

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 31st Session

MALTA

I. BACKGROUND INFORMATION

Malta acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1971 and lifted the geographical limitation on the application of Article 1 in 2001. Malta is not a State party to the *1954 Convention Relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*.

National refugee status determination procedures were established in 2002 with the enactment of the *Refugees Act*. Malta has transposed EU legislation and developed capacity to manage detention, reception and accommodation for asylum-seekers, refugees and other beneficiaries of protection in open centres. Malta has also developed institutions such as the Office of the Refugee Commissioner and the Refugee Appeals Board to conduct refugee status determination as well as the Agency for the Welfare of Asylum Seekers (AWAS), which manages reception centres. Nonetheless, the Refugee Appeals Board is ineffective and often fails to identify persons who are in need of protection. Malta is in need of a professionalized and full-time second instance body with relevant expertise, and a second instance procedure where all procedural safeguards are guaranteed.

For the majority of asylum-seekers in Malta previously arrived irregularly by boat, the Government maintained a policy of mandatory detention for most irregular arrivals; only the most vulnerable cases (pregnant women, families with children, serious medical/mental health cases) were released early, after they went through, at times, lengthy vulnerability/age assessment procedures. This policy of mandatory, blanket detention for all arrivals is no longer in effect.

Since 2014, Malta has continued to receive a steady number of asylum-seekers and refugees arriving through regular channels (by plane and ferry from Italy), while at the same time the number of irregular boat arrivals has almost ceased, with the exception of occasional medical evacuations. In this regard, Malta has seen a shift in arrival trends.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no.102.107: "Pursue the implementation of programs of action aimed at slowing down and controlling the migration flow while continuing engaging with international efforts aimed at addressing the root causes of the illegal migration phenomenon (Morocco)."

Malta has participated in the relocation of asylum-seekers from Greece and Italy and is also involved with the resettlement of beneficiaries of protection from Turkey. Malta received 168 asylum-seekers from hotspots during 2016-2017, in accordance with its obligations under the EU relocation program. In 2017, Malta also received 17 Syrians from Turkey as part of the EU-Turkey agreement. The relocated and resettled families received a 'Local Subsidiary Protection Status'. For the next two years, Malta has also pledged another 20 resettlement places for refugees in Egypt and Libya.

Linked to 2nd cycle UPR recommendation no.102.115: "That further efforts should be taken to improve the detention regime, taking into consideration the recommendations in the UNHCR Position Paper (Norway)."

Legislative and policy amendments, including revising the former detention system, were carried out in December 2015. The amendments prescribe ending automatic and mandatory detention, and establish the creation of an Initial Reception Centre. Revised legislation also provides for alternatives to detention, detention order reviews and free legal aid to challenge one's detention.

The Initial Reception Centre applied measures of deprivation of liberty, usually for a duration of maximum 7 days for the purpose of medical screening and other assessments. Refugees relocated from Italy and Greece were also subject to these measures. On 31 July 2017 a roundtable meeting was co-organised by the UNHCR and Council of Europe, where the problematic aspects of the Initial Reception Centre (IRC) were discussed. In September 2017, the IRC was converted from a place of detention to an open facility with the removal of the detention features such as the locked gates. Furthermore, detention on medical grounds is no longer being implemented arbitrarily. Children have not been held in immigration detention.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Integration of migrants into Maltese society

Linked to 2nd cycle UPR recommendation no. 102.112: "Examine additional ways to accelerate and strengthen the integration of migrants into Maltese society, including in the work place, to allow them to contribute fully to the well-being of the country (Canada)."

Malta has gained important experience managing reception of asylum-seekers and asylum claims. However institutional gaps persist in relation to access to naturalization and citizenship, family reunification programmes as well as education, employment and social benefits and a general impediment in accessing mainstream services. Recognized refugees face several barriers to gaining citizenship. They become eligible for citizenship after completing 10 years of continued residency in Malta, while persons granted local subsidiary protection status must demonstrate 18 or 20 years of continued residency. Another barrier may arise from the fact that the decision to grant citizenship lies within the discretion of the Minister of Foreign Affairs. UNHCR has noted important steps taken by the authorities to improve access to mainstream services whilst scope for improvement remains. The launch of the *Migrants Integration Strategy & Action Plan* is a very positive development and it is augured that the implementation and detailed plan will address the current gaps.

