

# Country Report: Malta



2019  
Update

## Acknowledgements & Methodology

This report was jointly researched and written by aditus foundation and the Jesuit Refugee Service Malta 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.

We would like to thank the Office of the Refugee Commissioner, the Refugee Appeals Board, the Agency for the Welfare of Asylum Seekers (AWAS), the Malta Police Force and UNHCR Malta for their cooperation in providing the requested data and information.

The information in this report is up-to-date as of 31 December 2019, 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>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>RAB</b>	Refugee Appeals Board
<b>RefCom</b>	Office of the Refugee Commissioner
<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

In 2017, RefCom started to publish a quarterly statistical overview of its activity, including statistics on the number of applications, with a breakdown per nationality and gender, as well as the number and type of decisions taken.<sup>1</sup> UNHCR regularly publishes information on arrivals, asylum applications, decisions and reception of asylum seekers.<sup>2</sup>

### Applications and granting of protection status at first instance: 2019

	First-time applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
<b>Total</b>	4,021	3,574	56	352	14	874	4.5%	27%	1%	67.5%

Breakdown by countries of origin of the total numbers

Sudan	1,057	936	6	0	1	35	14.3%	0%	2.3%	83.4%
Syria	429	455	24	261	0	77	6.6%	72.1%	0%	21.3%
Libya	258	348	12	50	0	24	14%	58%	0%	28%
Gambia	211	68	0	1	0	36	0%	2.7%	0%	97.3%
Eritrea	217	211	0	24	0	28	0%	46%	0%	54%
Somalia	221	163	2	9	0	228	0.8%	3.8%	0%	95.4%
Nigeria	218	126	0	0	3	29	0%	0%	9.3%	90.7%
Ivory Coast	165	155	0	0	0	36	0%	0%	0%	100%
Bangladesh	136	57	0	1	1	155	0%	0.6%	0.6%	98.8%
Morocco	119	77	0	2	0	60	0%	3.2%	0%	96.8%
South Sudan	84	68	0	0	0	1	0%	0%	0%	100%
Senegal	91	54	0	0	0	4	0%	0%	0%	100%

Source: Office of the Refugee Commissioner, February 2020. Note that the number of rejections includes withdrawals, inadmissibility decisions (including those where the applicant has already received protection in another Member State) and decisions taken on subsequent applications. However, it does not include applications which are viewed as “Dublin closures”. Dublin closures appear to relate to cases where another Member State is responsible for the applicant’s claim.

<sup>1</sup> Ministry for Home Affairs, National Security and Law Enforcement, *The Office of the Refugee Commissioner*, available at: <http://bit.ly/2DLven5>.

<sup>2</sup> UNHCR Malta, *Figures at a glance*, available at: <https://bit.ly/3bgXj6a>.

### Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
<b>Total number of applicants</b>	4,021	100%
Men	3,195	79.5%
Women	372	9.2%
Children	423	10.5%
Unaccompanied children	31	0.8%

Source: Office of the Refugee Commissioner, February 2020

### Comparison between first instance and appeal decision rates: 2019

	First instance		Appeal (01/01-31/12)	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	1,319	100%	580	100%
Positive decisions	422	32%	24	4%
• <i>Refugee status</i>	56	4.2%	5	0.8%
• <i>Subsidiary protection</i>	352	26.7%	17	2.9%
• <i>Humanitarian protection</i>	14	1.1%	2	0.3%
Negative decisions (including withdrawals)	897	68%	556	96%

Source: Office of the Refugee Commissioner, January 2020; Refugee Appeals Board, January 2020. Note that the total number of decisions does not include “Dublin closure” decisions.



## Overview of the legal framework

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

Title (EN)	Abbreviation	Web Link
Refugees 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	Refugees Act	<a href="http://bit.ly/1KuiEsU">http://bit.ly/1KuiEsU</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)
Immigration Act, Chapter 217	Immigration Act	<a href="http://bit.ly/1ee7pa9">http://bit.ly/1ee7pa9</a> (EN)
Children and Young Persons (Care Orders) Act, Chapter 285	Care Orders Act	<a href="http://bit.ly/1Npg8Td">http://bit.ly/1Npg8Td</a> (EN)
Prevention of Disease Ordinance, CAP 36, 1908		<a href="https://bit.ly/2E9u73v">https://bit.ly/2E9u73v</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	Procedural Regulations	<a href="http://goo.gl/SHBvX4">http://goo.gl/SHBvX4</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)
Refugees Appeals Board (Procedures) Regulations, Legal Notice 252 of 2001	RAB Regulations	<a href="http://bit.ly/1SWWIYP">http://bit.ly/1SWWIYP</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	Reception Regulations	<a href="http://goo.gl/uiOm2v">http://goo.gl/uiOm2v</a> (EN) <a href="http://bit.ly/1HpyUcd">http://bit.ly/1HpyUcd</a> (EN)

<i>Amended by:</i> Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015		
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 (2018)	Specific Residence Authorisation	<a href="https://bit.ly/2Svq8qA">https://bit.ly/2Svq8qA</a> (EN)

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

The report was previously updated in **March 2019**.

### Covid-19 measures

Please note that this report has largely been written prior to the outbreak of COVID-19 in Malta.<sup>3</sup> The following are just some developments which have taken place since the outbreak. The information below is up-to-date as of 17 April 2020.

#### Arrivals

On 9 April 2020 the Maltese authorities 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>4</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>5</sup>

On 15 April 2020, the International Organisation for Migration (IOM) confirmed that five people were found dead in a boat left stranded in Maltese waters, with survivors saying that another seven people were missing and presumed dead. The boat had been left floating in Malta’s Search and Rescue (SAR) zone for several days before it was intercepted by a commercial vessel on 14 April 2020 and handed over to the Libyan coast guards. IOM said that survivors were then placed in detention in Tripoli.<sup>6</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>7</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>8</sup>

#### Asylum procedure

The Office of the Refugee Commissioner (RefCom) is not currently open to applicants or beneficiaries of international protection and all scheduled appointments for lodging applications or for interviews are postponed until further notice. However, RefCom is still operating by email and they will take note of any individual wishing to apply for international protection. They can also confirm the status of applicants or beneficiaries to a relevant entity if needed.

The Immigration Appeals Board and the Refugee Appeals Board are currently closed.

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<sup>3</sup> For Statements issued by the Government of Malta in respect of COVID-19, please consult: <https://bit.ly/2KIOYCP>.

<sup>4</sup> Statement by the Government of Malta, 9 April 2020, available in Maltese at: <https://bit.ly/2VreEnP>.

<sup>5</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>6</sup> Independent Malta, ‘Migrants taken back to Libya; five dead bodies recovered from sea’, 15 April 2020, available at: <https://bit.ly/2RPjB7U>.

<sup>7</sup> Times of Malta, ‘Five migrants found dead in boat stranded in Maltese waters’, 15 April 2020, available at: <https://bit.ly/2XKLyRX>.

<sup>8</sup> Statement by the Government of Malta, 15 April 2020, available at: <https://bit.ly/2XLKBsx>.

## Reception

The reception system has reached full capacity in Malta with one centre in quarantine. Thus, no-one is allowed to enter or leave the premises of this centre. A *per diem* given by the Agency for the Welfare of Asylum Seekers is provided to any asylum seeker who requests it, even to those residing outside of a reception centre.

### Asylum procedure

- ❖ **Arrivals by sea:** Following the withdrawal of the Italian government from the informal agreement concluded between Italy and Malta in 2014,<sup>9</sup> people rescued within Maltese territorial waters and its Search and Rescue (SAR) zone are now disembarked in Malta. Over the course of 2019, several NGO ships on SAR missions thus requested to disembark in Malta in a context of political controversy on the island and in the European Union (EU). A total of 3,405 people arrived in Malta by boat, which represents a significant increase compared to 2018 (1,500 arrivals).<sup>10</sup> This puts the Maltese asylum system under significant pressure.
- ❖ **Relocation:** Relocations from Malta continued to happen on an *ad hoc* basis throughout 2019, 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.
- ❖ **Criminalisation:** A worrying development relates to the recent criminalisation by the Maltese authorities of people rescuing migrants at sea. Two significant cases were reported in 2019. This includes the case of Claus-Peter Reisch - the Captain of the vessel of the German NGO Mission Lifeline which rescued 234 migrants in the Mediterranean in June 2018 - who was finally cleared of all charges by the Court of Criminal Appeal in January 2020.<sup>11</sup> The other case concerns the merchant vessel "El Hiblu 1" where three teenagers are being accused of having hijacked the ship and were subsequently detained and charged with very serious offences, some falling under anti-terrorism legislation and punishable with life imprisonment. The case is still pending and has been subject to severe criticism.
- ❖ **Determining authority:** In October 2019, a new Refugee Commissioner was appointed,<sup>12</sup> who announced a series of reforms to the Office. These reforms are to be implemented in 2020 and include, *inter alia*, revising interview and assessment templates.
- ❖ **EASO support:** In mid-2019, the Maltese authorities also formally requested support from the European Asylum Support Office (EASO) in dealing with the high number of applications. In June 2019, an operational and technical assistance plan was signed which provides for support in the area of processing of applications for international protection, including support for the registration and lodging of the application, the Dublin procedure and interviews and the drafting of assessments and decisions.<sup>13</sup> As of July 2019, EASO deployed around 50 staff to support the authorities. Given the continued increase in sea arrivals, a new plan for 2020 was signed between Malta and EASO in

<sup>9</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.

<sup>10</sup> Information provided by the Immigration Police, 2020.

<sup>11</sup> Court of Criminal Appeal, IL-PULIZIJA vs REISCH CLAUS PETER, 150/2019, 07 January 2020, available at: <https://bit.ly/3esqsOm>.

<sup>12</sup> Appointments are usually for three years, although this is not laid out in legislation.

<sup>13</sup> 2019 Operational and Technical Assistance Plan Agreed by EASO and Malta, 24 June 2019, available at: <https://bit.ly/3b8FQ00>.

December 2019.<sup>14</sup> This new plan foresees that EASO strengthens and increases the support already provided but also adds additional support in the field of reception.

- ❖ **Unaccompanied children:** Several issues have affected the situation of unaccompanied children in 2019. This includes significant delays in conducting age assessments with unaccompanied minors being kept in detention in the closed section of the Initial Reception Centre (IRC) and Safi barracks for several weeks; delays in transferring persons found to be minors to open centres and delays of several months for legal guardians to be appointed, preventing them from lodging their application and starting the asylum procedure.

#### *Reception conditions*

- ❖ **Reception capacity:** The reception system is under intense pressure and has reached its full capacity throughout 2019. As a result, newly-arrived applicants in 2019 could not access reception centres and were systematically held in detention instead.
- ❖ **Reception conditions:** The lack of space and resources have led to overcrowded reception centres and a severe deterioration of reception conditions. Several riots took place throughout the year as residents complained about the extreme degradation of conditions. Evictions have taken place to make space for new residents resulting in a number of asylum-seekers becoming homeless.

#### *Detention of asylum seekers*

- ❖ **Systematic detention of all asylum-seekers:** Following the increase of new arrivals, the former practice of automatically detaining all asylum-seekers arriving irregularly was re-instated. This means that, in 2019, 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. This has meant that vulnerable applicants, including minors, are *de facto* detained upon arrival. Referrals to the Agency for the Welfare of Asylum Seekers (AWAS) are possible by NGOs visiting detention and vulnerability assessments can be conducted by the AWAS team. However, the release and transfer of vulnerable applicants to open centres is dependent on the availability of space in open reception centres.
- ❖ **Unlawful detention grounds:** All asylum-seekers arriving irregularly to Malta are detained under national health regulations on the ground that there is a reasonable suspicion that they might spread contagious diseases.<sup>15</sup> This regulation allows the authorities to restrict a person's movements for up to four weeks - with a possible extension of up to ten weeks - on suspicion that a disease may be spread. In practice, no form of assessment is conducted, and applicants are only provided with a simple document stating the duration of detention. This practice of systematic detention has been condemned by NGOs and UNHCR on several grounds. In particular, these are that no valid ground exists to detain asylum seekers on the basis of medical screening and no effective remedy is available. Several individual cases were brought to the Court of Magistrates and the detention was considered unlawful.<sup>16</sup>

Despite the limitation on the duration of detention as provided by the health regulations, it has been 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 open centres.

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<sup>14</sup> 2020 Operational and Technical Assistance Plan Agreed by EASO and Malta, 12 December 2019, available at: <https://bit.ly/3abiYfn>.

<sup>15</sup> Article 13 of the Prevention of Disease Ordinance, Cap. 36 of the Laws of Malta, 1908, available at: <https://bit.ly/2E9u73v>.

