



GOVERNMENT OF MALTA
PARLIAMENTARY SECRETARIAT
FOR REFORMS AND EQUALITY



Detention

TURNING THE TABLES

Facilitated by: African Media Association Malta
Prepared by: Neil Falzon (ADITUS)

2022



Asylum, Migration and Integration Fund 2014-2020
This project is part-financed by the European Union
Co-financing rate: 75% EU Funds 25% Beneficiary Funds
Sustainable Management of Migration Flows



This report presents outputs and key points raised during the pre-conference and conference on political rights as part of the migrant-led project



Summary

This report presents outputs and key points raised during the pre-conference and conference on political rights as part of the migrant-led project, Turning the Tables, coordinated by African Media Association Malta (AMAM). AMAM brought together relevant stakeholders, migrant communities and the general public to brainstorm and debate selected topics, amongst them education; employment; documentation; detention; and political rights. The main aim of the project is to facilitate dialogue and learning, and in this report, we address the difficulties encountered by migrants as a result of Maltese detention policy. The sections below lay out the key findings specific to migrant detention and integration.

The report will discuss the Maltese context to migrant detention, the current legal regime in place, and the reality of life in detention. Through the steady increase in sea arrivals to Malta in 2002, and accession to the European Union (EU), the Maltese asylum system has undergone drastic changes to adjust to the ever-changing landscape of migration. Through the detention of migrants, including vulnerable persons and children, integration is being impeded, and the long-lasting trauma of such detention affects long term migrant integration.

Migrant detention acts as the most significant barrier to migrant integration, through the physical and social isolation from all other members of Maltese society. This report will discuss the legal framework in place that allows for the detention of migrants, including the

automatic detention of asylum seekers arriving by boat, on the basis of public health, and the other grounds for the detention of migrants. The physical and psychological conditions that detainees are forced to endure are deplorable, yet the legal remedies available are hard to access, or ineffective at providing an adequate remedy for detention.

While the Maltese authorities face a significant challenge in the disproportionate number of irregular arrivals of refugees, asylum seekers and migrants, *“this situation cannot absolve the Maltese authorities of their international human rights obligations as regards the treatment of foreign nationals deprived of their liberty. The State must exercise its duty of care to all persons deprived of their liberty and treat them with humanity and with dignity”*¹.

¹ CPT, *Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020*, March 2021.



Contents

Summary	3
1 What is Detention?	5
1.1 History of Maltese Detention Policy	5
2 Current Administrative Detention	9
2.1 The Strategy for the Reception of Asylum Seekers and Irregular Migrants.....	9
2.1.1 The ‘End’ of Automatic and Mandatory Detention	9
2.1.2 Alternatives to Detention.....	9
2.1.3 Specific Legal Grounds for Detention	10
2.1.4 The Initial Reception Centre.....	10
2.2 Detention Service in Malta	11
2.3 Legal Basis for Detention	12
2.3.1 Detention of Asylum Seekers	12
2.3.2 Detention of Third-Country Nationals	13
2.3.3 Detention under Dublin III Regulations	13
2.3.4 Detention on Public Health Grounds.....	14
2.4 Other Considerations.....	15
2.4.1 Vulnerable Persons.....	15
2.4.2 When Removal is Not Possible	17
3 Legal Remedies	19
4 Life in Detention	21
4.1 Who is in Detention.....	21
4.2 The Living Conditions.....	21
4.3 Psychological Conditions	23
4.4 Conflicts	24
4.5 Access to Legal Representation.....	25
5 Recommendations.....	27
5.1 Systematic Reform	27
5.2 Reception and Detention Conditions	27

1. What is Detention?

The fact whether a person is being deprived of their liberty or are merely being subject to restriction of their movements is not always clear. The European Court of Human Rights (ECtHR) has consistently underlined that, “in order to determine whether someone has been deprived of his liberty, the starting-point must be his or her specific situation and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question. The difference...is one of degree or intensity, and not of nature or substance...”².

The Court, in its assessment of whether any measure is deprivation of liberty or restriction of movement, has taken into consideration:

- a. the relative size of the area within which the applicants are required to remain;
- b. the nature and level of supervision to which the applicant is subjected;
- c. the degree of possibility to make social contacts and maintain contacts with the outside world;
- d. the possibility of the applicant to retain his material possessions; and
- e. the extent of free movement during the day and night.

However, what is crucial is that what amounts to a deprivation of liberty is not solely determined by the classification imposed by national law, but rather the factual reality of the restrictions imposed on the

individual³. The ECtHR observed that “*the characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court’s conclusion as to the existence of a deprivation of liberty*”⁴ and that “*the classification of the applicants’ confinement in domestic law cannot alter the nature of the constraining measures imposed on them*”⁵.

1.1 History of Maltese Detention Policy

The detention of migrants who entered or resided in Maltese territory irregularly has been a constant in Maltese immigration legislation and policy. When the influx of migrant sea arrivals began to increase in 2002, Malta was not yet a member of the EU and therefore not bound by EU legislation and standards relating to migration. As a result, a Return Decision and Removal Order was given to all asylum seekers who entered Maltese territory irregularly, which resulted in their immediate, indefinite and mandatory detention. Some migrants remained in detention for years with no legal limit to the duration of their detention. The legal provision of a limit to the detention of asylum seekers was the first positive reform upon Malta’s accession to the EU, followed by the separation of single men from single women and provision of a vulnerability and age assessment that could call for the release of a detained

² See cases Tommaso v. Italy, 43395/09, para. 80; Guzzardi v. Italy, 7367/76, para. 92; Medvedyev and Others v. France, 3394/03, para. 73; Creanga v. Romania, 29226/03, para. 91).

³ International Commission of Jurists, Migration and International Human Rights Law - A Practitioners’ Guide, Third Edition, 2021.

⁴ Creanga v. Romania, 29226/03, para. 92

⁵ Khalifa and Others v. Italy, 16483/12, para. 71.



Up until 2015, the irregular entry or status of a migrant was greeted with automatic and mandatory detention, as per the Immigration Act

person⁶. Local organisations had regular access to the detention centres, with opportunities to provide services, monitor living conditions and raise awareness of issues to the public and relevant authorities.

Up until 2015, the irregular entry or status of a migrant was greeted with automatic and mandatory detention, as per the Immigration Act⁷. Additionally, asylum seekers were being detained on the same basis as other migrants, although they were limited to 12 months in detention⁸. Being one of the few Member States to have such a strict detention regime, Malta received widespread criticism for their practices⁹. Pressure mounted on the Maltese Government to drastically reform the policies and practices relating to migrant detention, with attention and visits from the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe's Human

Rights Commissioner¹⁰, the Committee for the Prevention of Torture (CPT)¹¹ and the UN Working Group on Arbitrary Detention¹².