With regards to family reunification programmes, unlike recognized refugees, beneficiaries of subsidiary protection, who constitute the majority of persons granted protection in Malta, do not have access to family reunification.

Although enjoying the right to free public education and training, asylum-seekers, refugees and beneficiaries of subsidiary protection often lack financial support to pursue full time education. Asylum-seekers and refugees encounter difficulties in accessing labour market in practical terms, a fact which forces them to take low paying and irregular jobs. Access to employment is conditional upon employers' applications for work permits. The permits are issued on the employer's name, meaning the asylum-seekers are then tied to that particular employer. Beneficiaries of international protection are granted a general employment permit independent of their employer. Recent studies warn of cases of exploitation of beneficiaries of international protection by their employers.¹

Asylum-seekers have a right to material reception conditions that ensure an adequate standard of living. Asylum-seekers registered as residents in an open centre are entitled to receive a per diem allowance of €4.66 per day. Beneficiaries of subsidiary protection are entitled to core social welfare benefits by law. These are generally considered to be the same as the minimum form of assistance granted to Maltese nationals. It excludes other benefits, such as regular unemployment benefits and children's allowance.

Recommendations:

UNHCR recommends that the Government of Malta:

- (a) Ensure procedures regarding citizenship are more predictably accessible to all beneficiaries of international protection residing in Malta with proper information and procedures put in place for remedy;
- (b) Facilitate the right to family unity and ensure access to family reunification programmes to all beneficiaries of international protection;
- (c) Consider developing financial support or accessible loan schemes for all beneficiaries of international protection pursuing higher education;
- (d) Improve access to the labour market for beneficiaries of international protection and asylum-seekers and establish mechanisms to monitor and address exploitation and abuses;
- (e) Address existing gaps in the housing market through the creation of schemes and incentives to property-owners to provide affordable accommodation to under-served groups in society, including for beneficiaries of international protection; and
- (f) Set up structures to carry out psycho-social assessments and provide treatment in open centres, including for individuals living in the community.

Issue 2: Detention of asylum seekers

Linked to 2nd cycle UPR recommendation no. 102.121: "Ensure that the conditions of detention of irregular migrants and asylum seekers do not constitute a degrading treatment. Limit the practice of detention of migrants, especially unaccompanied minors (France)."

Whilst amendments to the detention legislative framework have been made in order to bring Maltese law in line with the European directives, UNHCR is still concerned about the process of detention review. UNHCR's concerns mainly lie with the ways in which assessments are conducted by Immigration Police, who often use grounds such as 'risk of absconding' as a 'catch-all' detention ground. Additionally, material reception conditions, as well as the provision of psychosocial care, remain poor at all stages of the asylum process. Main issues of concern are the lack of individual follow up and the weak capacity of the reception agency, namely the Agency for the Welfare of Asylum Seekers (AWAS), to provide adequate conditions for asylum seekers.

¹ Such exploitation takes the form of payment of very low wages, refusal to work with beneficiaries who have a work permit, employment on the basis of irregular hours etc.

Recommendations:

UNHCR recommends that the Government of Malta:

- (a) Establish without delay procedures ensuring the effective review of measures of deprivation of liberty;
- (b) Take immediate measures to improve material conditions in closed and open centres dedicated to asylum-seekers;
- (c) Improve the infrastructure, organisational capacity and coordination of the government agencies involved in the reception system; and
- (d) Develop recreational activities for detainees at the reception centres.

Linked to 2nd cycle UPR recommendation no. 102.133. “Implement without delay the proposals for improved procedures and modalities as regards its asylum policy and to review its detention policy and that such review include how to ensure that children are not detained pending age determination (Sweden).”

Malta still relies heavily on granting subsidiary protection as a form of international protection, with very few cases being granted full refugee status. Beneficiaries of subsidiary protection lack access to long term integration paths and family reunification. They also lack access to other rights and full social benefits (they are entitled only to “core welfare benefits”, which is interpreted as being limited to social assistance). Furthermore, The Refugee Appeals Board is ineffective and often fails to identify persons who are in need of protection.

Recommendations:

UNHCR recommends that the Government of Malta:

- (a) Improve asylum procedures so that refugees are properly recognised; and
- (b) Review and implement an effective and professionalised, full-time second instance body which is made up of Board members with relevant expertise and training.