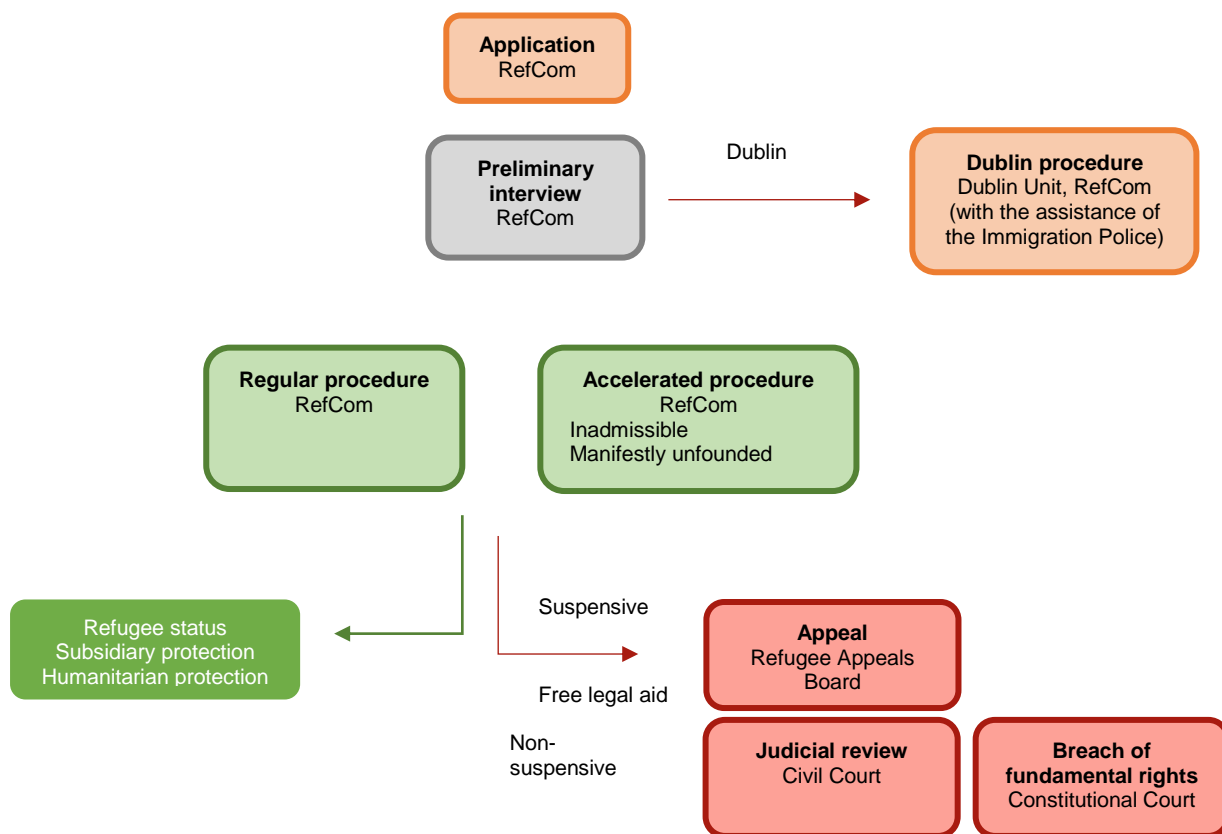
<sup>16</sup> Court of Magistrates, 7 October 2019, Mohammed Abdallah Mohammed 19O-030, available at: <https://bit.ly/2V6lVcs>; Court of Magistrates, Zeeshan Saleem 19N-24, 8 October 2019, available at: <https://bit.ly/3b7iLea>.

- ❖ **Access to information:** In 2019, information was no longer provided by the Office of the Refugee Commissioner (RefCom) to detained applicants, i.e. all applicants who entered Malta irregularly. The only information provided to applicants in detention was delivered by UNHCR Malta, who visited detention centres regularly, and by NGOs on a case by case basis. As a consequence, most applicants detained upon arrival were not informed about the ground for their detention, nor about their rights as asylum-seekers. Information provided to persons who are not detained is also a concern as the asylum system is not structured for asylum seekers who arrive regularly and, therefore, there is no systematic and structured way to provide comprehensive information to asylum seekers outside detention.

# 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>17</sup> | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: <sup>18</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>19</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	Office of the Refugee Commissioner
Dublin (responsibility assessment)	Dublin Unit, (within the Office of the Refugee Commissioner)
Refugee status determination	Office of the Refugee Commissioner
Accelerated procedure	Office of the Refugee Commissioner & Refugee Appeals Board (joint procedure)
Appeal	Refugee Appeals Board
Subsequent application (admissibility)	Office of the Refugee Commissioner

## 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?
Office of the Refugee Commissioner	29	Ministry for Home Affairs, National Security and Law Enforcement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Applications for international protection are to be lodged with the Refugee Commissioner. The Office of the Refugee Commissioner (RefCom) is the authority responsible for examining and determining applications for international protection at first instance.<sup>20</sup> RefCom 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 June 2019, the Office of the Refugee Commissioner employed 29 staff. The vast majority of staff have less than three years of experience.<sup>21</sup>

<sup>17</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>18</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>19</sup> Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

<sup>20</sup> Article 4 Refugees Act.

<sup>21</sup> ECRE, *Asylum authorities: an overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/3b6HZcM>, 39.



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>22</sup>

From June to December 2019, EASO has deployed, in total, 49 staff to Malta. This includes registration assistants deployed in the Initial Reception Centre **Marsa** (IRC) and **Safi** barracks and caseworkers who interview applicants and draft legal options. The number also includes Member State experts and Dublin caseworkers together with interpreters.

Given the continued increase in sea arrivals, a new plan for 2020 was signed between Malta and EASO in December 2019.<sup>23</sup> This new plan foresees that EASO strengthens and increases the support already provided but also adds additional support in the field of reception. According to the plan, and in respect of information provision and registration of applications, two information providers should operate in **Hal Far** and the IRC **Marsa** together with nine registration assistants and two Member State experts as well as interpreters. Regarding the assessment of first-time applications, there should be 15 caseworkers and 15 Member State experts. The Dublin Unit should be supported by three additional Member State experts.

This new plan not only foresees some 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 will gradually support the Agency for the Welfare of Asylum Seekers (AWAS) in the management of reception capacity/facilities, vulnerability screening and referral and age assessment. This will be done by deploying social worker experts, vulnerability officers and other experts.

## 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 Refugee Commissioner within the context of the same procedure. The Refugee Commissioner 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 Refugee Commissioner for the necessary follow-up. Since 2019, RefCom is now supported by EASO registration assistants in the registration process.

The registration process – whether undertaken by RefCom or EASO - consists of collecting personal details and issuing a unique RefCom 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.

The majority of applications for international protection are processed through the regular procedure. 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 into the custody of the immigration authorities and are subsequently fingerprinted and photographed.

The initial stages of the procedure require the filling in of a form known as the Preliminary Questionnaire (PQ) which asylum seekers are asked to complete. The PQ is considered to be the registration of the asylum seeker's desire to seek international protection. If, at this stage, an individual provides information that, *prima facie*, renders him or her eligible for a transfer to another EU Member State in terms of the

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<sup>22</sup> 2019 Operational and Technical Assistance Plan Agreed by EASO and Malta, 24 June 2019, available at: <https://bit.ly/3b8FQ00>.

<sup>23</sup> 2020 Operational and Technical Assistance Plan Agreed by EASO and Malta, 12 December 2019, available at: <https://bit.ly/3abiYfn>.

Dublin III Regulation, the examination of the application for protection is suspended pending the outcome of the Dublin procedure. The Refugee Commissioner is designated as the head of the Dublin Unit.

Following the initial collection of information in the PQ, an appointment is scheduled by RefCom for an interview with the applicant. Once the applicant is called for the interview, he or she is first asked to fill in an application form that contains questions similar to those previously answered in the PQ. The application form is considered to be the official application for international protection – meaning that the application has been lodged. The recorded interview then takes place and the applicant is informed at the end of the interview that he or she will be notified of the decision in due course. Since EASO staff directly operates within Safi premises, where most asylum seekers are initially held upon arrival, the registration and the lodging of the application usually happens on the same day. When asylum-seekers are registered directly by RefCom they usually need to be taken to the Office of the Refugee Commissioner to finalise the application.

The caseworkers' decision on the application is reviewed by a more experienced officer or manager and the Refugee Commissioner takes the final decision.<sup>24</sup>

According to the amended Procedural Regulations, the Refugee Commissioner 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>25</sup> However, most of the decisions taken by the RefCom 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 (referred to in the Refugee Act as a "recommendation") of the Refugee Commissioner, during which he or she may appeal to the Refugee Appeals Board (RAB). This Board, an administrative tribunal set up in terms of the Refugees Act, which is currently made up of three chambers, is entrusted to hear and determine appeals against recommendations issued by the Refugee Commissioner. The Refugees Act specifies that the Minister may also lodge an appeal against the recommendation at first instance.<sup>26</sup> An appeal to the Board 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>27</sup> In the majority of cases, the decision given by the RAB is binding on the parties and the Board will not remit it back to RefCom to take a new decision.

The Refugees Act specifies that no appeal is possible from the decision of the Refugee Appeals Board, although it is possible to submit a judicial review application to the First Hall of the Civil Court.<sup>28</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>29</sup>

Accelerated procedures are also foreseen in national law for applications that appear to be *prima facie* inadmissible or manifestly unfounded. All applicants for asylum are interviewed by the Refugee Commissioner although their case might be classified as being inadmissible following an evaluation of their asylum claim. In such cases, the accelerated procedure kicks in at the appeal stage. The recommendation of the Refugee Commissioner is transmitted to the RAB with the Board having a three-

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<sup>24</sup> ECRE, *Asylum authorities: an overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/2Ut8QIK>, 55.

<sup>25</sup> Regulation 6(6) Procedural Regulations.

<sup>26</sup> Article 7 Refugees Act.

<sup>27</sup> Regulation 12 Procedural Regulations.

<sup>28</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>29</sup> Article 7(9) Refugees Act.

day time limit, specified in law, during which an examination and review of the Refugee Commissioner's recommendation is to be carried out.<sup>30</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”, can be detained upon arrival in immigration detention facilities following an assessment of the need to detain based on a limited list of grounds. In such cases, their application for protection starts to be examined while they are in detention.

## 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

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>31</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>32</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, they were assigned a caseworker and were 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>33</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>34</sup> As a consequence, people rescued within Maltese territorial waters and its Search and Rescue (SAR) zone are now disembarked in Malta.

<sup>30</sup> Articles 23 and 24 Refugees Act.

<sup>31</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>32</sup> *Ibid*, 10.

<sup>33</sup> Regulation 6(1) Reception Regulations.

<sup>34</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.

Therefore, the number of arrivals increased significantly leading the authorities to revise their 2015 reception policy and to again resort to the systematic detention of all applicants entering Malta irregularly, as was the case pre-2015. This new detention regime is imposed on the basis of “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 apprehended at the airport should be taken to the IRC. Although the reception policy introduced in 2015 refers to “all persons entering Malta irregularly”,<sup>35</sup> according to the Jesuit Refugee Service (JRS) Malta, all applicants who arrive irregularly by plane are also immediately detained, either in the closed area of the IRC or in detention centres.<sup>36</sup>

**Arrivals by boat:** Over the course of 2019, several NGO ships on SAR missions requested to disembark in Malta in a context of political controversy on the island and in the EU. In March 2019, the “El Hiblu1” rescued over 100 migrants. While it was making its way to Libya, the rescued migrants protested against this return and insisted to be taken to European safety, as had been promised at the moment of rescue. As the ship approached Malta, it was denied entry to Malta’s waters with the captain claiming he was not in control of the vessel. As the ship entered Malta’s territorial waters, it was boarded and secured by Maltese special operation teams and brought to port. Upon arrival, the 108 migrants were detained and three teenagers identified as the ‘hijackers’ were charged with terrorist activities (See below).

On another occasion, in April 2019, the Sea Eye’s Alan Kurdi rescued 64 people and after 10 days stranded at sea, Malta accepted to receive the rescued migrants. In August 2019, the Alan Kurdi rescued 40 people and after four days stranded at sea it was authorised to disembark the rescued migrants in Malta following the intervention of Germany and as a gesture of goodwill. As with many similar incidents of migrant rescues by NGO ships, the agreement was that the rescued migrants would not remain in Malta but would be distributed to other EU Member States.<sup>37</sup>

In October 2019, 44 people rescued at sea by a charity vessel (Open Arms) were brought to Malta. The group was transferred from the Open Arms ship to an Armed Forces of Malta patrol boat and disembarked in Malta.<sup>38</sup>

Overall, in 2019, 3,405 people arrived in Malta by boat, which represents a significant increase compared to 2018 (1,500 arrivals).<sup>39</sup> The main countries of origin of arrivals were: Sudan, Eritrea and Nigeria.<sup>40</sup>

**Relocations:** Relocations from Malta continued to happen on an *ad hoc* basis throughout 2019, 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. To illustrate, those to be relocated to other Member States were not allowed to make an asylum application with the Maltese authorities 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>41</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

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<sup>35</sup> Strategy Document, November 2015, 7.

