

The refugee shall be informed in writing that his or her status is being reconsidered and shall be given the reasons for such reconsideration. The refugee shall also be given the opportunity to submit, in a personal interview or in a written statement, reasons as to why his or her refugee status should not be withdrawn.

The International Protection Agency may also revoke or refuse to renew the protection granted to a refugee when there are reasonable grounds for regarding him or her as a danger to the security of Malta or if, having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of Malta. In such cases, the person is entitled to appeal against the revocation to the Board within seven days of the notification of the revocation.<sup>309</sup>

Regarding **subsidiary protection** beneficiaries, the International Protection Agency shall revoke or refuse to renew such status if the person, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection or if that person's misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.<sup>310</sup>

In 2020, the IPA withdrew 4 refugee status and 10 subsidiary protection statuses.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
 Yes  No  
❖ If yes, what is the waiting period? 12 months
2. Does the law set a maximum time limit for submitting a family reunification application?  
To be exempt from material conditions  Yes  No  
❖ If yes, what is the time limit? 3 months
3. Does the law set a minimum income requirement?  Yes  No

<sup>308</sup> Article 10, International Protection Act.

<sup>309</sup> Article 10(6) International Protection Act.

<sup>310</sup> Article 22 International Protection Act.



Recognised **refugees** may apply for family reunification in Malta according to national legislation.<sup>311</sup> “Family members” include the refugee’s spouse and their unmarried minor children.

Only refugees may apply for family reunification, since the Regulations specify that **subsidiary protection** beneficiaries are excluded from this provision: “The sponsor shall not be entitled to apply for family reunification if he is authorised to reside in Malta on the basis of a subsidiary form of protection...”.<sup>312</sup> The exclusion of subsidiary protection beneficiaries from family reunification was raised as a major concern by the Council of Europe Commissioner for Human Rights.<sup>313</sup> In 2016, the Immigration Appeals Board ordered the competent authorities to allow a beneficiary of subsidiary protection to reunite with his wife on the basis of his work contract (with a public entity), granting employees such a right. This case remains an exception.

In November 2018, JRS Malta, aditus foundation, and Integra foundation, supported by UNHCR Malta, published a report titled *Family Unity: a fundamental right*.<sup>314</sup> The report examines national law and policy on family reunification for beneficiaries of subsidiary protection in light of European and human rights law, and concludes that current law and policy in Malta is highly questionable when set against these standards. The report highlights that the current blanket ban on family reunification for beneficiaries of subsidiary protection raises serious human rights concerns. The organisations urge the Government to review the existing legislative framework and to grant beneficiaries of subsidiary protection the right to be reunited with their families in Malta under the same conditions as refugees or, as a minimum, under the same conditions as refugees who married post-recognition.

Applications must be addressed to the Director for Citizenship and Expatriate Affairs who has to give a written notification of the decision no later than nine months after the lodging of the application.

In order to be able to apply, applicants need to provide evidence of their relationship with family members, and they need to have an accommodation regarded as normal for a comparable family in Malta as well as a sickness insurance. Moreover, applicants are requested to prove stable and regular resources which are sufficient to maintain the sponsor and the members of the family without recourse to the social assistance system in Malta which would be equivalent to, at least, the average wage in Malta with an addition of another 20% income or resources for each member of the family.<sup>315</sup>

In practice, refugees are not requested to fulfil the material conditions if they apply within three months of obtaining their status. Refugees who are applying to be joined by family members in Malta are only required to present the refugee status certificate; official documents attesting the family relationship; full copies of the passports of the family members; and the lease agreement.

Refugees whose family relationship post-dates the grant of their status, or whose application for family reunification has not been submitted within a period of three months after the grant of said status, are required to present additional documents such as an attestation by an architect confirming that the applicant’s accommodation is regarded as normal for a comparable family in Malta and which meets the general health and safety standards of the country and a confirmation of stable and regular resources which have not been obtained by virtue of recourse to the social assistance of Malta and which shall be deemed to be sufficient if they are equivalent to the national minimum wage in Malta.<sup>316</sup>

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<sup>311</sup> Family Reunification Regulations, LN 150 of 2007, Immigration Act Cap 217, 2007, available at: <http://bit.ly/2kC9tiH>.

<sup>312</sup> Regulation 3 Family Reunification Regulations.