Additional protection challenges

Issue 3: Statelessness

The Maltese *Citizenship Act*² contains some provisions that are not in line with international standards to prevent or reduce statelessness. Children born in Malta to stateless parents or foreigners, who are unable to confer their nationality to children born abroad, enjoy no definite safeguard to prevent their statelessness. Similarly, those children born before 31st July 1989 to a Maltese mother and a foreign father are at risk of statelessness, as prior to that date only children born to male nationals would automatically acquire nationality. The Maltese *Citizenship Act* also provides that a stateless person may apply for a certificate of naturalization as a citizen of Malta under certain conditions.³ Furthermore, the *Citizenship Act* prescribes that deprivation of nationality can intervene as an accessory penalty for crimes sanctioned with imprisonment of no less than twelve months. However, a person who would otherwise risk statelessness would not be subjected to this penalty.⁴

In 2017, the Maltese Government has publicly stated that it is considering becoming party to the *1954 Convention relating to the Status of Stateless Persons*. Malta is currently finalising the process of accession to the *1954 Convention*.

Recommendations:

² Chapter 188 of the Laws of Malta.

³ Article 10(1).

⁴ Article 14 (3).

UNHCR recommends that the Government of Malta:

- (a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and considers acceding to the *1961 Convention on the Reduction of Statelessness*;
- (b) Set up a Statelessness Determination Procedure which would ensure the identification of stateless persons in its territory; and
- (c) Amend national legislation and policies in order to prevent statelessness, and pay particular attention to the documentation and citizenship issues affecting children residing in Malta.

UNHCR
March 2018

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

MALTA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to MALTA.

I. Universal Periodic Review (Second Cycle – 2013)

Recommendation ⁵	Recommending State/s	Position ⁶
Refugees, asylum-seekers and migrants		
102.13. Ratify ICRMW, and adopt all necessary measures with the aim of improving the treatment of migrants and asylum seekers.	Argentina	Noted ⁷
102.113. Further implement legislation and policies that protect and promote the health, legal, social, educational, economic and labour rights of migrants, refugees, and asylum seekers.	Holy See	Supported
102.122. Provide effective remedies to challenge a detention or expulsion in accordance with international law on human rights and refugees as well as with European standards.	France	Supported
102.132. Continue to address the specific needs of children of migrants, refugees and asylum seekers and unaccompanied minors.	Portugal	Supported
102.133. Implement without delay the proposals for improved procedures and modalities as regards its asylum policy and to review its detention policy and that such review include how to ensure that children are not detained pending age determination.	Sweden	Supported
Rescue at sea		
102.46. Continue its cooperation with neighbouring countries regarding rescue operations at sea particularly for irregular migrants entering the country.	Azerbaijan	Supported
Detention of refugees, asylum-seekers and migrants		
102.114. Continue its efforts to improve the living conditions of migrants in detention and to bring its immigration detention system in line with the international human rights law and standards.	Tunisia	Supported
102.115. That further efforts should be taken to improve the detention regime, taking into consideration the recommendations in the UNHCR Position Paper.	Norway	Supported
102.116. Make every possible effort in order to reduce the detention period of asylum seekers, especially regarding unaccompanied children and pregnant women, and treat them with most proper manner.	Maldives	Supported

⁵ All recommendations made to Malta during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Malta" (4 December 2013), A/HRC/25/17, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MTIndex.aspx>.

⁶ Malta's views and replies, in English, can be found in: *Addendum* (11 March 2014), A/HRC/25/137/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MTIndex.aspx>.

⁷ *Addendum*: "Malta does not intend to sign the ICRMW, given that insufficient distinction is made in the Convention between the rights of regular and irregular migrants."