In 2015, a new reception policy was adopted after the ECtHR issued severe judgements against Malta¹³. Furthermore, amendments to the Reception Regulations transposing the recast set of EU asylum directives into Maltese law was carried out in the same period¹⁴. This moved Malta to adopt a new reception policy and reform national legislation to detention based on individual assessments, rather than the existing policies of automatic detention. The 2015 *Strategy for the Reception of Asylum*

6 Malta Immigration Detention Profile: <https://www.globaldetentionproject.org/countries/europe/malta#country-report>.

7 *Immigration Act*, CAP. 217 of the Laws of Malta, 1970, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1>.

8 *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0033&from=EN>

9 Human Rights Watch, *Boat Ride to Detention*, 2012, <https://www.hrw.org/report/2012/07/18/boat-ride-detention-adult-and-child-migrants-malta> <accessed 23 May 2022>; Amnesty International, *Amnesty International Report 2008 - Malta*, 2008, <https://www.refworld.org/docid/483e279f2.html>.

10 See the various letters and reports by the Commissioner on the Malta Country Page, <https://www.coe.int/en/web/commissioner/country-monitoring/malta>.

11 See the reports on the Malta Country Page, <https://www.coe.int/en/web/cpt/malta>.

12 UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention on its follow-up visit to Malta - Note by the Secretariat*, 2016, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/50/Add.1.

13 The judgments of *Louled Massoud v Malta*, *Suso Muso v Malta*, and *Aden Ahmed v Malta* held that Malta had violated the applicant's rights in relation to their detention; *Louled Massoud v. Malta*, 2010, App. No. 24340/08; *Suso Musa v. Malta*, 2013, App. No. 42337/12; *Aden Ahmed v. Malta*, 2013, App.No.55352/12.

14 Reception of Asylum Seekers Regulations, S.L. 420.06, <https://legislation.mt/eli/sl/420.6/eng>.

*Seekers and Irregular Migrants*¹⁵ was introduced to reform the Maltese asylum system, it coincided with a period where Malta was experiencing a stagnation of arrivals of asylum seekers by sea, and had a direct impact on the operational aspects of immigration detention and also on the legal aspects of use of such detention. Following this period of decreased arrivals, in the summer of 2018 the volume of sea arrivals increased drastically, with 3,400 arrivals in 2019 alone¹⁶. Although there is no official policy change, due to the lack of space in overcrowded reception centres and the inability to deal with such high number of arrivals, the authorities began automatically detaining all asylum seekers arriving irregularly in Malta or rescued at sea, on the basis of public health legislation¹⁷.

“...The Court finds it hard to conceive that in a small island like Malta, where escape by sea without endangering one’s life is unlikely and fleeing by air is subject to strict control, the authorities could not have had at their disposal measures other than the applicant’s protracted detention to secure an eventual removal in the absence of any immediate prospect of his expulsion.”

Louled Massoud v. Malta,
App No. 24340/08, ECHR 2010, 27 October 2010

The current administrative detention regime in Malta is comprised of the following:

- The 1970 *Immigration Act*¹⁸, which has been amended several times over the years, acts as the main national instrument that oversees border control, detention, deportation and residence in Malta;
- The 2015 Strategy for the Reception of Asylum Seekers and Irregular Migrants;
- Immigration and asylum legislation, a combination of laws originating from Malta’s original immigration system, and others from the transposition of EU legislation;
- Public Health legislation has been used as part and parcel of Malta’s administrative detention regime depriving asylum seekers of their liberty on the ground that there is a reasonable suspicion that they might spread contagious diseases.

the authorities began automatically detaining all asylum seekers arriving irregularly in Malta or rescued at sea, on the basis of public health legislation

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

16 UNHCR Malta, *Sea Arrivals and Asylum Statistics 2019*, https://www.unhcr.org/mt/wp-content/uploads/sites/54/2020/02/Malta-Sea-Arrivals-and-Asylum-Statistics_2019_UNHCRFactsheet.pdf.

17 Asylum Information Database (AIDA) Website: <https://asylumineurope.org/reports/country/malta/reception-conditions/short-overview-of-the-reception-system/> <accessed 23 May 2022>.

18 *Immigration Act*, CAP. 217 of the Laws of Malta, 1970, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1>.



**Immigration and asylum
legislation, a combination of
laws originating from Malta's
original immigration system**

2. Current Administrative Detention

2.1 The Strategy for the Reception of Asylum Seekers and Irregular Migrants

The Strategy for the Reception of Asylum Seekers and Irregular Migrants¹⁹, together with the amendments to the Reception Regulations, introduced the end to automatic and mandatory detention, particularly for vulnerable persons. It furthermore, created an Initial Reception Centre (IRC) as the first stage of screening and processing newly-arrived asylum seekers. In addition, it provided for the introduction and application of alternatives to detention and also provided clarity on the specific legal grounds for detention. Importantly, the law set a 9-month limit on the detention of asylum seekers²⁰. Finally, the law intended to provide basic information and identify vulnerable persons, unaccompanied minors, and victims of trafficking.

2.1.1 The 'End' of Automatic and Mandatory Detention

The 2015 Reception Strategy moved away from the mandatory and automatic detention of persons under Removal Order. The revised Article 14(2) of the *Immigration Act* reads²¹:

“If such a return decision is accompanied by a removal order, such person against whom such order is made, may be detained in custody until he is removed from Malta...”

The Reception Strategy produced a list of the specific grounds for detention, irregular entry not being one of them. Also provided for was the prohibition of the detention of vulnerable persons, including minors, with the Reception Regulations stating:

*“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”*²².

Despite this policy, the illegal detention of children and vulnerable persons has occurred for weeks or months, including in the case of Abdullahi Elmi and Aweys Abubakar v. Malta in 2016²³.

2.1.2 Alternatives to Detention

Also provided for in the 2015 Reception Strategy were the alternative to detention, mirroring those found under the recast Reception Conditions Directive. The alternatives are as follows²⁴:

19 Strategy for the Reception of Asylum Seekers and Irregular Migrants, 2015 <https://homeaffairs.gov.mt/en/MHAS-Departments/awas/Documents/Migration%20Policy%20FINAL.pdf>

20 Regulation 6(7) of the Reception Regulations: <https://legislation.mt/eli/sl/420.6/eng>.

21 For further commentary on the revisions brought about the Strategy and related reforms, see United Nations Commissioner for Human Rights (UNHCR), *UNHCR's Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers*, 2016, <http://www.refworld.org/pdfid/56e963824.pdf>.

22 Regulation 14(3) Reception Regulations, <https://legislation.mt/eli/sl/420.6/eng>.

23 ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgement of 22 November 2016.

24 Regulation 6(8) Reception Regulations, <https://legislation.mt/eli/sl/420.6/en>.

- a. To report to a police station;
- b. To reside at an assigned place;
- c. To deposit or surrender documents; or
- d. To place one-time guarantee or surety.