<sup>313</sup> Council of Europe Commissioner for Human Rights, Letter to the Minister for Home Affairs, National Security and Law Enforcement of Malta, CommHR/NM/sf 043-2017, 14 December 2017, available at: <http://bit.ly/2o5Bwr6>.

<sup>314</sup> “Family unity: a fundamental right”, a Project Integrated 2018 Policy Paper on the right to family reunification or beneficiaries of subsidiary protection, JRS Malta, aditus foundation, Integra Foundation, funded by UNHCR Malta, November 2018, available at: <https://bit.ly/3dtBlyX>.

<sup>315</sup> Regulation 12 Family Reunification Regulations.

<sup>316</sup> Information provided by Identity Malta, 2017.



## 2. Status and rights of family members

As soon as the application for family reunification has been accepted, family members will be authorised to enter Malta and every facility, for obtaining the required visas, will be given to them. In practice, problems in issuing documentation may arise in countries with no Maltese embassies.

The Family Reunification Regulations provide that family members shall be granted a first residence permit of at least one year's duration and shall be renewable.<sup>317</sup>

Since 2016, reunited family members are, in practice, now granted a residence permit of three years, with the mention "Dependant family member".<sup>318</sup>

According to national legislation, family members of refugees or subsidiary protection beneficiaries, if they are in Malta at the time of the decision or if they join the refugee in Malta, enjoy the same rights and benefits as the refugee.<sup>319</sup> As such, the family members of the sponsor have access, in the same way as the sponsor, to education, employment, and self-employed activity. While a refugee has access to employment and self-employment without the need for an assessment of the situation of the labour market, said family members are subject to such assessment for the first 12 months following their arrival. They also have access to vocational guidance, initial and further training, and retraining.<sup>320</sup>

Family members coming to Malta are barred from applying for international protection in their own name.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries have freedom of movement within the Maltese territory. No dispersal scheme is in place to allocate beneficiaries to specific geographic regions.

### 2. Travel documents

The Procedural Regulations provide that every beneficiary of international protection is to be granted a travel document entitling him or her to leave and return to Malta without the need of a visa.<sup>321</sup>

Travel documents for beneficiaries of international protection in Malta are issued by the Malta Passport Office following a request by the refugee or subsidiary protection beneficiary. They are valid for the duration of residence permits issued by the Expatriates Unit - three years.<sup>322</sup>

The Malta Passport Office issues a Convention Travel Document for people who are granted **refugee status** while persons holding **subsidiary protection** and **Temporary Humanitarian Protection** are issued an Alien's Passport. Beneficiaries of the new **SRA** status are also entitled to a travel document and they are also issued with an Alien's Passport. There are no geographical limitations imposed by the Passport Office or the Immigration Police, but holders of Aliens' Passports are bound to ascertain that the document is recognised and valid for travel to the country they intend to visit, as it is not an internationally

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<sup>317</sup> Regulation 14(2) Family Reunification Regulations.

<sup>318</sup> Information provided by Mr Ryan Spagnol, Director of Identity Malta, 29 September 2016.

<sup>319</sup> Regulation 20(2)(a) Procedural Regulations.

<sup>320</sup> Regulation 15 Family Reunification Regulations.

<sup>321</sup> Regulation 20 Procedural Regulations.

<sup>322</sup> Information provided by Mr Ignatius Ciantar, Senior Principal, Passport Office and Civil Registration Directorate, 19 September 2016.

recognised travel document.<sup>323</sup> There are no known obstacles to the recognition of these travel documents in other countries.

The travel documents issued to beneficiaries do not restrict the holder from travelling to the country of origin or any other country.

## D. Housing

### Indicators: Housing

- |   |                      |
|---|----------------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?        | Usually not entitled |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2020: | Not available        |

The main form of accommodation provided is access to reception centres which are the Initial Reception Centre in **Marsa, Hal Far Tent Village, Hal Far Open Centre, Hal Far Hangar**. Two centres are especially dedicated to host minors and women and provide for smaller types of accommodation, namely **Dar il -Liedna** and **Balzan Open Centre**. However, in the current context of a reception system which is at full capacity, beneficiaries of international protection are not allowed to stay in reception centres in 2020. Exceptions can be made for vulnerable persons and families but on a case-by-case basis.