102.117. Consider less restrictive alternatives to blanket detention of migrants and guarantee to all migrants the right to seek judicial review of the lawfulness of their detention and to obtain a determination without delay and release if detention is determined unlawful.	United States of America	Supported
102.118. Implement greater measures to guarantee in an effective manner the legal safeguards for all detained migrants, improve the detention and living conditions of migrants, in particular by modernizing detention centres.	Uruguay	Supported
102.119. Continue efforts to improve the living conditions in immigration detention centres, especially for children victims of armed conflicts.	Djibouti	Supported
102.120. Promote the access of persons placed in migration detention centres to free legal aid.	Djibouti	Supported
102.121. Ensure that the conditions of detention of irregular migrants and asylum seekers do not constitute a degrading treatment. Limit the practice of detention of migrants, especially unaccompanied minors.	France	Supported
102.124. Reduce at minimum the administrative detention of migrants and asylum seekers, observing the legal safeguards for persons in vulnerable situations and respecting the principles of international law, also considering the provision of free legal assistance for detained migrant children.	Mexico	Supported
102.125. Bring an end to the detention of migrant children as well as adults in a vulnerable situation, such as pregnant women and persons with disabilities.	Togo	Supported
102.134. Abide by international human rights law pertaining to migrants, including with regard to detention.	Sweden	Supported
Children and UASC		
102.126. Ensure that the best interests of the child, as spelled out in the Convention on the Rights of the Child, is the primary consideration in all asylum proceedings involving children.	Austria	Supported
102.127. Ensure that unaccompanied migrant children receive free legal representation.	Norway	Supported
102.128. Review its migration and criminal procedure codes with a view of deleting the provisions allowing for detaining non-accompanied children.	Egypt	Noted ⁸
102.129. Adapt the practice in which unaccompanied minors are being held in migrant detention together with unrelated adults, and give them the benefit of the doubt until their age has been determined.	Netherlands	Supported
102.130. Take the necessary steps to end detention of unaccompanied minors, and pending such measures, ensure that they are detained separately from adults and receive adequate and free legal representation.	Hungary	Supported
102.131. Review the law on protection of minors in order to deal with vulnerable situations of migrant children.	Nicaragua	Supported
102.132. Continue to address the specific needs of children of migrants, refugees and asylum seekers and unaccompanied minors.	Portugal	Supported
Access to nationality and birth registration		
102.97. Ensure birth registration for all children born in Malta	Sierra Leone	Supported
Trafficking		
102.81. Improve identification of victims of trafficking in human beings, by establishing an efficient inter-agency mechanism of identification and referral of such cases.	Republic of Moldova	Supported
102.82. Strengthen efforts for providing appropriate assistance to victims of trafficking in human beings and disseminate information on their right to compensation and ways to access it.	Republic of Moldova	Supported

⁸ **Addendum:** "Malta agrees with the principle that unaccompanied minors should not be detained. No amendments to its legislative framework are required since Maltese criminal law does not feature provisions relating to the detention of unaccompanied minors."

102.84. Strengthen efforts to proactively identify both domestic and international trafficking victims among vulnerable populations, particularly children and women in prostitution.	United States of America	Supported
102.85. Apply a victim-centred approach towards victims of trafficking.	Iran	Supported
Mixed migration flows and rights of migrants		
102.107. Pursue the implementation of programs of action aimed at slowing down and controlling the migration flow while continuing engaging with international efforts aimed at addressing the root causes of the illegal migration phenomenon.	Morocco	Supported
102.108. Take measures to fully ensure the rights of migrants who arrive in the country.	Cuba	Supported
102.109. Review periodically its migration policy in order to face the new challenges posed by this phenomenon.	Nicaragua	Supported
102.112. Examine additional ways to accelerate and strengthen the integration of migrants into Maltese society, including in the work place, to allow them to contribute fully to the well-being of the country.	Canada	Supported
102.123. Seek effective ways of support and coordination with the European Union in order to deal with migrants within the international human rights law framework, regardless of their migrant status.	Mexico	Supported
102.106. Noting the challenge presented to Malta's resources by irregular migration, the Government of Malta nonetheless should continue enhancing efforts to ensure that human rights of migrants are protected.	Trinidad and Tobago	Supported
Discrimination		
102.57. Redouble efforts to stem the development of racism and xenophobia.	Togo	Supported
102.58. Intensify its efforts to stem the development of racism and xenophobia and to ensure that the materials which are published in media do not contribute to creating an atmosphere of hostility, intolerance and rejection towards migrants.	Iran	Partially Supported ⁹
102.59. Carry out all possible efforts to combat racism, racial discrimination, xenophobia and other forms of related intolerance.	Cuba	Supported
102.60. Intensify the initiatives to enforce its legislation aimed at combating racial discrimination and take measures to combat racist speech of politicians as well as manifestations of racism in the media, in particular by prosecuting those responsible.	Costa Rica	Partially Supported ¹⁰
102.64. Adopt further measures to combat all forms of discrimination, including discrimination based on sexual orientation and gender identity.	Norway	Supported
102.65. Further progress in combating all forms of discrimination, including against LGBT persons, through the introduction and implementation of appropriate legislation, policy and practice.	United Kingdom of Great Britain and Northern Ireland	Supported
102.70. Continue its fight against any form of violence against children, women, migrants, and persons with disabilities.	Holy See	Noted
102.110. Promote a culture of non-discrimination and solidarity among its citizens towards migrants.	Nicaragua	Supported
Gender and SGBV		
102.67. Proceed towards the criminalization of rape and violent attacks as crimes against physical and mental integrity of women and as a form of discrimination based on the grounds of sex and gender.	Uruguay	Partially Supported ¹¹