<sup>36</sup> Information provided by Dr Katrine Camilleri, Director of JRS Malta, January 2017. This practice remains valid as of the end of 2019.

<sup>37</sup> Malta Today, Migration: Where search and rescue NGOs are this week, 23 August 2019, available at: <https://bit.ly/3ecKnRf>.

<sup>38</sup> Times of Malta, 44 migrants brought to Malta after Open Arms sea rescue, October 2019, available at: <https://bit.ly/3dpAXBm>.

<sup>39</sup> Information provided by the Immigration Police, 2020.

<sup>40</sup> Information provided by UNHCR Malta 2019.

<sup>41</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://lemde.fr/2laGFeZ>.

prolonged periods of time) in the IRC, 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 relocation route, were never actually selected or taken up by the Member States participating in the specific relocation exercise. A majority of these people are still waiting in the IRC.

**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 use of false or forged documents as invariably constituting a criminal offence, with no exception for refugees in law, practice or jurisprudence.<sup>42</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>43</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 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 in May 2019 that the registration "was not to the satisfaction of the Dutch authorities" when the vessel entered Maltese waters and fined the Captain 10,000 EUR for registration irregularities.<sup>44</sup> Nevertheless, the magistrate also strongly reiterated that saving migrants' lives 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>45</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>46</sup>

Amnesty International welcomed the final decision but stated that "such criminal prosecution against a human rights defender initiated in highly politicised circumstances (...) 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>47</sup>

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<sup>42</sup> Article 32(1)(d) Immigration Act.

<sup>43</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>44</sup> Court of Magistrates, IL-PULIZIJA vs CLAUS PETER REISCH, 20/2019, 14 May 2019, available at: <https://bit.ly/2VtrfWo>.

<sup>45</sup> European Database of Asylum Law, Malta: Judgment in case against Captain of MV Lifeline, 14 May 2019, <https://bit.ly/2UxTVx3>.

<sup>46</sup> Court of Criminal Appeal, IL-PULIZIJA vs REISCH CLAUS PETER, 150/2019, 07 January 2020, available at: <https://bit.ly/3esqsOm>.

<sup>47</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.



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>48</sup>.

The three teenagers were released on bail in November 2019 and remain in Malta pending the 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. 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>49</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>50</sup>

## 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

<sup>48</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>49</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/2JeiWlg>.

<sup>50</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>.

The authority responsible for registering asylum applications in Malta is the Office of the Refugee Commissioner (RefCom). RefCom 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>51</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>52</sup>

In 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 registration of their applications.

Since July 2019, EASO has been providing support to RefCom following an Operating Plan signed on 24 June 2019, outlining the deployment and operation of experts.<sup>53</sup> EASO is providing support in the registration of applicants, the Dublin procedure and refugee status determination.

For the registration and lodging phases, support is given through the deployment of experts. In particular, RefCom is supported by EASO to register applicants within the premises of the detention centres, the closed section of the IRC and Safi barracks. However, it seems that some detained applicants need to be taken to RefCom for the final registration. EASO also assists RefCom in the implementation of an *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 RefCom 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 RefCom.

Unaccompanied children need legal guardians to submit an asylum application. Due to the limited capacity of the Agency for the Welfare of Asylum Seekers (AWAS) - whose Head is acting as the only legal guardian for all applicants and who delegates his responsibility to social workers - and the large number of unaccompanied minors in 2019, children often faced delays - up to several months - until they were assigned a legal guardian and were able to lodge their application and receive assistance. This also applied to minors who have been recognised as such pursuant to an age-assessment procedure. In most cases, these months were spent in detention either at the IRC or Safi barracks whilst a space was found in a dedicated centre (Dar-il-Liedna or Balzan open centre) for them.

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<sup>51</sup> Article 4(3) Refugees Act.

<sup>52</sup> Regulation 8(1) Procedural Regulations.

<sup>53</sup> EASO Operational and Technical Assistance Plan 2019, accessible at: <https://bit.ly/2WFmr2z>.

## 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 2019:  | 3,574   |

In 2019, 4,021 applications for international protection were made in Malta. This represents a substantial increase compared to 2018 where RefCom received 2,045 applications.

RefCom 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 amended Procedural Regulations, the Refugee Commissioner shall ensure that the examination procedure is concluded within six-months of the lodging of the application. The Commissioner 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>54</sup>

The examination procedure shall not exceed the maximum time limit of twenty-one months from the lodging of the application.<sup>55</sup>

When a recommendation/decision cannot be made by the Refugee Commissioner 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 Commissioner to take a decision within that time frame.<sup>56</sup>

Most of the decisions taken by the RefCom are, in practice, not taken before the lapse of six months. The average length of the asylum procedure at first instance is not available for 2019.

Following on from the deployment of EASO staff to Malta in June 2019, EASO supports RefCom 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 RefCom regarding the scope of examination of asylum applications, meaning that it processes claims on both admissibility and merits.

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

<sup>54</sup> Regulation 6(4) Procedural Regulations.

<sup>55</sup> Regulation 6(6) Procedural Regulations.

<sup>56</sup> Regulation 6(7) Procedural Regulations.



## 1.2. Prioritised examination and fast-track processing

The Refugee Commissioner 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>57</sup>

In the past, as a matter of practice, certain caseloads were prioritised by RefCom. The types of cases which were prioritised included cases involving particular vulnerable persons who, on a *prima facie* basis, were likely to be given protection, cases involving persons who were in closed centres over those who were in open centres and, in the case of mass influx, preference was given to those coming from countries whose nationals are, *prima facie*, more liable to be given protection.

RefCom confirmed that applications lodged by applicants claiming to be Bangladeshi nationals or Moroccan nationals have been prioritised in 2019.<sup>58</sup>

Moreover, applicants who applied for protection after being issued a removal order by Immigration Police were also prioritised.<sup>59</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>60</sup> However, whilst cases of Bangladeshi asylum-seekers were in fact prioritised at first and second instance, no Bangladeshi nationals were returned in 2019.

## 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?  
❖ If so, are interpreters available in practice, for interviews?  
☒ Yes ☐ No  
☒ 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

The Procedural Regulations now 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>61</sup>

In practice, all asylum seekers are interviewed, although applicants classified as coming from a [Safe Country of Origin](#) are reportedly questioned only on basic information.

<sup>57</sup> Regulation 6(8) Procedural Regulations.

<sup>58</sup> Information provided by the Office of the Refugee Commissioner, January 2019.

<sup>59</sup> Information provided by the Office of the Refugee Commissioner, April 2020

<sup>60</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>61</sup> Regulation 10 Procedural Regulations.

The interviews are conducted by caseworkers at RefCom, which means that the interviews are conducted by the same authority that takes the decision on the application. However, as mentioned above, EASO also provides support to RefCom in the conduct of interviews (see [Number of staff and nature of the determining authority](#)).

The new Refugee Commissioner, 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. For example, the current template does not clearly differentiate the assessment of facts with the legal analysis and is not conducive to a proper and reasoned individual assessment. The changes to the template are to take place in 2020.

## **Interpretation**

The presence of an interpreter during the personal interview is required according to national legislation.<sup>62</sup> Interpreters for Somalis, Eritreans, Syrians or Libyans - 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>63</sup> However, this is not automatic, and requests to this end have to be made either by the applicant him or herself or by his or her 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>64</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 there is a lack of interpreters available in order to proceed with the interview of an asylum seeker. In 2019, no interview was conducted through video conferencing. However, videoconferencing was used on a couple of occasions to lodge an application when physical interpretation was not possible.<sup>65</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>66</sup> This constitutes a real improvement in the applicants' rights to access their file and access to an effective

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<sup>62</sup> Regulations 4(2)(c) and 5(3) Procedural Regulations.

<sup>63</sup> Regulation 10(10)(d) Procedural Regulations.

<sup>64</sup> Regulation 11(2) Procedural Regulations.

<sup>65</sup> Information provided by the Office of the Refugee Commissioner, April 2020.

<sup>66</sup> The evaluation report is a very long template used for all the cases. It is currently being reviewed by the new Commissioner.

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>67</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?
 

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision:<sup>68</sup> The average time is not available but waiting times range between one and several years.

### 1.4.1. Appeal before the Refugee Appeals Board

An appeal mechanism of the first instance decision is available before a board known as the Refugee Appeals Board (RAB). Originally composed of three Chambers, the Home Affairs Ministry increased the RAB's capacity by adding an additional Chamber in 2019. Each Chamber is made up of four persons - a chairperson and an additional three members.<sup>69</sup> It 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 Refugee Commissioner.<sup>70</sup> The Refugee Appeals Board does not accept late appeals. There is no time limit set in law for the Board to take a decision. Nevertheless, the appeal has suspensive effect.

The decision containing the reasons for the rejection of the application at first instance is always written in English. RefCom 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.

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 such forms are mostly provided by NGOs who are not present in detention facilities on a daily basis.

Processing times at the appeal stage vary significantly. The majority (321 cases, 55%) of decisions taken in 2019 were under the accelerated procedure which provides for a three-day review for all decisions deemed inadmissible by RefCom. The decisions taken through the regular procedure following a hearing and assessment can take up to several years.

In 2019, applicants channelled through the regular procedure saw their waiting time seriously increase, partially due to the suspension of one Chamber for several months following the resignation of one of its members. In 2019, 50 decisions were taken on appeals which were pending since 2014, 15 on appeals pending since 2015, 17 on appeals pending since 2016, 28 on appeals pending since 2017 and 92 on appeals pending since 2018.

<sup>67</sup> Court of Appeal, *TeshoomeTensaeGebremariam v Refugee Appeals Board and the Attorney General*, 65/10 RCP, 30 September 2016.

<sup>68</sup> Information provided by the Refugee Appeals Board, January 2020.

<sup>69</sup> Article 5(1) Refugees Act.

<sup>70</sup> Article 7 Refugees Act.

Usually, the appeal takes the form of written submissions to the Refugee Appeals Board. However, the Board can, where appropriate, hold an oral hearing.<sup>71</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 Refugee Appeals Board are not public and its decisions are communicated only to the applicant concerned, their legal representative, if known, the Refugee Commissioner, the Minister concerned and UNHCR.<sup>72</sup>

There is no information available on the number of oral hearings that have been held in 2019.<sup>73</sup> However, NGOs' experience suggests that most appellants treated through the regular procedure have oral hearings conducted by the chambers.

The hearings held by the Board 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.

Recently, RefCom has started to submit written observations on selected cases, replying to lawyers' argumentations in support of their decision. The Board usually grants RefCom a six-week period to submit the observations. Appellants should receive these RefCom submissions prior to the Board's hearings and are usually allowed to comment on them. However, procedural rules are mostly lacking before the Refugee Appeals Board, giving scope to legal uncertainty and varying practices. Therefore, rules are unclear regarding the submissions of observations by RefCom, 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*.

In 2019, RefCom started to attend oral hearings. Some case workers attended hearings and provided some comments on the cases.

One of the main concerns expressed by NGOs 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>74</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.

In the majority of cases, the decision given by the RAB is binding on the parties and they will not remit it back to RefCom to take a new decision. In 2019, less than 1% of the decisions taken by the RAB granted refugee status and less than 3% granted subsidiary protection.

#### 1.4.2. Judicial review

An onward appeal is not provided in the law in case of a negative decision from the RAB. However, judicial review of the decisions taken by the Board is possible within six months and several cases to this effect

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<sup>71</sup> Regulation 5(1)(h) RAB Procedures Regulations.

<sup>72</sup> Regulation 5(1)(n) RAB Procedures Regulations.

<sup>73</sup> Information provided by the Refugee Appeals Board, January 2019.

<sup>74</sup> UN General Assembly, *Report by the Special Rapporteur on the human rights of migrants*, François Crepeau, December 2014.

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?
 

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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  - ❖ 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> 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>75</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>76</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 Refugee Appeals Board 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 and Security 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>77</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 for Home Affairs and Security in 2019. The reason for this shift is not known.

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-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>78</sup> The main obstacle with regard to 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.

<sup>75</sup> Regulation 7(1)-(2) Procedural Regulations.

<sup>76</sup> The Judiciary Malta, *Frequently Asked Questions*, available at: <http://bit.ly/1FJWCug>.