These alternatives to detention would be limited to 9 months, the same limit as with the detention of asylum seekers²⁵. It is important to note that, as laid out by the recast Reception Conditions Directive, alternatives to detention should only be used in situations where there is a legal basis for detention, and not simply when detention is not resorted to²⁶. Conversely, the wording of the Receptions Regulations, that transposed into Maltese law, implies that it is possible for alternatives to detention to be used even in cases where there is no legal ground for detention²⁷. Concerns on the use of alternatives to detention were confirmed when asylum seekers were released from detention and immediately placed in alternatives to detention despite having no clear ground for detention²⁸. This use of alternatives to detention continued up until 2018, with 706 asylum seekers released from detention and placed under alternatives to detention²⁹.

2.1.3 Specific Legal Grounds for Detention

The amended Reception of Asylum Seekers Regulations, providing an exhaustive list of the legal grounds in which

²⁵ Ibid.

²⁶ Asylum in Europe Website: https://www.asylumineurope.org/reports/country/malta/detention-asylum-seekers/legal-framework-detention/alternatives-detention#footnote3_oaygdbdf. <accessed 17 May 2022>

²⁷ *aditus foundation and others, NGO Input on the Draft Strategy Document: Strategy for the Reception of Asylum-Seekers and Irregular Migrants*, 2015, <http://bit.ly/2kX6K4j>.

²⁸ Ibid.

²⁹ Information provided by Immigration Office, Malta Police Force, February 2019.

the Principal Immigration Officer (PIO), may issue a detention order for an asylum seeker. The grounds for detention are the following:

- a. In order to determine or verify his or her identity or nationality;
- b. 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;
- c. 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;
- d. 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;
- e. When protection of national security or public order so require; or
- f. In accordance with the Dublin III Regulation.

2.1.4 The Initial Reception Centre (IRC)

Another notable development in the 2015 Reception Strategy was the establishment of the IRC run by the Agency for the Welfare of Asylum Seekers (AWAS). The IRC was introduced to accommodate newly arrived migrants whose entry was irregular, to facilitate medical screenings and processing, in addition to identifying vulnerable people and minors through the age and vulnerability assessment procedures.

The original intent was to temporarily hold this group of persons in the IRC away from other groups of irregular

migrants until the necessary medical clearances could be obtained. This temporary stay was envisioned to be no more than one week, which could be extended on the basis of health-related reasons, and the IRC fulfilled its objectives when arrivals to Malta were extremely low. Access to the detainees in the IRC was initially limited to the Malta Red Cross Society, the UNHCR and the Jesuit Refugee Service (JRS) Malta, and only much later were other organisations granted access to visit and provide services to clients. The drastic increase in arrivals to Malta in 2018 affected the entire Maltese asylum system, including the IRC³⁰, and although not an official detention centre, has operated as a secure detention site since. The IRC concept was subsequently extended to the Safi Detention Centre so that the Centre could accommodate newly arrived asylum seekers as well as those detained within the ‘regular’ detention centre.

2.2 Detention Service in Malta

From the summer of 2018 onwards, all asylum seekers rescued at sea, including those to be onward relocated to other EU member states are detained in three centres. These centres are located in Marsa, the Marsa Initial Reception Centre and two in Safi, the Safi Barracks, which has since been designated partially as an Initial Reception Centre, and Ħal-Far Immigration Reception Centre, known as China House Detention Centre, set up in 2020 for quarantine in response to the Covid-19

Pandemic³¹. The Detention Service (DS)³² is responsible for the administration of all detention centres, which is stipulated in Chapter 4 of the Reception Strategy³³, and subject to the ‘*Standing Instructions for the Detention Service: Detention Centre Rules*’.

DS operates partly under the regime of the amended *Reception of Asylum Seekers Regulations*, and partially under the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations*³⁴. The DS is obligated to meet reception standards through the provision of basic services such as meals, daily access to open air, and access to free medical care and attention. Detention facilities must also provide telephones for communication, places of worship, educational and other activities, and private rooms for one-to-one interviews among others. Additionally, voluntary return opportunities should be promoted to prospective returnees. If vulnerabilities and specific needs are identified by professionals, such persons should be granted access to the profiling documentation available at the IRC. Each migrant will have an AWAS worker following their case through the initial reception or detention phase, where vulnerabilities, age, identity and nationality will be assessed and established.

30 The Malta Independent, *Increase in migrant boat arrivals to Malta biggest change to migratory dynamic in 2018 – UNHCR*, 7 January, 2019, <https://www.independent.com.mt/articles/2019-01-07/local-news/increase-in-migrant-boat-arrivals-to-Malta-biggest-change-to-migratory-dynamic-in-2018-UNHCR-6736201653> <accessed 23 May 2022>.

31 Asylum in Europe Website: <https://asylumineurope.org/reports/country/malta/detention-asylum-seekers/detention-conditions/place-detention/> <accessed 23 May 2022>.

32 For more information on the DS, see Legal Notice 16 of 2016, *Detention Service Regulations*, 2016, <https://legislation.mt/eli/sl/217.19/eng/pdf>.

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

34 *Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations*, S.L. 217.12, 2011, <https://legislation.mt/eli/sl/217.12/eng/pdf>.

The Reception Regulations obliges Malta to grant the UNHCR, relevant international organisations, health officials, legal counsels, and relevant non-government organisations (NGOs) access to detention centres. Under the Common Standards and *Procedures for Returning Illegally staying Third Country Nationals Regulations*, these organisations may also be granted access to prospective returnees. Members of the media are permitted to visit upon authorisation from the Home Affairs Ministry. Furthermore, visits from family members and friends of detainees are permitted, but only upon the approval and actions of the DS.

2.3 Legal Basis for Detention

The current Maltese detention regime dictates that Detention Orders may be given to Third-Country Nationals (TCNs) denied entry at the border, asylum seekers, TCNs pending removal, and persons in the Dublin Procedure.

2.3.1 Detention of Asylum Seekers

Where permission to enter Malta is refused to TCNs, they may be temporarily detained in a Minister-approved location. These persons are considered to not have arrived in Malta, and are in legal custody. As previously outlined, under Regulations 6(1) of the Reception Regulations³⁵, which corresponds to Article 8(3) of the recast Reception Conditions Directive³⁶, asylum seekers may be detained

on the following grounds:

- a. To determine or verify identity or nationality;
- b. To determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk that the applicant will abscond;
- c. To decide on the applicant's right to enter Maltese territory;
- d. When the applicant is subject to a return procedure and there are reasonable grounds to believe that the application for international protection was made solely to delay or frustrate an enforcement of a return decision;
- e. To protect national security or public order; or
- f. To determine the member state responsible for examining the application.