**Refugees** are entitled to apply to the Maltese Housing Authority program for alternative accommodation known as "Government Units for Rent", provided they have been residing in Malta for 12 months and have limited income and assets. Refugees are also entitled to all of the schemes that the Housing Authority offer, such as a rent subsidy scheme.

A study carried out among the migrant community in Malta (asylum-seekers and beneficiaries of international protection) evidenced that housing remains an issue for such populations as rental prices have increased greatly over the past few years. Most of the people interrogated for the survey qualified housing costs as a burden. Moreover, problems such as shortage of space and lack of light are common as the overall quality of the dwellings rented by the migrant population is usually poor and/or their size is not suited for the number of individuals living in them.<sup>324</sup>

In 2017, the Council of Europe Commissioner for Human Rights raised the issue of access to housing in correspondence with the Ministry for Home Affairs.<sup>325</sup> This problem persisted throughout 2018, 2019, and even more in 2020 due to the Covid-19 crisis, with NGOs working in the social sector commenting that access to private accommodation was increasingly challenging for several groups, including migrants and beneficiaries of international protection, resulting in higher numbers of homeless persons or of persons living in squalid conditions.<sup>326</sup>

In April 2020, 41 NGOs issued a press statement urging the authorities about the immediate and urgent need for shelter. They stated that they were receiving numerous alerts of people about to be evicted for not being able to pay their rent. They stressed that most people, especially the migrant population, might not be able to rely on the Government's support packages or simply not be aware of it. They added that

<sup>323</sup> *Ibid.*

<sup>324</sup> aditus foundation and JRS Malta, *Struggling to survive, an investigation into the risk of poverty among asylum seekers in Malta*, January 2017, available at: <http://bit.ly/2kVtuRz>.

<sup>325</sup> Council of Europe Commissioner for Human Rights, Letter to the Minister for Home Affairs, National Security and Law Enforcement of Malta, CommHR/NM/sf 043-2017, 14 December 2017, available at: <http://bit.ly/2o5Bwr6>.

<sup>326</sup> Times of Malta, 'Number of officially homeless in Malta is "not a reality"', 6 October 2018, available at: <https://bit.ly/2SPEsJV>.

community or NGO's initiatives are not enough to meet the escalating demand for assistance. They urged the authorities to implement an emergency food and shelter initiative.<sup>327</sup>

Following the press release, the Ministry for Social Accommodation engaged in a dialogue with NGOs. They indicated that evictions are strictly regulated, and all cases should be referred to the Housing Authority to verify such evictions are legal. They also announced that people struggling to pay rent may apply for housing benefit which was increased due to Covid-19.<sup>328</sup>

## E. Employment and education

### 1. Access to the labour market

Beneficiaries of international protection have access to the labour market both as employees and self-employed workers.<sup>329</sup>

**Refugees** are entitled to access the labour market under the same conditions as Maltese nationals. To do so, they need an employment licence issued by JobsPlus. The maximum duration of the employment licence is 12 months and is renewable. In such cases, the person is granted an employment licence in their own name. Obstacles in this area include the application costs. A new application costs €58, while annual renewal costs €34.<sup>330</sup>

Refugees are eligible for all positions and have access to benefits including employment insurance and pension. They also have access to employment training programmes at JobsPlus.

**Subsidiary protection** beneficiaries may not be eligible for certain jobs e.g., police and military. Although they must pay tax on wages, legislation foresees that the social welfare benefits granted to beneficiaries of subsidiary protection may be limited to core social welfare benefits with no access to many employment benefits, including employment insurance and pensions. They have access to employment training programmes at JobsPlus.

In Malta, research findings by the European Network Against Racism indicate that non-EU qualifications are often not recognised.<sup>331</sup> Another obstacle is the difficulty in obtaining the necessary certificates from their country of origin. The Malta Migrants Association (MMA) argues that even when refugees are aware of the possibility of their qualifications being recognised, it is a protracted process, in some cases taking up to five or six months. The situation is even more laborious for those who require a warrant to practise their profession: once they have their qualifications recognised, they then need to start another process to be able to work in Malta.