<sup>77</sup> *Ibid.*

<sup>78</sup> Regulation 7(4) Procedural Regulations.

In 2019, UNHCR provided trainings to eight lawyers at the legal aid clinic.<sup>79</sup>

There are no known private lawyers providing free legal assistance to asylum seekers at first instance.

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. 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 remains an issue in 2019.

A recurrent problem of inadequate place for the legal aid lawyers to discuss the case with his or her client in detention has also been noted, a problem which persists in 2019. However, in Safi barracks, one of the detention centres in Malta, there is now a room specifically dedicated for these meetings.

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>80</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>81</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.

## **2. Dublin**

### **2.1. General**

No statistics have been provided by the Office of the Refugee Commission for 2019 in respect of the number of Dublin requests and transfers to and out of Malta. Statistics from 2018 are available in the previous update of this report, however.

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 Refugee Commissioner 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

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<sup>79</sup> Information provided by UNHCR Malta, January 2020

<sup>80</sup> Regulation 7(2) Procedural Regulations.

<sup>81</sup> Regulation 7(3) Procedural Regulations.



checks and the transfers but the rest of the procedure seems to be handled by the Dublin Unit of the Office of the Refugee Commissioner. Within this more coordinated procedure, access to 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 RefCom in the Dublin procedure in October 2019 in the form of Member State expert deployment within the Dublin Unit. Their support is limited to outgoing requests and consists of screening for potential applicability of the Dublin Regulation after an application has been lodged. Two Member State experts are currently deployed to the Dublin Unit for the outgoing procedure.<sup>82</sup>

### 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>83</sup> or the EU Member State granting a Schengen visa.<sup>84</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?  
6 months

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 the IRC where 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.

According to the authorities, no force or coercion is required to take the fingerprints of asylum seekers.<sup>85</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.

<sup>82</sup> ECRE, *The role of EASO operations in national systems: An analysis of the current European Asylum Support Office (EASO) Operations involving deployment of experts in asylum procedures at Member State level*, 29 November 2019, available at: <https://bit.ly/3dcX6D0>.

<sup>83</sup> Article 13 Dublin III Regulation.

<sup>84</sup> Article 12 Dublin III Regulation.

<sup>85</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.

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 Refugee Commissioner to then contact the asylum seeker to ask for 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>86</sup> Yet lawyers report that in 2018 there were a number of cases wherein the Refugee Appeals Board 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. The Court 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>87</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.

Over the course of 2016, NGOs providing legal aid to asylum seekers have noticed an increase of cases where persons were not informed about the status of their application and the ongoing Dublin procedure. As of the end of the year, RefCom provides a standard information sheet explaining that the Dublin procedure is applied and that the examination of the application is put on hold (see [Information on the Procedure](#)). However, since the Dublin Unit was transferred to the Office of the Refugee Commissioner in 2017, applicants have received information about the procedure and the status of their application.

Nonetheless, 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>88</sup>

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<sup>86</sup> ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

<sup>87</sup> Civil Court First Hall, *Enas Mhana 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>88</sup> *Havval Gamshid v the Commissioner of Police and the Attorney General*, 15/2013, 27 January 2016.



The Dublin Unit had 45 outgoing implemented transfers in 2018. More than half of the implemented transfers took place within six months. There is no information available on the reasons why a significant number of outgoing transfers were not carried out with the six-month time period. Moreover, asylum seekers in a Dublin procedure are not informed of delays in receiving responses from the responsible Member State. The number of outgoing implemented transfers in 2019 is unknown.

### 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 Refugee Commissioner 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 take place at the Office of the Refugee Commissioner.

### 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
  - ❖ If yes, is it ☐ Judicial ☒ Administrative
  - ❖ If yes, is it suspensive ☒ Yes ☐ No

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>89</sup> which has taken over responsibility from the Immigration Appeals Board.

The provisions of the amended Refugees Act indicate that the appeal must be filed within two weeks from notification of the decision.<sup>90</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 Board. Moreover, access to the files is problematic as NGOs assisting applicants report the difficulty to access the different documents such as the transfer requests or Eurodac documents because of the lack of clarity as to the authority in charge.

<sup>89</sup> Article 7(1) Refugees Act, as amended by Article 4(a) Act XX of 2017.

<sup>90</sup> Article 7(2) Refugees Act, as amended by 4(c) Act XX of 2017.

## 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, applicants appealing a Dublin transfer are now entitled to legal assistance. According to the Refugees Act, legal assistance is provided under the same conditions applicable to Maltese nationals,<sup>91</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>92</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 from 15 December 2018, Dublin procedures to Greece of non-vulnerable asylum seekers were resumed, but as of 31 December 2018 it appears that no transfers were carried out.<sup>93</sup>

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 Refugee Commissioner 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.

<sup>91</sup> Article 7(5) Refugees Act.

<sup>92</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application 30696/09, Judgment of 21 January 2011.

<sup>93</sup> Information provided by Dublin Unit, Office of the Refugee Commissioner, January 2019.

Indeed, in 2019, 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 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.

There have been no known cases from other jurisdictions suspending transfers to Malta in 2019.

### 3. Admissibility procedure

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

Article 24 of the Refugees Act provides for “inadmissible applications” under Part V of the Act, in the provisions related to the accelerated procedures. The following grounds allow for deeming an asylum application inadmissible:<sup>94</sup>

- (a) Another Member State has already granted the applicant international protection under the Dublin III Regulation;
- (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.
- (g) The applicant comes from a [Safe Country of Origin](#).

According to the Refugees Act, inadmissibility is a ground for an application to be processed under the [Accelerated Procedure](#). It should be noted that the inclusion of the “safe country of origin” concept as a ground for inadmissibility in Article 24 of the Refugees Act is incompatible with Article 33(2) of the recast Asylum Procedures Directive.

As the law mentions the inadmissibility of an application for recognition of refugee status, only the Refugee Commissioner can decide upon the admissibility of the application.<sup>95</sup> According to NGOs’ experience, applications submitted by individuals deemed to be coming from a safe country of origin or applicants having lodged a subsequent application presenting no new documents 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 Refugee Appeals

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<sup>94</sup> Article 24 Refugees Act.

<sup>95</sup> Court of Appeal, *Paul Washimba v Bordtal-Appellidwarir-Rifugjati*, 28 September 2012.

Board 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 2019, 388 applications were deemed inadmissible.

### 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 Regulation 5(5) of the Procedural Regulations, the interview may be omitted if the application is unfounded. In practice, most asylum seekers have access to a personal interview but some applicants who are classified as coming from safe countries of origin and whose applications were deemed inadmissible reported interviews limited to identity, nationality and travel route. Cases were also reported of applicants undergoing full interviews, receiving an in-depth assessment of their asylum claims and then being informed that their applications were considered inadmissible or manifestly unfounded and were then channelled into the accelerated procedure.

### 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?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

  - ❖ If yes, is it
  - ❖ If yes, is it suspensive

Article 23(3) of the Refugees Act foresees that inadmissible applications “shall immediately be referred to the Chairman of the [Refugee Appeals] Board who shall examine and review the recommendation of the Commissioner within three working days.”

Indeed, the recommendation taken by the Refugee Commissioner 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 Refugee Appeals Board or raise any arguments to support an appeal. Moreover, applicants sometimes receive two simultaneous rejections (i.e. the RefCom decision dismissing the application as inadmissible and the Refugee Appeal Board’s decision confirming the RefCom decision), or receive the rejections within a timeframe that makes an appeal against the inadmissibility decision impossible.

Moreover, the review conducted by the Refugee Appeals Board 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 Refugee Commissioner’s recommendation. According to the UNHCR’s observations, the Board tends

to automatically confirm RefCom's recommendation.<sup>96</sup> Furthermore, the term "shall immediately" in Article 23(3) lacks legal clarity so the actual mandatory duration of the procedure is unclear.

In 2019, the majority of decisions taken by the Refugee Appeals Board (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 RefCom'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.

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>97</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 included a provision which specifies that "the review conducted by the Chairperson of the Refugee Appeals Board shall be deemed to constitute an appeal."<sup>98</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>99</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>100</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, although details are currently unknown.

### 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(5) of the Refugees 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 inadmissible is

<sup>96</sup> Information provided by UNHCR, January 2019.

<sup>97</sup> Information provided by UNHCR, January 2019.

<sup>98</sup> Article 7(1A)(a)(ii) Refugees Act, as amended by Article 4(b) Act XX of 2017.

<sup>99</sup> Case no. 909/2018GM filed on 16 February 2018.

<sup>100</sup> Civil Court, First Hall, CHEHADE MAHMOUD vs L-AVUKAT GENERALI E, 909/2018, 28 January 2020, available at: <https://bit.ly/2Vqn2CT>.

automatically and systematically referred to the Board, the appellant is not effectively able to 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 of the Refugees Act provides that applications should be examined under accelerated procedures where:<sup>101</sup>

- The application is manifestly unfounded;
- The applicant has or could have found safe protection elsewhere under the Refugee Convention or the asylum Directives; or
- The applicant holds a travel document from a safe country.

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>102</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) Has given clearly insufficient details or evidence to substantiate his claim and his story is inconsistent, contradictory or fundamentally improbable;
- (c) Has based his application on a false identity or on forged or counterfeit documents which he maintained as genuine when questioned about them;
- (d) 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;
- (e) Made false representations of a substantial nature;
- (f) Has, without reasonable cause and in bad faith, destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his application or to make the consideration of his application by the authorities more difficult;
- (g) Having had ample earlier opportunity to submit an application for international protection, submitted the application in order to forestall an impending removal order from Malta, and did not provide a valid explanation for not having applied earlier;
- (h) Is from a safe country;
- (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 RefCom is of the opinion that an application is manifestly unfounded, he shall examine the application within three working days and his recommendation shall immediately be referred to the Refugee Appeals Board, who will then also examine within three working days.

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<sup>101</sup> Article 23(1), (8) and (9) Refugees Act.

<sup>102</sup> Article 2(k) Refugees Act.

Information for 2016, 2017, 2018 and 2019 is not available, as RefCom 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 in 2018 and 2019.

In 2019, 388 applications were considered inadmissible and therefore channelled through the accelerated procedure but, as stated above, no data is available on the total number of applications processed under the accelerated procedure.

## 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? ☒ Yes ☐ No
  - ❖ If so, are questions limited to nationality, identity, 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

No information is available regarding RefCom's policy on personal interviews in case of accelerated procedures. However, applicants deemed to be coming from safe countries of origin, whose applications were deemed inadmissible and processed under the accelerated procedure, reported not being interviewed on the substance of their claim.

## 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 Refugees Act provide that if the Refugee Commissioner 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 Refugee Appeals Board, 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.



## 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?  
☐ 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

Article 7(5) of the Refugees 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 inadmissible is automatically and systematically referred to the 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>103</sup>

### 1.1. Screening of vulnerability

According to the current policy, during their stay at the Initial Reception Centre (IRC), migrants shall be assessed by professionals from AWAS with a view to identifying possible vulnerabilities through the Vulnerable Adults Assessment Procedure (VAAP), also known as the Adult Referral Assessment Tool. AWAS accepts 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 usually accompanied by medical certificates or other supporting documents.

<sup>103</sup> Regulation 14 Reception Regulations.



According to AWAS, an Initial Assessment is done by social workers for every migrant the day they arrive at the IRC. This basic assessment is designed to collect basic information about the applicant. It is supposed to help the care team and can be used as a base for the vulnerability assessment.<sup>104</sup>

According to the policy, the vulnerability assessment procedure shall take into account potentially traumatic experiences undergone by the individual migrant. If necessary, AWAS professionals may call on the assistance of other specialised professionals whilst conducting vulnerability assessments.<sup>105</sup> In practice, AWAS conducts these assessments with a social worker and a coordinator.<sup>106</sup>

Like the Age Assessment Procedure discussed below, the VAAP 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 ever 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.

Where the applicant is detained, the VAAP allows for the possibility of review of a decision not to recommend release at any point during an individual's detention, usually upon presentation of new evidence.

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.

When an applicant is deemed to be vulnerable, the result shall be communicated to the police authorities so that the applicant in question shall not be subject to a detention decision according to the amended legislation (see [Detention of Vulnerable Applicants](#)).<sup>107</sup> Instead, they are to be immediately accommodated in open centres. According to the authorities, in those cases where vulnerability emerges only after an asylum seeker has been detained, the result shall be communicated to the police authorities so that the detention order is withdrawn with immediate effect. The applicant shall then be released from detention and offered accommodation at an open centre.

In 2019, 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 team. Depending on the availability of space in open centres, vulnerable applicants can be released from detention.

A persisting issue is that the reception system is only tailored to people arriving in Malta irregularly and referred to the IRC. 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.