The majority of asylum seekers in Malta are detained on the first two grounds, namely a) and b). With regards to the second ground for detention, a 2018 judgement from the Court of Magistrates stated that in the case of an asylum seeker returned to Malta under the Dublin III Regulation³⁷, the applicant had provided the majority of the elements needed for the determination of his asylum claim, and that a risk of absconding is not, in itself, a ground for detention³⁸. Detention under these grounds is for a maximum period of 9 months³⁹.

35 *Reception of Asylum Seekers Regulations*, S.L. 420.06. These were amended by L.N. 417 of 2015, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662&l=1> <accessed 23 May 2022>.

36 *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection* (recast), 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0033&from=EN>.

37 *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person* (recast), 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU) No 604/2013.

38 Court of Magistrates, *Rana Ghulam Akbar v Kummissarju tal-Pulizija*, 26 February 2018.

39 Regulation 6(7), *Reception Regulations*.

2.3.2 Detention of Third-Country Nationals

Immigration police have the right to remove irregular migrants through a removal order which can result in a detention order. Such irregular migrants include rejected asylum seekers, stateless persons, and TCNs who have overstayed a single work permit. TCNs who have overstayed their visa are given 10 days to rectify their legal status in Malta, through pathways to regularisation such as obtaining a single work permit, and can be subject to a detention order if they do not rectify their status in the time allowed as they are officially staying illegally in Malta. The EU Return Directive⁴⁰ lays down the procedures of returning illegally staying TCNs, and was transposed into Maltese law through the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations⁴¹.

Regulations 6 a) and b) of the Maltese Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations prescribe that, persons subject to removal procedures may be detained where other sufficient and less coercive measures are inapplicable and only in order to carry out the removal, where:

- a. There is a risk of absconding; or
- b. The person avoids or hinders the return/removal procedure⁴².

The issuing of a removal order signals the beginning of

⁴⁰ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 2008, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>.

⁴¹ Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, S.L. 217.12, 2011, <https://legislation.mt/eli/sl/217.12/eng/pdf>.

⁴² Ibid.

the identification procedure in which the authorities attempt to confirm the nationality of the third-country national, and their country of origin must accept them as a national. This process can take months due to the bureaucratic process that involves inter-governmental communications, and can often become impossible to confirm the identity of the TCN. If at any stage, before or during the detention of the migrant, there is no prospect of removal, or if the police are not actively trying to remove them, they cannot be detained. In relation to stateless persons, the impossibility of returning a person to any country is not itself a juridically relevant factor⁴³. There is an initial limit of 6 months to the length of detention for the purpose of removal, which may be extended by 12 months in exceptional circumstances. If after these 18 months the police have not completed the identification process, the detained person must be released.

2.3.3 Detention under Dublin III Regulations

Article 28 of the Dublin III Regulation⁴⁴ outlines the permitted reasons and standards of the detention of persons in the Dublin Procedure, which are as follows:

- a. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation;

⁴³ For more on the risk of arbitrary detention faced by stateless persons in Malta: European Network on Statelessness (ENS), *Statelessness Index – Malta Report*, <https://index.statelessness.eu/country/malta> <accessed 23 May 2022>; ENS and aditus foundation, *Protecting Stateless Persons from Arbitrary Detention in Malta, 2015*, https://aditus.org.mt/Publications/ENS_reports.zip.

⁴⁴ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 2013, OJ L. 180/31-180/59; 29.6.2013, (EU) No 604/2013.

- b. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only insofar as detention is proportional and other less coercive alternative measures cannot be applied effectively; or
- c. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention⁴⁵. Furthermore, persons who are already beneficiaries of international protection in another EU Member State will be returned to the country in which they received protection, and may be detained if protection was revoked by that state and if removal is possible.

2.3.4 Detention on Public Health Grounds

The final and most controversial justification for the detention of migrants in Malta relies on national health legislation to detain asylum seekers. Through the misapplication of the law, Malta is using the Prevention of Disease Ordinance⁴⁶ to deprive the majority of asylum seekers of their liberty, on the ground that there is reasonable suspicion that they might spread a contagious disease.

45 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast), 2013.

46 Prevention of Disease Ordinance, CAP. 36 of the Laws of Malta, 1982, <https://legislation.mt/eli/cap/36/eng/pdf>.

The detention of asylum seekers in Malta on the basis of the Prevention of Disease Ordinance⁴⁷ is not compatible with international and EU standards. The detention of asylum seekers on health grounds was not intended in the recast Reception Directive or in the national Reception Regulations, and is not a permitted ground for detention under such legislation. This is not a formal detention regime and the detainees are not issued with a detention order. Since the drastic increase in arrivals from asylum seekers to Malta in 2018, the detention of all asylum seekers reaching Malta by boat has been automatic. This detention is on the basis of the 1982 Prevention of Disease Ordinance that provides for the Superintendent of Public Health to restrict personal movements. The Superintendent informs asylum seekers through a signed document that their movement is about to be restricted, under the provision found in Article 13(1), which 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.”*⁴⁸

The ordinance also states that in the exceptional circumstances of deprivation of liberty, there must be an order from a Magistrate, they must be detained in a hospital, and the person must be suffering from a disease. This means that suspicion, however reasonable,

47 Ibid.

48 Prevention of Disease Ordinance, CAP. 36 of the Laws of Malta, 1982, <https://legislation.mt/eli/cap/36/eng/pdf>.

that an asylum seeker is suffering from a disease is not sufficient cause for detention. The template document that is provided and signed by the Superintendent to the asylum seeker, and does not explicitly inform them that they are about to be deprived of their liberty. The document is available in many languages, but there have been cases of Arabic documents being given to Bangladesh and Pakistan nationals. Hundreds of asylum seekers have been detained for over 5 months, often up to 10 months, despite the ordinance permitting a maximum period of 10 weeks in exceptional circumstances⁴⁹. There is no evidence that the extension of their detention due to the need to finalise microbiological tests was ever communicated to the detainees, and no effective remedy is available for such detention.

This form of detention has been pronounced illegal by Maltese Courts in 6 cases brought by detained asylum seekers at the end of 2019⁵⁰. Despite initial medical testing confirming the absence of infectious diseases, the asylum seekers' liberty was deprived as they were detained in Safi Detention Centre for up to and over 100 days. Communication of their medical based detention was not always in a language understood by the applicants, and their detention lasted longer than the limit provided

by law⁵¹. The Court ordered the applicants' immediate release, and the Office of the Attorney General and the Superintendent of Public Health agreed that at the time of their court applications, there were no grounds for detention.

2.4 Other Considerations

2.4.1 Vulnerable Persons

The Reception Regulations, in accordance with EU law, states that vulnerable persons, including LGBTQAI+ persons, persons with disabilities, and victims of trafficking, shall not be subject to detention. This includes identified minors and alleged unaccompanied minors, and all other options should be exhausted in order to prevent the detention of applicants who claim to be minors⁵². The 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*”⁵³. Often, where vulnerable persons are detained and risk facing discrimination from within detention, they may avoid reaching out to lawyers or staff out of fear of drawing attention. If they are not promptly identified as vulnerable persons, they are subject to illegal detention.