⁹ **Addendum:** "The Maltese authorities will continue to combat racism and xenophobia, including by means of the prosecution of those responsible for racist and/or xenophobic acts"; "The stemming of the development of racism and xenophobia is an ongoing process through training and awareness raising. It is envisaged that efforts will be strengthened in the context of the widening of the NCPE's remit". (for recommendation 58 and 60)

¹⁰ *Ibid.*

II. Treaty Bodies

Human Rights Committee

Concluding Observations, (21 November 2014), [CCPR/C/MLT/CO/2](#)

Racial discrimination

9. Despite the efforts taken by the State party to combat racial discrimination, the Committee is concerned about reports of racism and xenophobia against migrants, including racially motivated violence and racial discrimination in access to employment, housing, and services. The Committee regrets the lack of concrete information on investigations, prosecutions and sanctions imposed on those responsible (arts. 2 and 26).

The State party should strengthen its efforts to eradicate stereotypes and discrimination against migrants, inter alia, by conducting public awareness campaigns to promote tolerance and respect for diversity. The State party should ensure that cases of racially motivated violence are systematically investigated, that the perpetrators are prosecuted and punished, and that appropriate compensation is awarded to the victims.

Ill-treatment and excessive use of force by police officers

14. The Committee is concerned about allegations of ill-treatment and excessive use of force by soldiers and police officers at detention centres for migrants, which in some cases included the use of tear gas and rubber bullets. The Committee regrets the incomplete information on sanctions taken against officers found responsible by the State party for such cases and particularly with regard to the deaths of two migrants of Nigerian and Malian origin in 2011 and 2012 (arts. 6 and 7).

The State party should adopt effective measures to prevent excessive use of force and ill-treatment by law enforcement officials and members of the security forces. The State party should ensure that allegations of torture and/or ill-treatment are effectively investigated, perpetrators prosecuted and, if convicted, punished with sanctions commensurate with the seriousness of the crime, and victims should be adequately compensated. The State party should promptly investigate cases of death in custody, prosecute those responsible and provide appropriate compensation to families of victims.

Trafficking in human beings

15. While noting the adoption and implementation of the second National Action Plan on Combating Trafficking in Persons 2013–2014, the Committee is concerned about the low number of investigations and convictions related to trafficking in human beings. The Committee also regrets the lack of information on measures adopted to improve the identification of victims and to ensure that victims have access to compensation and rehabilitation (art. 8).

The State party should intensify its efforts to combat trafficking in persons; systematically and vigorously investigate and prosecute perpetrators, and ensure that, when convicted, they are adequately sanctioned. The State party should also guarantee adequate protection, reparation and compensation to victims, including

¹¹ **Addendum:** “Malta considers that these recommendations are already addressed in the Criminal Code and, therefore, Malta is not accepting these recommendations. The Criminal Code also provides for aggravating circumstances when rape is committed on the spouse, person engaged to be married, persons related with consanguinity amongst other aggravations”.

rehabilitation. It should ensure that legal alternatives are available to victims who may face hardship and retribution upon removal.

Administrative detention of migrants and asylum seekers

16. While taking note of the explanations provided by the State party, the Committee is concerned that irregular migrants, including asylum seekers are systematically detained upon arrival in the State party and that the length of detention could rise to 18 months for irregular migrants and to 12 months for asylum seekers. Similarly, the Committee is concerned about reports that migrants in a vulnerable situation, including unaccompanied children are automatically detained and that they are not systematically provided with free legal representation. Finally, the Committee notes that the time limit for administrative detention for immigration purposes is not defined by law and is concerned about the absence of an effective judicial remedy to review the lawfulness of detention, possibly due to reported lack of independence and judicial capacity of the Immigration Appeals Board (arts. 9, 13 and 24).