Since 2017, the Refugee Commissioner has started carrying out a preliminary vulnerability assessment in relation to all new applicants for international protection upon the lodging of the application. This

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<sup>104</sup> Information provided by AWAS, 24 January 2017.

<sup>105</sup> Strategy Document, November 2015, 15.

<sup>106</sup> Information provided by AWAS, 24 January 2017.

<sup>107</sup> Regulation 14(3) Reception Regulation.

assessment is based on readily apparent signs or the applicant's own declarations and is done by non-medical practitioners for the sole purpose of identifying vulnerable persons for possible procedural guarantees that might be needed.<sup>108</sup>

## 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 filling in of the Preliminary Questionnaire are referred to AWAS for age assessment.

The age assessment procedure was developed and implemented with a view to assessing 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 reference to age assessment procedures in law is found in Regulation 17 of the Procedural Regulations, which deal with the use of medical procedures to determine age, within the context of an application for asylum.

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>109</sup>

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>110</sup>

The first age assessment phase consists of an interview conducted jointly by an AWAS staff member and a transcultural counsellor.<sup>111</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, a 'Care Order' is issued and the minor is transferred to an open reception centre where the asylum procedure resumes.

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 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, a 'Care Order' is issued and the minor is transferred to an open centre where the asylum procedure resumes.

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>112</sup>

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<sup>108</sup> Information provided by the Refugee Commissioner, 12 January 2018.

<sup>109</sup> Strategy Document, November 2015, 11.

<sup>110</sup> Information provided by AWAS, 24 January 2017.

<sup>111</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>112</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/1W5M0Pq>.

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 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. According to NGOs' experience, only negative decisions were delivered and often with considerable delays.<sup>113</sup> 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>114</sup>

Furthermore, 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 in the IRC together with other adult asylum seekers.<sup>115</sup>

Age assessment decisions may be appealed before the Immigration Appeals Board. However, the decisions lack proper reasoning and individual assessment. The Board has received 12 appeals against age assessment decisions. All these appeals are still pending.

The ECtHR criticised the length of the age assessment procedure in *Abdullahi Elmi 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>116</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>117</sup> One of the main issues in 2019, beyond the waiting time to conduct an age assessment, is the delay in appointing legal guardians (see [Legal representation of unaccompanied children](#)).

In 2019, AWAS conducted 410 age assessment (up from 330 in 2018). Out of the 410 applicants assessed, 102 were declared minors and 175 applicants were considered as adults. Also, in a number of cases, applicants declared that they were adults but were still channelled through an age assessment by AWAS. In 133 of such cases, the age assessment confirmed them as being adults.<sup>118</sup> The number of age assessments still pending is unknown.

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<sup>113</sup> Information provided by JRS, January 2019.

<sup>114</sup> Information provided by JRS, January 2019.

<sup>115</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>116</sup> ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

<sup>117</sup> Information provided by JRS, January 2019.

<sup>118</sup> Information provided by AWAS, 2020.

## 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 Refugee Commissioner 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>119</sup> The notion of “adequate support” is not defined further, although RefCom may decide to postpone the examination of the application depending on the case.<sup>120</sup>

The Refugee Commissioner has stated that in the case that an asylum seeker has been identified as being in need of special procedural guarantees, a trained caseworker is assigned to do the interview, during which the caseworker remains sensitive to the fact that the person might be unable to fully disclose details of the asylum claim. Nonetheless, the Refugee Commissioner does not have a specialised unit dealing with vulnerable groups, although a number of caseworkers have attended an EASO training session on the module “Interviewing Vulnerable Persons” in 2016 and 2017.<sup>121</sup> In 2019, UNHCR also provided trainings to seven caseworkers.<sup>122</sup>

Practitioners who have attended several interviews over the last few years indicate that vulnerability may not always be taken into consideration as the asylum seeker will still be expected to provide a considerable amount of detail that they might not always be able to provide on account of the trauma they would have experienced. In the absence of a procedure geared towards identifying victims of trauma and torture, and the emphasis on concluding cases in the shortest time possible, these asylum seekers may be at a disadvantage as they could be unable to comprehensively disclose their protection needs.

### 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>123</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>124</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>125</sup>

<sup>119</sup> Regulation 10 Procedural Regulations.

<sup>120</sup> Information provided by the Refugee Commissioner, 17 July 2017.

<sup>121</sup> Information provided by the Refugee Commissioner, 17 July 2017. No information available for 2018.

<sup>122</sup> Information provided by UNHCR Malta, January 2020.

<sup>123</sup> Regulation 7 Procedural Regulations.

<sup>124</sup> Regulation 18 Procedural Regulations.

<sup>125</sup> Article 23A Refugees Act.

### 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

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 notes 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>126</sup> and there is no information available for 2019.

### 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

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>127</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.

The above procedure is not enshrined in any law, and no formalities exist to ensure compliance. Legal guardians are generally the social workers engaged by AWAS, who are, therefore, not independent from public authorities. Moreover, in most cases they are responsible for a large number of children due to resource constraints. NGOs have expressed the need for additional human resources and the necessity to train staff, including guardians, about the specific needs of minor children from different cultural backgrounds regarding reception and care. The situation is of particular concern regarding traumatised children who have fled situations of war and violence.<sup>128</sup>

In 2019, there were delays of several months in the issuance of the 'Care Orders', leading to delays in the appointment of a legal guardian. As unaccompanied children only get access to the asylum procedure

<sup>126</sup> Information provided by the Refugee Commissioner, January 2019.

<sup>127</sup> Regulation 18 Procedural Regulations.

<sup>128</sup> IOM & UNHCR, *Unaccompanied Migrant and Refugee Children: Alternatives to detention in Malta*, IOM-UNHCR Joint Technical Mission, May 2014, available at: <http://bit.ly/1rsk1t3>.

after the issuance of a 'Care Order' and the appointment of a legal guardian, these children were *de facto* prevented from having access to the asylum procedure, often for several months.

Currently, the Head of AWAS is acting as the only legal guardian for all applicants, delegating his responsibility to social workers. At the end of 2019, 102 UAMs were under the care of AWAS.

According to NGOs assisting migrants, some unaccompanied minors, *de facto* detained in the closed section of the IRC, reported acts of violence including sexual violence perpetrated against them by other detainees.<sup>129</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.

## 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 Refugee Commissioner.<sup>130</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 before. Such new elements need to be presented within 15 days of receiving the information.

RefCom 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 Refugee Commissioner. 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.

Removal orders are only suspended once the applicant has formally been confirmed to be an asylum seeker by the Refugee Commissioner, 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 Refugee Appeals Board within 15 days, in the same way as with the regular procedure.<sup>131</sup>

<sup>129</sup> Information provided by JRS Malta, aditus foundation, 2020.

<sup>130</sup> Articles 7A and 4 Refugees Act.

<sup>131</sup> Article 7(1A)-(2) Refugees Act.



In case the subsequent application is deemed inadmissible when no new elements were found, the decision is immediately forwarded to the Refugee Appeals Board 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 RAB 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 2019, 62 applicants had filed a subsequent application.

## 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 Refugees 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 Refugees 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 2017 and it removed references to individual Member States from the European Economic Area (EEA) and replaced them with a generic reference to EEA countries. 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>132</sup> It can also be used to deem an application inadmissible.<sup>133</sup>

According to RefCom, this concept is applied provided that the applicant does not submit serious grounds for considering his or her country of origin not to be a safe country of origin due to his or her particular circumstances. No more information is available but according to NGOs assisting applicants, the concept of safe country of origin was used to deem applications inadmissible and such applications have been processed under the [Accelerated Procedure](#).

<sup>132</sup> Articles 8(1)(h) and 23 Refugees Act.

<sup>133</sup> Article 24(1)(g) Refugees Act.

## 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 Refugees Act, the concept of a safe third country can be used to determine if an application should be considered under the accelerated procedure as manifestly unfounded or considered inadmissible.<sup>134</sup>

According to RefCom, depending on the particular circumstances of the case, it could be determined that the concept of safe third country could apply.<sup>135</sup> However, no specific information was provided as regards the actual interpretation and application of the safe third country concept by RefCom.

## 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 may be readmitted thereto. This is also mentioned as a ground for inadmissibility.<sup>136</sup>

No information is available about the application of this concept. According to RefCom 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.

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<sup>134</sup> Articles 8(1)(g), 23 and 24(1)(c) Refugees Act.

<sup>135</sup> Information provided by the Refugee Commission, 12 January 2018.

<sup>136</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, information was no longer provided by RefCom to detained applicants, i.e. all applicants who entered Malta irregularly. The only information provided to applicants in detention was delivered by UNHCR Malta, who visited detention centres regularly, and by NGOs on a case by case basis.

As a consequence, most applicants detained upon arrival were not informed about the ground for their detention, nor about their rights as asylum-seekers. Most of the 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.

It is worth noting that the EASO operating plan with Malta for 2020 foresees 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>137</sup> Moreover, the plan envisages tailored information provision sessions by EASO.

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 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

<sup>137</sup>

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

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 of all this, 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>138</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? N/A

National legislation provides that UNHCR shall have access to asylum applicants, including those in detention and in airport or port transit zones.<sup>139</sup> Moreover, the law also states that a person seeking asylum in Malta shall be informed of his right to contact UNHCR.<sup>140</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>141</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 one NGO.

Specific NGOs have not been granted access to open reception centres for the purpose of meeting asylum applicants.

Since all applicants arriving irregularly in Malta were detained, access to detention became a priority for UNHCR and NGOs. While UNHCR was always granted access, NGOs were limited in accessing detention facilities on several occasions. For example, access was revoked after two leading NGOs filed

<sup>138</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>139</sup> Regulation 16(a) Procedural Regulations.

<sup>140</sup> Regulation 3(3)(c) Declaration Regulations.

<sup>141</sup> Regulation 7(3) Procedural Regulations.

*Habeas Corpus* cases which led to the acknowledgment of the unlawfulness of detention and the release of several applicants.<sup>142</sup> Access was then denied for NGOs for several weeks without any explanation.

Moreover, the authorities are limiting the possibility for NGOs to provide information to a large group of people. Lawyers or social workers are only allowed to meet with their individual clients.

## 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>143</sup> ☒ Yes ☐ No  
❖ If yes, specify which: Jamaica, Brazil, Japan, Canada, US, Cape Verde, New Zealand, Child, Senegal, Costa Rica, Gabon, Ghana, Uruguay, EU/EEA

### 1. Syria

In 2019, 429 Syrian nationals applied for international protection in Malta. 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.

As of 2015 the Refugee Commissioner considered the security situation in Libya to be unsafe and recommended that Libyans, whose nationality is established, and who do not meet the criteria to be granted refugee status, be granted subsidiary protection.<sup>144</sup> No information is available for 2019 but it is presumed that should nationality be established, Libyan nationals would still, automatically, be granted international protection.

<sup>142</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>143</sup> Whether under the “safe country of origin” concept or otherwise.

<sup>144</sup> In January 2015, the Refugee Commissioner conducted a review of the situation in Libya to assess whether the security situation reached that threshold of indiscriminate violence in terms of Article 15(c) of the recast Qualification Directive. The Office identified a number of indicators to measure the level and nature of indiscriminate violence and based its reasoning on European case law, UNHCR guidelines and up-to-date country of origin information. RefCom came to the conclusion that “the armed conflict in Libya meets the threshold of an indiscriminate violence since it is of such intensity that any person, only by returning to the country, would be at risk simply on account of his/her presence there.”

## Reception Conditions

### 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?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------

Maltese law does not distinguish between the various procedures in order 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>145</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>146</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.

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>147</sup>

<sup>145</sup> Regulation 2 Reception Regulations.

<sup>146</sup> Regulation 11(4) Reception Regulations.

<sup>147</sup> Information provided by AWAS, January 2019.

In 2019, due to a significant number of asylum-seekers arriving by boat, the whole Maltese reception system, not sufficiently resourced to deal with such high numbers, was under extreme pressure. Due to the lack of space available in overcrowded reception centres, the authorities decided to detain all applicants arriving irregularly in Malta.

## 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 2019 (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>148</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;
- 2.91 € persons returned under the Dublin III Regulation; and
- 2.33 € 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. 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 to have their certificate and, therefore, receive the *per diem*.

<sup>148</sup>

Article 2 Reception Regulations.

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 the established place of residence without providing information or consent or does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure.

The law does not define when a place is considered abandoned. However, practice shows that this is the case where a resident:<sup>149</sup>

- Fails to sign the residence sheet for a set number of times without a valid excuse;
- Does not comply with reporting duties;
- Fails to appear for the asylum interview; or
- Has concealed financial resources.

If a resident has not signed for 15 days their place is reclaimed at the centre.<sup>150</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.