Where the law indicates that an alleged minor should be treated as vulnerable until proven otherwise through the age assessment procedure, alleged unaccompanied minors and other vulnerable persons are still subject to detention before their assessments. These flaws in the age and vulnerability assessment procedures

49 The Times of Malta, ‘1400 migrants detained illegally at Marsa and Safi – UNHCR’, January 2020, available at: <https://timesofmalta.com/articles/view/1400-migrants-detained-illegally-at-marsa-and-safi-unhcr.760653> <accessed 23 May 2022>.

50 Court of Magistrates (Malta) as a Court of Criminal Inquiry, *Application of Zeeshan Saleem*, 9 October 2019, https://aditus.org.mt/Publications/applicationofZeeshanSaleem_09092019.pdf; Court of Magistrates (Malta) as a Court of Criminal Inquiry, *Application of Mohammed Abdallah Mohammed*, 8 October 2019, https://aditus.org.mt/Publications/applicationofMohammedAbdallahMohammed_08092019.pdf.

51 Times of Malta, *Third detention centre opens amid questions over legality*, 15 March 2020, <https://timesofmalta.com/articles/view/third-detention-centre-opens-amid-questions-over-legality.778184> <accessed 23 May 2022>.

52 Regulation 14(1), *Reception Regulations*.

53 Regulation 14(3) *Reception Regulations*.



Where the law indicates that an alleged minor should be treated as vulnerable until proven otherwise through the age assessment procedure

have resulted in the illegal detention of vulnerable persons and unaccompanied minors. During visits by aditus foundation to Safi Detention Centre, several unaccompanied minors were identified, who had declared their minor age upon arrival, but had not yet been through the age assessment procedure, which was also confirmed by the Home Affairs Minister⁵⁴. Newly arrived families and children whose age is undisputed are taken to the closed section of the Marsa IRC, before being transferred to open centres. Furthermore, the public health ordinance has also been applied to deprive the liberty of vulnerable applicants and children, as seen in the illegal detention of children Abdullahi Elmi and Aweys Abubakar. The ECtHR judgement of Abdullahi Elmi and Aweys Abubakar v. Malta found that Malta had detained two children for 8 months in 2016, under conditions amounting to degrading treatment and without an effective and speedy remedy to challenge the lawfulness of such detention⁵⁵.

In a visit to Maltese Detention Centres, the CPT⁵⁶ highlighted the detention of vulnerable persons, including minors⁵⁷. The CPT report confirmed the presence of children and persons awaiting age assessment results in detention. It furthermore confirmed the detention of other vulnerable persons, such as breast-feeding mothers and pregnant persons and their young children, in Marsa IRC and the now-closed Lyster Barracks⁵⁸. These women and children were being detained with unrelated single adult men, with no privacy, for months with many having no contact with a doctor or midwife for the duration of their detention. The Council of Europe Commissioner for Human Rights confirmed that these practices continued into October 2021⁵⁹, and was reinforced through 7 Habeas Corpus cases filed by the aditus foundation in

54 The Malta Independent, *Child migrants being kept in detention centre*, 10 September 2019, <https://www.independent.com.mt/articles/2019-09-10/local-news/Minors-being-kept-in-detention-centre-6736213325> <accessed 23 May 2022>.

55 ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgement of 22 November 2016.

56 Council of Europe Website: <https://www.coe.int/en/web/cpt> <accessed 23 May 2022>.

57 CPT, *Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020*, March 2021.

58 Ibid.

59 CoE, *Reforms needed to better protect journalists' safety and the rights of migrants and women in Malta*, 18 October 2021, available at: <https://www.coe.int/en/web/commissioner/-/reforms-needed-to-better-protect-journalists-safety-and-the-rights-of-migrants-and-women-in-malta> <accessed 23 May 2022>.

2022⁶⁰. The 7 young men included 3 confirmed minors at various stages of the procedure, who had all been detained upwards of 2 months in Safi Detention Centre. Another case filed in March 2022 before the Immigration Appeals Board confirmed again that Malta still detains children with adults pending age assessment⁶¹, despite the numerous confirmations that Malta continuously, and inhumanely, detains minors and vulnerable persons. The Immigration Police officially report that no minor or vulnerable people are detained in Malta and indicated that, in 2020 and 2021, no vulnerable or minor asylum seekers were detained.

2.4.2 When Removal is Not Possible

When there is no prospect of removal, or removal is impossible within a reasonable timeframe, there is no longer a legal ground for detention. Detention of persons under removal order after this point is deemed illegal. Often migrants are held in detention with removal orders despite the fact that there was never a prospect of removal. Authorities must be actively working to remove the migrant, and there are mandatory reviews to ensure the detention of those under removal order is still lawful.

The legal remedies available to challenge and remedy the detention of migrants include the review of asylum detention under the Reception Regulations, human rights actions before the national courts, applications under Article 409A of the Criminal Code and reviews of pre-removal detention under the Returns Regulations.

Detainees may also submit a request for bail under Article 25A (6) of the Immigration Act to the Immigration Appeals Board (IAB). The IAB sets many demands that most applicants are unable to fulfil, they require a guarantor for each applicant, and the bail is typically set around €1,000.

The Reception Regulations allow for the assessment of the lawfulness of the detention through a review by the IAB which shall be automatically conducted after seven working days from the issuing of the detention order, and may be extended by another seven working days and then conducted every two months after, in cases where the

In a visit to Maltese Detention Centres, the CPT highlighted the detention of vulnerable persons, including minors

60 aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://aditus.org.mt/three-children-released-from-illegal-detention-following-court-action/#.YpCM3FRBzIW> <accessed 23 May 2022>.

61 aditus foundation, Malta still detains children with adults in Safi Detention Centre, 10 April 2022, available at <https://aditus.org.mt/malta-still-detains-children-with-adults-in-safi-detention-centre/#.YpCNJVRBzIV> <accessed 23 May 2022>.



**The IAB sets many demands
that most applicants are
unable to fulfil**

3. Legal Remedies

individual is still detained⁶². While the first review does typically occur after the first seven days, the hearings are short and do not rule in favour of the applicant as the IAB rarely questions the legality of the detention, or explores whether less coercive alternatives to detention could be imposed, and nearly always presumes the detention to be lawful⁶³. Up until recently, the subsequent reviews were not held, unless specifically requested by the lawyer, and since legal aid is only granted for the first review, this resulted in large numbers of asylum seekers being detained without the proper and necessary judicial review.