In its 2019 "Working Together, a UNHCR report on the employment of refugees and asylum-seekers in Malta" report, UNHCR documents the difficulty for refugees to have their certificates or academic qualifications recognised.<sup>332</sup> It is reported that this process, in respect of recognising their qualifications, often results in a negative reply. Moreover, another burden is the cost incurred in translating certificates. In the report, UNHCR recommends several actions to be taken to address those shortcomings, such as

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<sup>327</sup> Joint NGO Press Release, 'An immediate food and shelter initiative is urgently needed!', 3 April 2020, available at: <https://bit.ly/3rkSjoZ>.

<sup>328</sup> Information provided by aditus foundation, 2021.

<sup>329</sup> Regulation 20c Procedural Regulations.

<sup>330</sup> European Commission, *Challenges in the Labour Market Integration of Asylum Seekers and Refugees*, EEPO Ad Hoc Request, May 2016.

<sup>331</sup> European Commission, *Labour market integration of asylum seekers and refugees: Malta*, 2016, available at: <http://bit.ly/2lkMKc6>.

<sup>332</sup> UNHCR, *Working Together*, a UNHCR report on the employment of refugees and asylum-seekers in Malta December 2019, available at: <https://bit.ly/34Wj0GH>.

the establishment of a special body to assess the skills of refugees; the promotion of vocational testing; the setting of a mechanism for refugees to access university; or a support to employers to pay the cost of translating certificates.

## 2. Access to education

All beneficiaries of international protection are covered under compulsory and free of charge state education up to the age of 16. After secondary school, and after obtaining the relevant and necessary Ordinary Level examination passes, students may enrol for post-secondary education: two years of study in preparation for Advanced Level Examinations. All beneficiaries of protection may also apply to enrol at the University of Malta and, in principle, they are treated as all other third-country national applicants in terms of application procedures, fees, and stipends.

In 2014, the Ministry Education launched the policy document “National Strategy on Literacy for the period 2014-2019”.<sup>333</sup> The document acknowledges the need to support third-country nationals living in Malta and the necessity to review the education system with regard to the participation of migrant children in schools. In this context, the policy foresees a list of recommendations ranging from the provision of information about schooling options for migrant parents and the instauration of small language support classes to the implementation of assessment procedures and training courses for teachers and the active involvement of parents with literacy courses for adult migrants.

Regarding the integration of migrant children, this National Strategy is yet to be implemented at national level. Nevertheless, in practice, several initiatives to integrate migrant children are in place in Malta.

The Migrant Learners Unit within the Ministry for Education is in charge of promoting the inclusion of newly arrived learners into the education system and runs several projects which aim to provide migrant learners in school with further support in basic and functional language learning over and above the teaching provided by the class teacher.

Several projects have been implemented at local level in recent years in schools in Malta to help students to integrate in providing targeted language classes for children.

Skills Kit is a freshly introduced initiative by Malta College of Arts, Science and Technology (MCAST) that is available for free to refugees and beneficiaries of subsidiary protection. It includes various topics such as art, hairdressing, beauty, basic web design, caring for others, animal care, sport, installation of low voltage devices and cultures.<sup>334</sup>

In 2018, the government also introduced the ‘I Belong’ Programme which is available for beneficiaries of international protection as well. The initiative consists of English and Maltese language courses and basic cultural and societal orientation as part of the integration process. It is important to note that integration requests are accepted from all persons of migrant background regardless of their grounds of residence.

In 2020, 3,456 people applied for the ‘I Belong Programme’, among them, 364 were beneficiaries of international protection and 191 were asylum-seekers.<sup>335</sup>

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<sup>333</sup> Ministry of Education, *Launch of the National Literacy Strategy*, available at: <https://bit.ly/3cfEUay>.

<sup>334</sup> MCAST, *Skills Kit*, available at: <https://bit.ly/3ccZpE1>.

<sup>335</sup> Information provided by the Integration Unit, March 2021.

## F. Social welfare

The Procedural Regulations provide for access to social welfare for beneficiaries of international protection.<sup>336</sup> However, the law makes a difference between refugees and subsidiary protection beneficiaries since social welfare benefits granted to the latter “may be limited to core social welfare benefits”.

**Refugees** are entitled to the same benefits as Maltese nationals, under the same conditions. They are namely entitled to Children’s Allowance, Social Benefits, Pension Benefits, Rent Subsidy, Social Housing and Unemployment Assistance. However, like Maltese citizens, refugees must satisfy the established criteria for each benefit or assistance they apply for. In practice, refugees are rarely able to benefit for Malta’s Contributory Scheme since they are not present in Malta for a sufficient amount of years to be able to pay the minimum number of social security contributions required for some benefits.