In 2019, due to the lack of space in reception centres, it had been noticed by NGOs that the authorities acted in a stricter manner with people who did not respect the centres’ rules and did not sign as required.<sup>151</sup> These persons were then evicted from the reception centre with no regard taken for their status or situation (as described below).

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 as 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>152</sup>

<sup>149</sup> Regulation 13 Reception Regulations.

<sup>150</sup> Information provided by AWAS, January 2019.

<sup>151</sup> Information provided by JRS Malta 2020.

<sup>152</sup> ECtHR, *Louled Massoud 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.



## Evictions

In the summer of 2019, evictions from reception centres were stepped up in order to make space for applicants released from detention. Whilst the exact number of persons evicted is unknown, it has been reported that AWAS evicted dozens of migrants, whose asylum applications are still on-going, from the Hal Far Tent Village, one of the main reception centres on the island, in order to make way for new arrivals. Authorities explained at the time that reception centres are meant to facilitate migrants' transition into society and not to provide permanent hospitality<sup>153</sup>

According to NGOs assisting migrants, evictions are conducted in a seemingly random way and no organisation or pattern was noticed. According to AWAS, applicants are allowed to stay between nine and 12 months in the reception system. In previous years, as space was available, applicants were allowed to stay longer until they found private accommodation.

The authorities usually provide a written decision one-month before the eviction. People are entitled to challenge it with AWAS, but with no formal procedure provided. According to NGOs, AWAS might reconsider such decision on a case by case basis depending on the vulnerability of the applicant<sup>154</sup>.

These evictions are a major problem in Malta where accommodation is very hard to secure due to high prices in a largely unregulated private rental market and the fact that landlords are usually extremely reluctant to rent accommodation to asylum-seekers. Thus, these evictions often resulted in homelessness.

In July 2019, the police discovered around 100 migrants living in stables transformed into illegal dwellings by landlords in an ever-increasing black-market sector. After their eviction, it was reported that these people ended up living in the streets.<sup>155</sup>

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 and 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 appears not to accept asylum-seekers any longer.<sup>156</sup>

## 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 a continued right to reside in the centre. Residents who are

<sup>153</sup> Times of Malta, Migrants to be evicted from Hal Far 'tent village', 15 August 2019, available at: <https://bit.ly/3brApcz>.

<sup>154</sup> Information provided by JRS Malta 2020.

<sup>155</sup> Times of Malta, Evicted from stables, now living 'like animals', 23 July 2019, available at: <https://bit.ly/2WG19Sd>.

<sup>156</sup> Information provided by JRS Malta, 2020.

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.

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>157</sup> Beyond individual situations, movement between centres is sometimes affected due to 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.

As already mentioned, asylum seekers arriving irregularly were automatically detained throughout 2019, mainly under health legislation, until space was available in open centres.

It was noted that many applicants released and placed in open centres were released under 'alternatives to detention' provisions, even though they had never been issued a detention order since they were detained under Health Regulations. Once again, one could not notice any policy or pattern in the way the authorities decided to release someone under grounds of alternatives to detention.

These measures significantly restricted the freedom of movement of applicants who were required to reside in centres and to sign at the centre several times a day rendering it difficult for them to find employment.

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

- |  |               |
|--|---------------|
| 1. Number of reception centres: <sup>158</sup>   | 7             |
| 2. Total number of places in the reception centres:  | Not available |
| 3. Total number of places in private accommodation:  | Not available |
| 4. Type of accommodation most frequently used in a regular procedure:  |               |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other |               |
| 5. Type of accommodation most frequently used in an accelerated procedure:   |               |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other |               |

There are six reception centres in Malta (down from eight in 2017). Of these, four 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.

<sup>157</sup> Regulation 13 Reception Regulations.

<sup>158</sup> Both permanent and for first arrivals.



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

Open centre	Maximum capacity
Tent Village Hal-Far	-
Hal-Far Open Centre	-
Emigrants Commission (apartments)	-
Peace Lab	-
Dar il-Liedna	-
Balzan Open Centre	-
Initial Reception Centre Marsa	-
<b>Total capacity</b>	<b>2,018</b>

Source: AWAS, January 2019. A breakdown by centre was not available in 2019 but can be found in the previous update of this report.

The total reception capacity of the centres is approximately 2,018 places (up from 1,500 in 2018). At the end of 2018, 1,182 (up from 913 in 2017) persons were accommodated in open centres.<sup>159</sup>

At the end of 2019, 520 persons were accommodated in the IRC, 1,120 in Hal Far Tent Village, 50 at Dar il-Liedna, 117 at Hal Far Open Centre, 108 at Balzan Open Centre, 200 in apartments run by Emigrants Commission and 45 at Peace Lab.

Some families, single women and unaccompanied children are accommodated in separate open centres although families also often share accommodation with other groups. Foster families are hardly ever resorted to and in such cases these would be processed through the mainstream fostering procedures.

Unaccompanied children are generally accommodated alone, or in a centre where families are also accommodated, although the spaces are kept separate. 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, it has been the case UAMs live in Hal Far Tent Village. Moreover, severe delays in transferring unaccompanied children from the IRC to open centres have been noted in 2019.

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.

Whilst efforts are made to segregate single women from single men, it is not uncommon for men and women, single or otherwise, to be accommodated in the same centre.

Due to the large numbers of new arrivals, some families and single women were accommodated again in Hal Far Tent Village. Although they were placed in a sectioned-off area of the centre, the single women lacked privacy and security since they were accommodated in units with unrelated men. In 2019, minors were also accommodated in Hal Far Tent Village putting them in great danger, as has also been reported by NGOs. Following a JRS Malta intervention, a 'minor's section' was created in Hal Far in order to isolate them from the rest of the residents<sup>160</sup>.

<sup>159</sup> Information provided by AWAS, 7 February 2018.

<sup>160</sup> Information provided by JRS Malta, 2020.

## 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. There are also common showers and toilets. The large number of persons accommodated in each centre (e.g. around 400 in **Initial Reception 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 175 AWAS staff are currently working in several reception centres.<sup>161</sup> An AWAS coordinator is based in the centres run by NGOs, and social workers visit migrants on a regular basis.

The majority of centres do not offer any form of activities for residents, it is rather NGOs which provide certain activities, such as free language classes in English or Maltese. However, residents are able to freely leave the centre as they please.

Overall, the living conditions in the open centres, save for a few exceptions, are extremely challenging. Low hygiene levels, severe over-crowding, a lack of physical security, the location of most centres in remote areas of Malta, poor material structures and 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 2019, especially in the **Hal Far** centres.<sup>162</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>163</sup> Little has changed in the years since this visit.

In 2019, the conditions in the reception centres continued to deteriorate significantly, due to over-crowding and a lack of resources. Issues include a lack of cleaning, difficult access to bathrooms, very limited hot water, or air conditioning and heating not being available.

Group evictions also led to tensions which culminated in October 2019 when riots broke out in **Hal Far** Tent Village, the main reception centre of the island. It is estimated that 300 residents were involved and 107 people were arrested. Some police officers were slightly injured, several cars burnt and some buildings of the centre sustained substantial damage.

<sup>161</sup> Information provided by AWAS, January 2019.

<sup>162</sup> Information provided by JRS social workers who visit reception centres on a regular basis, 2018.

<sup>163</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>.

These incidents led to strong reactions from all actors involved in the field. The Home Affairs Minister mainly underlined the damages caused by migrants and said that *“as a democratic country, peaceful protests can take place, but breaking the law is not allowed and it applies to everyone even migrants.”*<sup>164</sup>

UNHCR Malta stated that *“resorting to violence can never be a solution as it puts both the residents and staff at risk.”*<sup>165</sup> Nevertheless, UNHCR also referred to the deteriorating conditions in open centres, *“falling far short of acceptable standards”* and urged the Maltese government to *“take immediate action in improving the conditions in the centres”*

The University of Malta expressed its concern by *“univocally condemning the violence”* but *“equally calling on the authorities to reflect on the reasons that lead to these behaviours”*.<sup>166</sup> The Faculty of Education clearly called on the authorities *“to reflect on the policies the country adopts in relation to migration, including its integration strategies. Ghettoing people in a particular locality, leaving them in a state of uncertainty, and de facto punishing those who are simply seeking to escape hell or seek a decent life is leading to anger and frustration, unfortunately this may lead to violence.”*

## 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? ☒ Yes ☐ No  
9 months
2. Does the law allow access to employment only following a labour market test? ☐ Yes ☒ No
3. Does the law only allow asylum seekers to work in specific sectors?  
❖ If yes, specify which sectors: ☐ Yes ☒ No
4. Does the law limit asylum seekers' employment to a maximum working time?  
❖ If yes, specify the number of days per year ☐ Yes ☒ No
5. Are there restrictions to accessing employment in practice? ☒ Yes ☐ 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 application is initially rejected to six months for those whose application is still pending. Fees are payable for new licences (€58) and for every renewal (€34).

<sup>164</sup> The Independent, Police cars set on fire as migrants protest at Hal Far, October 2019, available at: <https://bit.ly/2xiGPvQ>.

<sup>165</sup> The Independent Malta, 107 migrants arrested in Hal Far centre riot, 21 October 2019, available at: <https://bit.ly/2wzfSUw>.

<sup>166</sup> University of Malta, Recent Riots at the Hal Far Open Centre, 24 October 2019, available at: <https://bit.ly/2Jbvycz>.

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>167</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, limited or seasonal employment opportunities. Asylum seekers from sub-Saharan Africa 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>168</sup>

A recent report from UNHCR Malta highlighted the challenges encountered by migrants in employment.<sup>169</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, and 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.

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.

## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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>170</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.

In 2018 and 2019, access to education for unaccompanied children was significantly hindered as a consequence of delays in the registration of asylum applications.<sup>171</sup>

The Ministry for Education and Employment recently 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.

<sup>167</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>168</sup> *Ibid.*

<sup>169</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>.

<sup>170</sup> Proviso to Regulation 9(2) Reception Regulations.

<sup>171</sup> Information provided by JRS, January 2019.

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>172</sup>

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. 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 also 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, therefore asylum-seekers are allowed to benefit from it.

## 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 Refugees 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>173</sup> This, persons suffering mental health problems fall under the above-mentioned legal provisions.

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, absence of full-time medical staff in the detention centres, informal transactions for medicine, etc.

<sup>172</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>.

<sup>173</sup> Regulation 11(2) Reception Regulations.

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.

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”.

However, upon arrival, alleged unaccompanied minors, family groups with children and other manifestly vulnerable persons are now immediately detained in pursuance of the Health Regulations 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. When someone will be deemed to be vulnerable, he or she will not be detained and will immediately be accommodated in open centres or centres for unaccompanied minors, depending on availability.

Beyond the general principle, specific measures provided by law for vulnerable persons are as follows: maintenance of family unity where possible;<sup>174</sup> particular, yet undefined, attention to ensure that material reception conditions are such to ensure an adequate standard of living.<sup>175</sup>

Families are usually accommodated in **Hal Far** Open Centre. Single women and unaccompanied minors are generally accommodated 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. Due to capacity reasons, families and single women are also accommodated in **Hal-Far** Tent Village which was initially only for men. According to NGOs' experience, the segregation is insufficient and inadequate.

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.

<sup>174</sup> Regulation 7 Reception Regulations.

<sup>175</sup> Regulation 11(2) Reception Regulations.

## 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>176</sup>

In 2018, the Office of the Refugee Commissioner 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.

### 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 the Ministry for Home Affairs and National Security, for which permission is also required. Criteria to be granted access to the centres are unclear, although recently it has proven to be problematic for individuals/organisations wishing to provide a service to residents. In practice, only a limited number of NGOs, lawyers and UNHCR have effective access to any reception centre. Permission is not easily granted to non-service-related visits, as is the case for academics, friends, research students, reporters, and so forth.

## G. Differential treatment of specific nationalities in reception

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

Since many landlords have the stereotype of Libyan nationals as being wealthy and affluent, they are being charged higher-than-usual rent prices, which *de facto* discriminates against them.

<sup>176</sup> Regulation 4 Reception Regulations.



## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2019: <sup>177</sup>	250 excl. <i>de facto</i> detainees <sup>178</sup>
2. Number of asylum seekers in detention at the end of 2019:	Not available
3. Number of detention centres:	2 + 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 either mandatory or an automatic consequence of the decision to issue a Removal Order.

Between 2002 and 2015, the majority of the asylum-seeking population in Malta arrived by boat, having travelled in an irregular manner from Libya. Most were brought ashore after they were rescued from vessels in distress; upon arrival all were issued with a Return Decision and Removal Order in terms of the Immigration Act and placed in detention. Submission of an application for international protection did not imply release from detention. As the majority of asylum seekers reached Malta after travelling irregularly by boat from Libya, most asylum seekers were detained.