Asylum seekers detained under public health grounds are not entitled to effective remedies, nor are they entitled to appeal their detention. They are forced to rely on other forms of legal remedies that do not qualify as “*speedy, judicial remedies*” under Article 5(4) of the ECHR, according to the ECtHR⁶⁴. The first remedy that an asylum seeker may rely on, is to challenge their detention before the national courts. This process is lengthy and practically inaccessible to most asylum seekers due to difficulty in access to legal representation.

⁶² Regulation 6(3) *Reception Regulations*.

⁶³ Asylum Information Database, *Judicial Review of the Detention Order, Malta, 2022*, https://asylumineurope.org/reports/country/malta/detention-asylum-seekers/procedural-safeguards/judicial-review-detention-order/#_ftnref1 <accessed 23 May 2022>.

⁶⁴ ECtHR, *Louled Massoud v. Malta*, Application No 24340/08, Judgement of 27 July 2010; ECtHR, *Suso Musa v. Malta*, Application No 42337/12, Judgement of 9 December 2013 and ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgement of 22 November 2016.

Detained persons may challenge the lawfulness of their on-going detention before the Court of Magistrates through a Habeas Corpus application brought under Article 409A of the Criminal Code⁶⁵, whereby:

“Any person who alleges he is being unlawfully detained under the authority of the Police or of any other public authority not in connection with any offence with which he is charged or accused before a court may at any time apply to the Court of Magistrates, which shall have the same powers which that court has as a court of criminal inquiry, demanding his release from custody”.

Although this remedy is speedy and judicial, it fails to examine the lawfulness of the detention under Article 5 of the ECHR. This remedy has been more successful than the former, resulting in the successful release of several applicants detained under the above-mentioned health grounds. In January 2022, a local NGO secured the release of 6 men, including 3 minors as confirmed by AWAS, from their illegal detention at Safi Detention Centre through a Habeas Corpus application. In a similar case filed that same day by another detainee, also a minor being represented by the same, the Court of Magistrates did not require the Government to justify the legal grounds of his detention. The second court petition filed by this detainee was rejected on the basis of a claim

⁶⁵ *Criminal Code*, CAP. 9 of the Laws of Malta, <https://legislation.mt/eli/cap/9/eng/pdf>.



Asylum seekers detained under public health grounds are not entitled to effective remedies, nor are they entitled to appeal their detention

that he was suffering from a contagious illness, and the Court noting that no public authority had ordered the applicant's detention as he was not under detention order, but simply under an order that restricted his movements, in which case Article 409A of the Criminal Code did not apply⁶⁶. This was despite the fact that the teenager was accommodated in a facility described by Maltese law as “*a place of detention for the purposes of the Immigration Act*”, administered by DS, and prohibited from leaving the centre, under constant supervision and with limited contact with those outside the centre.



⁶⁶ aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://aditus.org.mt/three-children-released-from-illegal-detention-following-court-action/#.YpC34FRBzIV> <accessed 23 May 2022>.

4. Life in Detention

4.1 Who is in Detention

In 2019, 250 asylum seekers were detained throughout the year, according to data provided by the Malta Police Force, not including asylum seekers detained under public health grounds⁶⁷. Repeated requests by active NGOs in Malta for the number of asylum seekers detained under this regime have been continuously ignored, but 3,046 persons were rescued at sea, the majority were placed in detention. Although disaggregated data of the gender, age and other descriptors of detainees are not available, it has been confirmed that women and minors have been amongst those detained for weeks, even months. Through contact with detainees from NGOs and other actors, it is known that the vast majority of those in detention are adult men. Since 2018, the main countries of origin of persons disembarked in Malta include Eritrea, Libya, Sudan, Nigeria, Syria, Somalia and Bangladesh⁶⁸. There are mixes of different ethnic, religious and cultural backgrounds, and only recently have DS begun grouping detainees by their backgrounds.

4.2 The Living Conditions

The Reception Regulations outline the conditions under which asylum seekers must be detained, including that they be detained in specialised facilities and if possible,

separated from TCNs who are not asylum seekers.⁶⁹ Furthermore, they must have regular access to open-air spaces, privacy, and female and male detainees must be separate. Detention facilities must have access to a clinic, medical isolation facilities, telephones, offices and rooms for interviews and meetings, leisure facilities, places of worship and educational programmes⁷⁰.

However, migrants are often detained in large containers, with a capacity of up to 470 detainees living in one unit. The large numbers of detainees in one shared space results in a lack of privacy, and forced to share the few facilities that are not equipped to provide for so many people, exacerbating the inadequate sanitation and hygiene conditions⁷¹. Detainees reported living in terribly unsanitary and overcrowded conditions, sharing limited showers and toilets between hundreds of detainees. Inadequate maintenance from DS left such facilities in squalid conditions, with blocked drains and overflowing toilets.

Detained persons are offered their own bed, but limited space in between the beds means they have almost no privacy while sleeping, and no storage for their personal possessions. Detainees are provided with only one set of basic items upon arrival, such as shoes, clothing and bedsheets. The distribution of clothing

67 Asylum Information Database, *Malta: Country Report 2019*, April 2020, <https://www.asylumineurope.org/reports/country/malta> <accessed 23 May 2022>.

68 UNHCR, *Figures at a Glance*, 2021, <https://www.unhcr.org/mt/figures-at-a-glance> <accessed 23 May 2022>.

69 Regulation 6A *Reception Regulations*.

70 *Ibid.*

71 Asylum Information Database, *Conditions in Detention Facilities*, Malta, 2022, <https://asylumineurope.org/reports/country/malta/detention-asylum-seekers/detention-conditions/conditions-detention-facilities/> <accessed 23 May 2022>.

is inconsistent, provided roughly every 3 months, and clothes are rarely weather appropriate⁷². Detained persons are forced to stand naked, covered only by their bedsheets, or borrow other people's clothing while laundering their one outfit, in order to prevent it from being stolen. Similarly, detainees often sleep with their slippers as pillows to prevent theft, as many are left without slippers as they break due to poor quality and constant wear.

There is rarely adequate heating or ventilation, leaving detainees exposed to extreme heat and cold, and inadequate clothing and blankets to comfortably live⁷³. The CPT report confirmed the deplorable and inhumane living conditions in the Detention Centres, urging Malta to immediately rectify the situation to ensure the dignity of all persons detained. They cited the broken and unsanitary shower and bathroom facilities, mould growing in the living quarters, the lack of clothing, and access to adequate drinking water⁷⁴. In 2020, a video recorded by detainees in Safi Detention Centre was circulated, showing asylum seekers who had been detained for a year begging to be returned home due to the overcrowded living areas with a lack of hygiene, medical attention and nutritious food that had severely affected their physical and mental health⁷⁵.