**Subsidiary protection** beneficiaries are, for their part, only entitled to “core welfare benefits” which is interpreted as being limited to social assistance.<sup>337</sup> They are, however, eligible for contributory benefits if they are employed, pay social security contributions, and satisfy the qualifying conditions.

The provision of social welfare benefits is not conditioned on residence in a specific place in Malta.

Benefits entitlements fall within the remit of the Ministry for the Family, Children’s Rights, and Social Solidarity, whilst social protection and care is provided by the public agency Agenzija Appoġġ. For benefits, beneficiaries may apply to their local social security office or online.

Employment assistance is provided by the public agency **JobPlus**, and in 2017 this agency extended its services to beneficiaries of subsidiary protection.

Difficulties arise in practice insofar as entitlements are not clear and beneficiaries of international protection are usually very confused about which benefits they could be eligible for. Other persisting obstacles include lack of information and lack of communication with their job advisors.

## G. Health care

**Refugees** have access to state medical services free of charge. They have equal rights compared with Maltese citizens and are, therefore, entitled to all the benefits and assistance to which Maltese citizens are entitled to under the Maltese Social Security Act,<sup>338</sup> as defined in the Procedural Regulations.<sup>339</sup> Access to medication and to non-core medical services is not always free of charge, in the same way as it is also not always free of charge for Maltese nationals. All low-income individuals may be given a Yellow Card to indicate entitlement to free medication. The main public mental health facility, **Mount Carmel** Hospital, also offers free mental health services to refugees.

Beneficiaries of **subsidiary protection** are only entitled to core medical services according to national legislation and guidelines provided by the authorities.<sup>340</sup> Beneficiaries have to lodge an application for

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<sup>336</sup> Regulation 20 Procedural Regulations.

<sup>337</sup> Council of Europe Commissioner for Human Rights, *Letter to the Minister for Home Affairs, National Security and Law Enforcement of Malta*, CommHR/NM/sf 043-2017, 14 December 2017, available at: <http://bit.ly/2o5Bwr6>.

<sup>338</sup> Social Security (U.N. Convention Relating to the Status of Refugees) Order, Subsidiary Legislation 318.16, 2001, available at: <http://bit.ly/2kvolaz>.

<sup>339</sup> Regulation 20 Procedural Regulations.

<sup>340</sup> Regulation 20 Procedural Regulations.

Core Benefits at one of the Social Security branch offices. They are obliged to sign in once a week at the Social Security branch office on a fixed registration date.

The public health service provides interpreters on a roster basis. This service can be booked by anyone within the public health sector in order to aid a specific patient, although it appears that not all health professionals are aware of this support.<sup>341</sup>

In practice, specialised treatment for victims of torture or traumatised beneficiaries is not available. As no special referral system is in place, when officers come across someone who was tortured and is in need of assistance, they refer the individual to the mainstream mental health services and to the psychiatric hospital for in-depth support. Most cases are usually referred from the communities and are sent to polyclinics. Very few cases of victims of torture and violence have officially been noticed over the past few years.<sup>342</sup>

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<sup>341</sup> Nitktellmu, Refugee Integration Perspectives in Malta, December 2013, available at: <http://bit.ly/2lywmBc>.  
<sup>342</sup> Information provided by Ms Marika Podda Connor, Migrant Health Liaison Office, Primary Health Care Department, 2016.

## ANNEX I - Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	3 March 2015 11 December 2015	Refugees (Amendment) Act, No VI of 2015 Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015	<a href="http://bit.ly/1LQjEov">http://bit.ly/1LQjEov</a> (EN) <a href="https://bit.ly/2ORQang">https://bit.ly/2ORQang</a> . (EN)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015	11 December 2015	Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015	<a href="https://bit.ly/3ecdAwX">https://bit.ly/3ecdAwX</a> . (EN)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	11 December 2015	Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015	<a href="https://bit.ly/3x2SoRW">https://bit.ly/3x2SoRW</a> . (EN)
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013	11 December 2015	Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015	<a href="https://bit.ly/3uVZ9TM">https://bit.ly/3uVZ9TM</a> . (EN)