For a limited period of time, between 2015 and mid-2018, the situation changed and the majority of asylum seekers arrived regularly by plane, thereby avoiding the mandatory detention policy. However, with the establishment of the new Italian government and the end of an informal agreement between Malta and Italy – on the basis of which all migrants rescued in Maltese territorial or search and rescue waters were being disembarked in Italy – the situation changed again and asylum seekers reached Malta after travelling irregularly by boat, generally from Libya.

Applicants arriving irregularly by plane or by boat were referred to the IRC where they were detained for a period of between some days and a couple of weeks. In the IRC, the need to detain was assessed by the Principal Immigration Officer. They were then either detained, placed under an alternative to detention or sent to reception centres. Furthermore, as mentioned above, if the irregular entry involved use of false documentation, criminal action is taken and the asylum seeker risks a sentence of up to two years' imprisonment (see [Access to the Territory](#)).

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** or in **the Safi Detention Centre**, part of which is now considered an extension of the IRC.

<sup>177</sup> Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

<sup>178</sup> The number does not include *de facto* detainees under the Health Regulation, which concerns the vast majority of the 3,046 persons rescued at sea and disembarked in Malta in 2019.



## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
  - ❖ on the territory: ☒ Yes ☐ No
  - ❖ at the border: ☐ Yes ☒ No
2. Are asylum seekers detained in practice during the Dublin procedure?  
☒ Frequently ☐ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice?  
☒ Frequently ☐ Rarely ☐ Never

According to the Reception Regulations,<sup>179</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 unlawful.<sup>180</sup>

The individual detention order shall be issued in writing, in a language that the applicant is reasonably supposed to understand and 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.

However, in the vast majority of cases, the detention of asylum-seekers is not in line with the recast Reception Conditions Directive. Throughout 2019, 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>181</sup> This article provides that “*Where 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.*”

<sup>179</sup> Regulation 6 Reception Regulations.

<sup>180</sup> Court of Magistrates, *Rana Ghulam Akbar v Kummissarju tal-Pulizija*, 26 February 2018.

<sup>181</sup> Cap. 36 of the Laws of Malta, 1908, available at: <https://bit.ly/2E9u73v>.

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>182</sup>

No data has been made available on the number of applicants detained under this new policy in 2019.

According to official data, 250 asylum seekers were placed in detention. However, the vast majority of the 3,046 persons rescued at sea and disembarked in Malta in 2019 were placed in *de facto* detention, and therefore not included within the 250.

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.

Towards the end of 2019, a series of administrative decisions were adopted leading to a situation where detained persons are no longer receiving information about their status. No information regarding the reason for their detention is provided, neither on the expected duration of the detention and their rights. Information about the asylum procedure is provided by EASO and RefCom 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, and on NGOs such as JRS Malta and aditus foundation, also visiting detention and providing information and legal advice.

Over the course of 2019, detainees held a number of demonstrations at **Safi** to protest against their indefinite incarceration, the absence of information and the conditions in which they were being kept.<sup>183</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

<sup>182</sup> The Times of Malta, 1400 migrants detained illegally at marsa and safi, UNHCR, December 2019, available at: <https://bit.ly/2JbWIXp>.

<sup>183</sup> ECRE, Malta Charges Five Rescued Migrants with ‘Terrorist Activities’ while Facts Remain Unclear, 5 April 2019, available at: <https://bit.ly/33HDTVd>.

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>184</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>185</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>186</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.

According to the authorities, 1,358 asylum seekers in 2019 were released from detention and placed under alternatives to detention (ATD). They were requested to report regularly at a police station, to reside at an assigned place and to deposit some of their documents.<sup>187</sup> Moreover, it seems that some groups of asylum-seekers have more restrictive measures imposed upon them, such as signing in the reception centre several times a day, which has prevented them from working full-time. It seems that these distinctions depended on the applicants' nationalities. This practice was noticed in relation to Bangladeshi applicants.

Moreover, many applicants were released and placed under ATD when there was no valid ground for detention or when such grounds never existed, as in the case of applicants detained under the new regime on the basis of the Health Regulations. It looks like the authorities do not use this provision as an actual alternative to detention but rather as a way to monitor applicants once released from detention.

NGOs reported that there is no clear pattern on the reason, when and why ATD are applied to asylum-seekers.

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.

### 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

<sup>184</sup> Strategy Document, November 2015, 26.

<sup>185</sup> Regulation 6(8) Reception Regulations.

<sup>186</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>.

<sup>187</sup> Information provided by Immigration Office of Malta Police Force, January 2020.

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>188</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>189</sup>

Upon arrival at the border, alleged unaccompanied minors, family groups with children and other manifestly vulnerable persons were prioritised during the preliminary screening. When an asylum seeker was deemed vulnerable, following a vulnerability assessment conducted during their stay at the IRC, he or she was not detained and was accommodated immediately in a reception centre and assisted according to his or her vulnerability. Minors had access to leisure and open-air activities. 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 were in place to assess ‘vulnerability’ in individual cases: the Age Assessment Procedure and the VAAP (see section on [Identification](#)). Both of these procedures are officially implemented by AWAS.<sup>190</sup>

Since mid-2018, all asylum-seekers entering Malta irregularly are immediately detained in application of the Health Regulations without any form of individual assessment being conducted, leading to the detention of women, children and other vulnerable applicants.

UNHCR and NGOs regularly visiting detention facilities have the possibility to refer people for a vulnerability assessment but no information is available on how and when assessments are conducted, and on the actual impact of such an assessment. However, applicants presenting obvious vulnerabilities, such as children, are usually detained in IRC Marsa rather than in Safi barracks.

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 a 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 age where space for their accommodation is not available in any of the open centre spaces.

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 obligation at law to regard children as persons under the age of 18.”<sup>191</sup>

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<sup>188</sup> Regulation 14(3) Reception Regulations.

<sup>189</sup> ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

<sup>190</sup> Strategy Document, November 2015, 15.

<sup>191</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>.

## 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 |

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>192</sup>

Applicants formally detained in line with the grounds of the Reception Conditions Directive are usually released after two or three months and placed under alternatives to detention.

Applicants detained under the Health Regulations are kept in detention until there is space available in open centres. Therefore, applicants can 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.

## 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)? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

There are currently two detention centres: **Safi barracks, B Block**, with a maximum capacity of 200 and **Lyster Barracks**. The facilities known as the Warehouses in Safi barracks were closed for refurbishment at the beginning of 2014 and are now reopened. **Lyster Barracks**, the other detention facility, was closed in mid-2015 because no more migrants were detained there but re-opened at the beginning of January 2020 to host the increased numbers of detainees.

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-seeker arriving irregularly in Malta. Another section of the IRC remains open and accommodates families, among others.

### 2. Conditions in detention facilities

#### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> 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

<sup>192</sup> Regulation 6(7) Reception Regulations.

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 or have access to a clinic, medical isolation facilities, telephone facilities, an office for the delivery of information by RefCom, rooms for interviews with RefCom and NGOs, facilities for leisure and the delivery of education programmes as well as a place of worship.

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>193</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.

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>194</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. Following a visit in 2015, the CPT stated that, despite better detention conditions mainly due to the very few people detained, no activities were being offered to persons in detention.<sup>195</sup> The UN Working Group on Arbitrary Detention, who visited Malta in June 2015, also pointed out that the conditions of detention have improved due to the drastic reduction in the number of detainees. However, lack of educational and social programmes but also deficiencies in the availability of legal aid were reported by the Working Group. Finally, the fact that a detention facility for migrants is located in military barracks remains an unsolved issue.<sup>196</sup>

Men are usually detained separately from women, as are families and couples. However, in 2019, it was noticed that some children were detained together with adults due to the fact that detention centres are overcrowded.

Moreover, reading and leisure materials are not systematically 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. Detainees only have access to news and other media through the television set which is in place per centre as no newspapers are ever provided. There are no computers or internet access within the centres.

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<sup>193</sup> For more information see Ministry for Home Affairs, *Detention services*, available at: <http://bit.ly/1M7HMkS>.

<sup>194</sup> Information provided by Katrine Camilleri, Director of JRS Malta, January 2018.

<sup>195</sup> CPT, *Report to the Maltese Government on the visit to Malta carried out from 3 to 10 September 2015*, October 2016, available at <http://bit.ly/2So8b8v>.

<sup>196</sup> Human Rights Council, *Report of the Working Group on Arbitrary Detention on its follow-up mission to Malta*, June 2016.



A lack of interpreters has also been pointed out by the CPT which noticed that another detained person with the necessary language skills was usually requested to act as an interpreter. This situation is inappropriate when used for other but emergency situations. Moreover, the CPT expressed concerns about the lack of information provided to detainees regarding the house rules of the detention facility.<sup>197</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 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.

As mentioned, the conditions in detention centres in 2019 deteriorated and became extremely challenging with severe overcrowding, insanitary conditions, limited availability of shared toilets and showers and no privacy. Applicants enjoy limited time in the open, or with access to fresh air and sunlight. They also have hardly any contact with the outside world.

This led to several protests by detainees over the course of the year. In September 2019, some migrants scaled fences and set mattresses on fire demanding to be released from detention. Several police and army units were sent on site to stop the protests and several migrants were arrested.<sup>198</sup> Later that month, migrants protested again against their continued detention. They started shouting and demanding to be set free. Migrants held up signs saying “4 months in detention Why?”<sup>199</sup>

In October and December 2019, peaceful protests were also organised sometimes escalating in violent confrontation with detention service staff.<sup>200</sup> Each time, migrants were arrested and immediately taken to Court.

Following these events, 34 NGOs reiterated that the detention of these migrants is unlawful.<sup>201</sup> They raised the fact that some migrants had been kept detained for more than six months when the Health Regulations provide for a restriction of movement up to ten weeks. They explained that migrants were protesting for their freedom since there was no lawful reason for them to be detained. Moreover, NGOs raised the lack of information on how long individuals are to be detained, the lack of accessible effective remedies and the crowded and insanitary conditions in detention.

In January 2020, only a few days after another 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>202</sup>

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<sup>197</sup> CPT, *Report to the Maltese Government on the visit to Malta carried out from 3 to 10 September 2015*, October 2016.

<sup>198</sup> The Independent, Unrest at Safi barracks as migrants demand freedom, September 2019, available at: <https://bit.ly/39k8Eky>.

<sup>199</sup> Malta Today, Migrants at Safi detention centres are protesting against their detention, September 2019, available at: <https://bit.ly/2Uer8yl>.

<sup>200</sup> Malta Today, Police arrest several migrants after protest at Safi detention centre, October 2019, available at: <https://bit.ly/3bnLPd>.

<sup>201</sup> Press statement available at: <https://bit.ly/2QEOPoo>.

<sup>202</sup> The Independent, Safi detention centre, available at: <https://bit.ly/2Jes67C>.



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>203</sup>

## 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 between 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 the 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. Following a visit in 2015, the CPT stated that there was no systematic medical screening in place for every newly arrived detainee.<sup>204</sup>

NGOs visiting detainees in 2019 reported that migrants face particularly long waiting times, up to several weeks, before having access to a doctor when requested.

The vast majority of applicants are now detained in application of Health Regulations and undergo medical examination which only consists in 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.

## 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 |

According to the 2015 policy, UNHCR, relevant international organisations, health officials, legal counsels and relevant accredited NGOs shall have access to applicants in detention.<sup>205</sup> Moreover, the 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>206</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

<sup>203</sup> Press Statement available at: <https://bit.ly/2UfVpx7>.

<sup>204</sup> *Ibid.*

<sup>205</sup> Strategy Document, November 2015, 17.

<sup>206</sup> Regulation 6A Reception Regulations.

remains an issue.<sup>207</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.

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.

There is no published policy position regarding visits by politicians, but politicians have visited the detention centres on occasion.

UNHCR, legal advisers and NGOs are allowed access at any time in order for them to provide their services to detained persons. No specific criteria seem to apply, 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.

Following the change in the detention policy and the tensions within the detention centre where hundreds of people are detained with no information, access to detention had been limited at times during 2019.

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.

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 Lister detention centres. This situation is highly problematic as NGOs have very limited resources and cannot provide information to all the persons in need on an individual basis.

## 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>208</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.

<sup>207</sup> Information provided by Katrine Camilleri, Director of JRS Malta, January 2017.  
<sup>208</sup> Regulation 6(3) Reception Regulations.

From the practice observed in recent years, review of detention is usually now done after the first seven days. NGOs have noticed that, in recent years, asylum seekers have been released and placed under alternatives to detention after two or three months, following their interview with the Refugee Commissioner.