Growing reports of incidents, whereby the staff has used excessive force with detainees, have highlighted the lack of effective remedies when persons have been

72 Ibid.

73 Ibid.

74 CPT, *Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020*, March 2021.

75 The Times of Malta, 'Watch: Migrants in covert video beg to be sent back home', 6 September 2020, available at: <https://timesofmalta.com/articles/view/migrants-in-covert-video-beg-to-be-sent-back-home.816459> <accessed 23 May 2022>.



Figure 1: Source: Politico <https://www.politico.eu/article/pictures-inside-malta-crowded-migrant-detention-center/> <accessed 23 May 2022>.

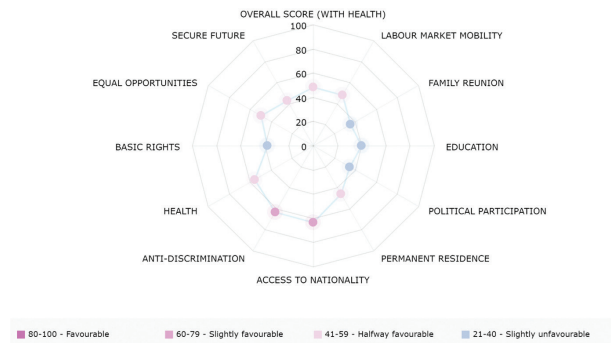


Figure 2: Detainees Sitting on Bunkbeds in the Overcrowded Safi Barracks, Times Malta, 2020.

abused or mistreated by staff⁷⁶. The CPT reported several allegations of excessive use of force by DS staff and private security following riots. There are reports that staff purposefully shook the fence while detainees were climbing it, and beat them with batons when they fell to the ground⁷⁷. The CPT also reported the unwarranted use of pepper spray by staff against detainees⁷⁸. In 2020, an asylum seeker died from internal bleeding after attempting to escape detention and falling, to which the CPT stated that they “cannot reassure itself that staff, including health-care staff, had reacted sufficiently promptly when crucial help was needed to attempt to save this young man’s life from the effects of suspected internal bleeding over a period of at least three hours”. Reports of physical torture, beatings, solitary confinement, denial or delay of medical care and electrocution have emerged from Detention Centres including Safi, which have been acknowledged by the European Union Agency for Asylum (EUAA), who referred the allegations to the relevant Maltese authorities⁷⁹.

4.3 Psychological Conditions

Due to the physical living conditions, in addition to the complete deprivation of one’s liberty, and the various aspects to living in detention, the mental toll of detainees is considerable. The dehumanising aspects of detention are abundant, including the continuous identification of those detained by only their Immigration Police Number, rather than their names and identities. Suicide attempts and self harm are more common amongst those in detention, and these levels increased significantly during the Covid-19 Pandemic due to lack of access to information, lawyers or NGOs or even the possibility to call outside⁸⁰. The difficulty to call outside, due to the removal personal mobiles and/or telephone facilities, only furthers their social and psychological isolation.

EUAA⁸¹ noticed a high number of referrals to the psychiatric hospital because of frequent attempted suicide⁸². In January 2021, a nurses’ union claimed that detainees were “*purposely self-harming to get themselves transferred out of detention centres*” and asked for the hospital to refuse admissions of such people⁸³. This ignores severe effects that the prolonged detention in undignified conditions have on migrant’s psychological health. Self-harm and suicide attempts are not abuses of the system, but rather the “*extremely worrying effects of a policy*

76 Asylum Information Database, Conditions in Detention Facilities, Malta, 2022, <https://asylumineurope.org/reports/country/malta/detention-asylum-seekers/detention-conditions/conditions-detention-facilities/> <accessed 23 May 2022>.

77 CPT, *Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020*, March 2021.

78 Ibid.

79 Asylum Information Database, Conditions in Detention Facilities, Malta, 2022, <https://asylumineurope.org/reports/country/malta/detention-asylum-seekers/detention-conditions/conditions-detention-facilities/> <accessed 23 May 2022>.

80 Times of Malta, ‘More detainees treated for self-harm, suicide attempts’, 2 April 2021, available at: <https://timesofmalta.com/articles/view/more-detainees-treated-for-self-harm-suicide-attempts.861790> <accessed 23 May 2022>.

81 European Union Agency for Asylum (EUAA) Website: <https://euaa.europa.eu/> <accessed 23 May 2022>.

82 The Times of Malta, ‘Detained migrants have reported being tortured in Malta’, 31 January 2021, available at: <https://bit.ly/318IX64>.

83 The Times of Malta, ‘Union claims migrants are “purposely self-harming” to enter Mount Carmel’, 29 January 2021, available at: <https://bit.ly/3scNO0Q>.



In addition to the extensive trauma associated with being detained, psychological issues may also arise with the DS staff enforcing such detention

*that entirely dehumanises people*⁸⁴. It simply reinforces the need for all people to receive appropriate treatment for their mental health conditions without discrimination⁸⁵. It is reported that, in 2020, 93 detainees were taken to the psychiatric hospital (60 in 2019 and 17 in 2018) in order to be treated for self-harm or suicide attempts. Times of Malta, reporting about the issue in March 2021, spoke to a former employee of the Safi detention centre who claimed that migrants with mental health issues were deprived of adequate care. The former employee told the newspaper that emergency services were called in none of the cases of attempted suicide she knew of⁸⁶. The UNHCR representative in Malta also indicated that her office received reports of some physical and verbal abuse against detained asylum seekers as well as suicide attempts in closed centres⁸⁷.

The psychological trauma associated with detention does not cease upon release, due to the long term affects of their detention, amongst other things. When released from detention while under removal order, it remains

possible that at any point they may be located and removed to their country of origin by authorities if they obtain the necessary documents for the identification procedure. The prospect of this can hang over their lives, prolonging the trauma they experienced in their country of origin and in detention.

In addition to the extensive trauma associated with being detained, psychological issues may also arise with the DS staff enforcing such detention. Feelings of powerlessness are common as they are forced to enforce a system that compromises their values, which results in decreasing sympathy in the long-term. Moral injuries may occur in response to acting or witnessing behaviours that compromises an individual's values or moral beliefs, resulting in psychological, behavioural and social distress⁸⁸. Moral injuries are shown to decrease sympathy and compromise one's values in the long-term, furthering the inhumane system that allows for the psychological and physical mistreatment of detained migrants.

4.4 Conflicts

The mix of cultures, religion, languages, sexualities and nationalities and lack of resources are common

84 aditus foundation, 'Press statement from the Malta Refugee Council, network of Maltese NGOs working for the promotion of the fundamental human rights of persons in forced migration', 29 January 2021, available at: <https://bit.ly/3tOrj2r> <accessed 23 may 2022.>

85 Ibid.

86 The Times of Malta, 'More detainees treated for self-harm, suicide attempts', March 2021, available at: <https://bit.ly/3abuYjt>.

87 The Times of Malta, 'Migrant detention numbers shrink, fears about child detainees remain', 7 February 2021, available at: <https://bit.ly/3vPfwD4>.