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. These difficulties were also highlighted by the European Court of Human Rights in the cases brought against Malta by detained asylum seekers.<sup>209</sup>

The vast majority of migrants are now detained in application of Health Regulations. 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>210</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 community for immediate assistance. As a consequence, NGOs have refrained from initiating similar proceedings for other applicants.

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<sup>209</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.

<sup>210</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>.

## 1.2. Review of pre-removal detention under the Returns Regulations

In 2014, amendments were made to the Returns Regulations in order to further transpose the Returns Directive. The amendments introduced the review, either on application by the detained individual or *ex officio* by the Principal Immigration Officer, of a person's detention at reasonable intervals that shall not exceed three months. As it is provided for in the law, Regulation 11(8) further specifies that in situations of detention lasting six months or more, this review process is obligatory and the Principal Immigration Officer is duty-bound to inform the Immigration Appeals Board of it, with the Board supervising the review.

Throughout the second half of 2014 a number of reviews were in fact conducted, resulting, in most cases, in the release of the detained person. Although the Regulations apply to persons in a return procedure, some reviews of the detention of asylum seekers awaiting a decision on their asylum application were also conducted. Some of these reviews resulted in the asylum seeker's release from detention. Limited information is available on the details of the review procedures, but it seems that those implemented so far have consisted of an assessment of the "returnability" of persons based on their nationalities.

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".

## 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 *Louled Massoud v. Malta*, in *Abdullahi Elmi 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>211</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.

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<sup>211</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.

In addition to the length of time for 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. A case was brought before the Court in January 2017 by a detained asylum seeker, yet his detention was confirmed by the Court. The case was latter brought before the European Court of Human Rights who, in turn, did not find a violation of Articles 5(1) and 5(4) of the Convention.

The Court's reasoning in the judgment was that while under Article 5(1) detention which was not compliant with domestic law induced a violation of that provision, a breach of time-limits for automatic reviews established in law did not necessarily amount to a violation of Article 5(4) if the proceedings by which the lawfulness of an applicant's detention were examined had, nonetheless, been decided upon speedily.

In the applicant's case, despite certain irregularities, the time which had elapsed until his first review could not be considered unreasonable.

The Court also held, unanimously, that there had been no violation of Article 5(1), finding that the applicant's detention had been closely connected to the ground of detention relied on by the Government and the length of detention could not have been considered unreasonable.<sup>212</sup>

### **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 in order to mislead the authorities; the fact that over the years there were only very few cases where this remedy was used successfully; and the duration of such proceedings.

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<sup>212</sup>

ECtHR, *Aboya Boa Jean v. Malta*, Application No 62676/16, Judgment of 2 April 2019.

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 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>213</sup> Free legal assistance and representation entails preparation of procedural documents and participation in any hearing before the Immigration Appeals Board. Yet 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 said 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>214</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.

## E. Differential treatment of specific nationalities in detention

No differential treatment on the basis of nationality has been reported.

<sup>213</sup> Regulation 6(5) Reception Regulations.

<sup>214</sup> ECtHR, *Suso Musa v. Malta*, Application No 42337/12, Judgement of 9 December 2013, par. 61.

### 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>215</sup>

Once international protection is granted by RefCom, the beneficiary is issued a residence permit by Identity Malta, the public agency in charge of matters relating to passports, identity documents, 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.

<sup>215</sup> Regulation 20 Procedural Regulations.



## 2. Civil registration

Individuals can register child birth 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 his or her 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 2019:	Not available
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National legislation provides for the possibility for third-country nationals residing regularly in Malta to access long-term residence.<sup>216</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>217</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.

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>218</sup>

<sup>216</sup> Status of Long-Term Residents (Third Country Nationals) Regulations, Subsidiary Legislation 217.05, November 2006, available at: <http://bit.ly/2kX9hvu>.

<sup>217</sup> Regulation 5 Long-Term Residence Regulations.

<sup>218</sup> Regulation 7 Long-Term Residence Regulations.

In practice, it is close to impossible for beneficiaries to access long-term residence as the threshold for income is particularly high and the language requirements are burdensome.

### Specific Residence Authorisation Status

On 15 November 2018, Malta issued a policy regularising a select group of failed asylum seekers, the Specific Residence Authorisation.<sup>219</sup> The Specific Residence Authorisation (SRA) was introduced to replace the former Temporary Humanitarian Protection New (THPN) status. SRA recognises the needs of failed asylum seekers who have been residing in Malta for a period of five years and are actively contributing to Maltese society. In order to be eligible to apply applicants need 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 is 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 hold a valid Temporary Humanitarian Protection New (THPN) are to be granted an SRA automatically, without any individual assessment. Upon renewal, an individual assessment will be conducted by Identity Malta and the immigration authorities based on the criteria outlined above.

The Government also clarified how the above-listed eligibility criteria will be assessed, taking into account the particular situation of families, vulnerable persons and those who were unable to secure legal employment.

In 2019, the authorities received 878 applications for SRA and delivered 861 residence permits.

However, according to NGOs working in the field, many people were denied the right to apply when Identity Malta considered their application *prima facie* not complete. Consequently, these individuals were not given any document or clear explanation as to the reason why they were not allowed to apply.

When applications are registered and processed, people usually receive a decision in writing mentioning either the acceptance or the ground for rejection. However, no information about the possibility to challenge such a negative decision is mentioned and it remains unclear how one can challenge such decisions.

NGOs assisting migrants for SRA applications report that the procedure is swift from the moment applications are registered. They also report that no matter the situation of the applicant, the requirement of irregular entry is absolute and suffers no exception.

NGOs also report issues when assessing families' applications and reported many women being rejected when their male partners received residence permits.

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<sup>219</sup> Ministry for Home Affairs, National Security and Law Enforcement, *Policy regarding Specific Residence Authorisation*, November 2018, available at: <https://bit.ly/2Svq8qA>.

## 4. Naturalisation

### Indicators: Naturalisation

- |   |               |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship?  | 10 years      |
| 2. Number of citizenship grants to beneficiaries in 2019: | Not available |

The Citizenship Act foresees that foreigners or stateless persons may apply for citizenship in Malta.<sup>220</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 language.<sup>221</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.

## 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? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  |
| 2. Does the law provide for an appeal against the first instance decision in the cessation procedure?           | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  |
| 3. Do beneficiaries 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 |

The Refugees Act provides for the possibility of cessation of **refugee status**.<sup>222</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;

<sup>220</sup> Citizenship Act, Chapter 188, September 1964, available at: <http://bit.ly/2lz5z8H>.

<sup>221</sup> Article 10(1) Citizenship Act.

<sup>222</sup> Article 9 Refugees Act.

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 Refugee Appeals Board within 15 days after notification.<sup>223</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 Minister is satisfied, after consulting the Commissioner, 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>224</sup>

Appeals are possible against such decisions under the same conditions as the regular procedure.<sup>225</sup>

According to the authorities, cessation is not applied to individuals or specific groups of beneficiaries of international protection in Malta.<sup>226</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 2019.

## 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 Refugees Act, a declaration of **refugee status** can be revoked by the Minister of Home Affairs after due investigation, in the case where a person was erroneously recognised as a refugee on an application which contains any materially incorrect or false information, or was so recognised owing to fraud, forgery, false or misleading representation of a material or substantial nature in relation to the application.<sup>227</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, reasons as to why his or her refugee status should not be withdrawn.

<sup>223</sup> Article 9(2) Refugees Act.

<sup>224</sup> Article 21 Refugees Act.

<sup>225</sup> Article 9(2) Refugees Act.

<sup>226</sup> Information provided by RefCom, 2 June 2016.

<sup>227</sup> Article 10 Refugees Act.

The Minister of Home Affairs 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>228</sup>

Regarding **subsidiary protection** beneficiaries, the Minister 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>229</sup>

As of 31 October 2019, the Refugee Commissioner withdrew one refugee status, nine subsidiary protection statuses and seven humanitarian protection statuses.<sup>230</sup>

## 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

Recognised **refugees** may apply for family reunification in Malta according to national legislation.<sup>231</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>232</sup> The exclusion of subsidiary protection beneficiaries from family reunification was raised by the Council of Europe Commissioner for Human Rights.<sup>233</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.

<sup>228</sup> Article 10(3) Refugees Act.

<sup>229</sup> Article 22 Refugees Act.

<sup>230</sup> Information provided by the Office of the Refugee Commissioner, February 2020

<sup>231</sup> Family Reunification Regulations, LN 150 of 2007, Immigration Act Cap 217, 2007, available at: <http://bit.ly/2kC9tiH>.

<sup>232</sup> Regulation 3 Family Reunification Regulations.

<sup>233</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>.

In November 2018, JRS Malta, aditus foundation and Integra foundation, supported by UNHCR Malta, published a report titled “Family Unity: a fundamental right”.<sup>234</sup> The report examines national law and policy on family reunification for beneficiaries of subsidiary protection in the 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 have to 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 the relationship with family members, 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>235</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>236</sup>

## 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 which shall be renewable. In the past, the reuniting family members were given a one-year residence document indicating “Dependant family member – refugee”, causing difficulties when public service providers (e.g. hospitals) failed to recognise the holder’s entitlements as being equal to those of his or her refugee sponsor.

Policy has changed in 2016 and reunited family members are now granted a residence permit of three years, with the mention “Dependant family member”.<sup>237</sup>

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<sup>234</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>235</sup> Regulation 12 Family Reunification Regulations.

<sup>236</sup> Information provided by Identity Malta, 2017.

<sup>237</sup> Information provided by Mr Ryan Spagnol, Director of Identity Malta, 29 September 2016.

According to national legislation,<sup>238</sup> 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. 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>239</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>240</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>241</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,<sup>242</sup> as it is not an internationally recognised travel document. 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?	9-12 months
2. Number of beneficiaries staying in reception centres as of 31 December 2019	2,160

<sup>238</sup> Regulation 20(2)(a) Procedural Regulations.

<sup>239</sup> Regulation 15 Family Reunification Regulations.

<sup>240</sup> Regulation 20 Procedural Regulations.

<sup>241</sup> Information provided by Mr Ignatius Ciantar, Senior Principal, Passport Office and Civil Registration Directorate, 19 September 2016.

<sup>242</sup> *Ibid.*



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 and Peace Lab. Two centres are 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 2019.

**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>243</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>244</sup>

This problem persisted throughout 2018 and 2019, 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>245</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>246</sup>

**Refugees** are entitled to access the labour market under the same conditions as Maltese nationals. In order 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>247</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.

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<sup>243</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>244</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>245</sup> Times of Malta, 'Number of officially homeless in Malta is "not a reality"', 6 October 2018, available at: <https://bit.ly/2SPesJV>.

<sup>246</sup> Regulation 20c Procedural Regulations.

<sup>247</sup> European Commission, *Challenges in the Labour Market Integration of Asylum Seekers and Refugees*, EEPO Ad Hoc Request, May 2016.

**Subsidiary protection** beneficiaries may not be eligible for certain jobs e.g. police, 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 pension. They have access to employment training programmes at Jobs Plus.

In Malta, research findings by the European Network Against Racism indicate that non-EU qualifications are often not recognised.<sup>248</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 recent “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>249</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 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>250</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.

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<sup>248</sup> European Commission, *Labour market integration of asylum seekers and refugees: Malta*, 2016, available at: <http://bit.ly/2IkMKc6>.

<sup>249</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>.

<sup>250</sup> Ministry of Education, *Launch of the National Literacy Strategy*, available at: <https://bit.ly/3cfEUay>.

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>251</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 2019, 2,028 people applied for the 'I Belong Programme', among them, 200 were beneficiaries of international protection and 111 were asylum-seekers.

## F. Social welfare

The Procedural Regulations provide for access to social welfare for beneficiaries of international protection.<sup>252</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>253</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.

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<sup>251</sup> MCAST, *Skills Kit*, available at: <https://bit.ly/3ccZpEI>.

<sup>252</sup> Regulation 20 Procedural Regulations.

<sup>253</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>.

## 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>254</sup> as defined in the Procedural Regulations.<sup>255</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>256</sup> Beneficiaries have to lodge an application for 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>257</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>258</sup>

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<sup>254</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>255</sup> Regulation 20 Procedural Regulations.

<sup>256</sup> Regulation 20 Procedural Regulations.

<sup>257</sup> Nitktellmu, Refugee Integration Perspectives in Malta, December 2013, available at: <http://bit.ly/2lywmBc>.

<sup>258</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="http://goo.gl/SHBvX4">http://goo.gl/SHBvX4</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="http://goo.gl/SHBvX4">http://goo.gl/SHBvX4</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="http://goo.gl/uiOm2v">http://goo.gl/uiOm2v</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="http://goo.gl/SHBvX4">http://goo.gl/SHBvX4</a> (EN)