88 Psychology Today Website: <https://www.psychologytoday.com/intl/basics/moral-injury> <accessed 23/05/2022>.

causes of conflicts in Detention Centres. In addition to living in poor physical and psychological conditions, the conflicts that arise out of failures by DS create an even more hostile environment. A primary cause of conflicts is often the television room, where fights may break out over what to watch, the volume, and the overwhelming amount of people attempting to use the one room and the one television. Theft can become a significant point of conflict, when detainees resort to theft due to inadequate supplies, and priority on who can use the bathrooms or showers is the cause of many fights. A spokesperson for the Ministry responsible for home affairs had stated that they do not tolerate any physical altercations that arise in Detention facilities, whether it include staff and/or detainees⁸⁹. Despite this, detainees have reported that DS staff often do not break up fights between detainees, sometimes simply switching off the lights hoping the conflict will die down in the dark.

4.5 Access to Legal Representation

Access to legal representation is a fundamental right for all persons, including migrants and asylum seekers. Yet lack of access to lawyers is a significant problem facing detained migrants in Malta. Currently, lawyers have limited access to migrants in Detention Centres, are restricted from accessing the living quarters, and are only permitted to meet clients in designated board room. In order for migrants to seek lawyers from inside detention, they must have the necessary numbers to call, and be given access to a phone. Due to the restrictions on communication, many detainees are prevented from

reaching out to lawyers for help, and vulnerable persons who have not been identified and are detained will often avoid reaching out to a lawyer and drawing attention to themselves. Access to a lawyer is not only a fundamental right, but also a way to receive reliable information and preparation regarding the asylum and migration system and procedures in Malta. Individuals can go through their entire asylum procedure without ever being given any legal advice or information⁹⁰. Without such information, feelings of despair and hopelessness are likely to worsen, as they have no idea why they are being detained or for how long.

Free legal aid is granted by the state to asylum seekers only for the first review of their asylum detention⁹¹. Legal aid lawyers provided by the State do not visit the detention centres on a regular basis, and are only obliged to represent them for the first review.

Access to legal representation is a fundamental right for all persons, including migrants and asylum seekers

⁸⁹ Times of Malta, Detained migrants have reported being tortured in Malta, 2021 <https://timesofmalta.com/articles/view/reports-of-torturing-detained-migrants-manuel-delia.848085>.

⁹⁰ Asylum Information Database, Malta, Access to Detention Facilities, 2022, <https://asylumineurope.org/reports/country/malta/detention-asylum-seekers/detention-conditions/access-detention-facilities/> <accessed 23 May 2022>.

⁹¹ Regulation 6(5) Reception Regulations.



Proper records of all migrants in IRCs and Detention Centres must be kept, and periodic reviews must be undertaken

5. Recommendations

5.1 Systematic Reform

- Malta must immediately address the grave issues with the immigration detention system as highlighted by the CPT report.
- Alternatives to detention must be used before relying on detention, which if at all used, must be used as a last resort.
- Public Health authorities must immediately desist from using public health grounds as a ground for the detention of migrants.
- Any restriction of liberty on public health grounds must be exceptional, individualised, specific, time-limited and regulated by clear procedural safeguards.
- Proper records of all migrants in IRCs and Detention Centres must be kept, and periodic reviews must be undertaken, in order to review the lawfulness of their detention in accordance with the procedures stipulated in Maltese law.
- Unaccompanied children should not be held in IRCs or Detention Centres. In line with the best interests of the child principle, they should be accommodated in specialised (semi) open facilities for juveniles with appropriately trained staff, where their living quarters are suitable for children, and constructive activities are offered, including the continuation of their education.
- Pregnant or breast-feeding persons, mothers with infants and young children should, in principle, not be deprived of their liberty, and should be

transferred to an open or semi-open facility that offers privacy and support from health care and psycho-social professionals.

- Avoid detaining women, children and vulnerable persons, and if exceptionally they are detained for a very short period of time (hours), they should be separated from unrelated men.
- Persons waiting for age and vulnerability assessment results should be treated as children and/or vulnerable and accommodated separately from unrelated men, in the exceptional event of the deprivation of their liberty until they can be transferred to an open centre.
- Less coercive measures, such as accommodation in open centres, should be explored as a viable option before resorting to detention.
- Allow NGOs, social workers, psychologists and other support staff full access to Detention Centres, including to the living quarters.
- Adopt a centralised system where all actors in asylum and migration have necessary information to aid those in detention.

5.2 Reception and Detention Conditions

- Adequate information services must be provided without delay to asylum seekers and third-country nationals in detention, in a language fully understood by the detainees.
- Regular updates must be provided to migrants detained, in a language fully understood, on the status of their stay.
- Information and training for authorities and detention staff, to improve their knowledge of the

system and abilities to interact with detainees, remove biases and give a culturally sensitive service.

- All detainees should be offered access to a lawyer, including legal aid where necessary, to allow the lawfulness of their detention to be periodically reviewed effectively.
 - The quality of medical screening upon arrival at each centre must be improved to detect illness, disabilities and mental disorders.
 - All centres and facilities must be regularly maintained, cleaned and sanitised.
 - Ensure official occupancy rates are revised to allow a minimum of 4 m² of living space per detained person in the multiple occupancy accommodation, dividing up rooms into smaller living units.
 - All dormitories should have adequate access to natural and sufficient artificial lighting, ventilation, heating and cooling.
 - Communication must be improved through the provision of basic internet services, the installation of pay phones and distribution of phone cards to detainees, and allowing migrants to keep, or regularly, access personal phones.
 - Provide detainees with a clean bed, mattress and blanket, and at least one set of additional clean, adequate and weather appropriate clothing, footwear and bedding at one time.
- Each detainee should be provided with lockable storage to keep personal belongings.
 - Call bells should be installed in Detention Centres in areas where staff are not continuously present.
 - Ensure there are separate showering and toilet areas for men, women and children in the IRCs.
 - Showers and toilets should be properly functioning and maintained with access to hot water, and designed to allow for privacy while using facilities in detention.
 - Ensure the grouping of cultures and languages where possible.
 - Detainees should be offered unrestricted access to outdoor exercise throughout the day, to an outdoor space that is proportionate to the number of migrants detained and consisting of adequate shelter and areas to rest.
 - Educational, recreational and vocational activities should be developed within detention centres.
 - At least one common association room equipped with books, television and games and one multi faith room should be set up in each detention block.
 - Detainees must be entitled to confidential access to an appropriate complaints' authority, and be informed of these possibilities from the outset of their deprivation of liberty.



Asylum, Migration and Integration Fund 2014-2020

This project is part-financed by the European Union
Co-financing rate: 75% EU Funds 25% Beneficiary Funds



Sustainable Management of Migration Flows