The State party should:

- (a) **Guarantee that administrative detention for immigration purposes is justified as reasonable, necessary and proportionate in light of the specific circumstances and used as a measure of last resort for the shortest appropriate period;**
- (b) **Further develop specific needs assessments of migrants in a vulnerable situation, particularly of unaccompanied children;**
- (c) **Guarantee that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings;**
- (d) **Ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children;**
- (e) **Establish in its legislation a specific time limit and alternatives for detention;**
- (f) **Ensure that administrative detention for immigration purposes is subjected to periodic evaluation and judicial review by an independent judicial body, in accordance with the requirements of article 9 of the Covenant.**

Non-refoulement and refugee determination procedures

17. While acknowledging the efforts made by the State party to improve the refugee determination procedure, the Committee is concerned about reports on difficulties faced by asylum seekers in access to counsel from the outset of the procedure. The Committee is also concerned about alleged instances of collective expulsions of migrants who have been intercepted and rescued at sea, in case of a real risk of ill-treatment, infringing the principle of non-refoulement and regrets that the State party contests its jurisdiction over persons rescued at sea (arts. 6, 7 and 13).

The State party should ensure that all persons applying for international protection are given access to a fair and full refugee determination procedure, have access to counsel and an interpreter from the outset of the procedure. The State party should scrupulously respect the principle of non-refoulement and ensure that migrants intercepted or rescued at sea are given access to the refugee determination procedure.

Living conditions in detention centres

18. Despite the efforts made by the State party to improve living conditions in detention centres, including open and closed centres for migrants, the Committee is concerned at reports of degrading living conditions, including inadequate sanitary conditions and health-care services (art. 10).

The State party should strengthen its efforts to improve the living conditions in detention centres on a sustainable basis, including with regard to adequate health

care- services and sanitary conditions, with a view to achieving full compliance with the requirements of article 10.

The right to a fair trial

19. The Committee is concerned about the restrictions to the right of persons deprived of liberty to have access to a lawyer, such as delays of up to 36 hours prior to such access and the prohibition of access to a lawyer during police interrogation (arts. 9 and 14).

The State party should adopt all legislative and other measures to ensure that all persons deprived of their liberty have proper access to a lawyer including during police interrogation.

III. Special Procedures Mandate Holders

Report by the Special Rapporteur on the human rights of migrants on his mission to Malta,

Addendum: Mission to Malta (12 May 2015) [A/HRC/29/36/Add.3](#)

Recommendations to the Government

2. Border management

109. The Special Rapporteur recommends that the Government:

- (a) **Further implement a human rights-based approach to migration and border management, ensuring that the rights of migrants, including irregular migrants, are always the first consideration;**
- (b) **Ensure that readmission and cooperation agreements aimed at, inter alia, combating irregular migration include safeguards to fully respect the human rights of migrants, as well as ensure adequate protection of vulnerable migrants, including asylum seekers, in particular with regard to the principle of non-refoulement;**
- (c) **Establish a comprehensive mechanism for the identification of unaccompanied minors that includes not only medical exams but also a psychosocial and cultural approach, in order to best identify specific protection measures in the best interests of each child;**
- (d) **Fully implement the relevant provisions of Regulation 656/2014 of the European Parliament and of the Council for all search and rescue operations coordinated by the Malta Rescue Coordination Centre;**
- (e) **Agree on criteria to identify the place of safety where people rescued at sea should be disembarked as a matter of urgency, to render disembarkation predictable and quick. To this end, negotiations on a memorandum of understanding on disembarkation should be vigorously pursued within the IMO framework.**

3. Detention and open centres

110. The Special Rapporteur recommends that the Government:

- (a) **Change laws and policies related to the administrative detention of irregular migrants, so that detention is decided upon on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation under which detention may be resorted to, rather than being the automatic legal consequence of a decision to refuse admission of entry or a removal order;**
- (b) **Ensure that migrants are detained only when there is a reasonable basis to believe that they present a danger to themselves or others or would abscond from future proceedings, and always for the shortest time possible, and that non-custodial measures are always considered first as alternatives to detention;**

- (c) Establish places of administrative detention outside of military facilities and expeditiously take measures to transfer the detainees to the non-military facilities. Such detention centres should not be managed by military staff;
- (d) Improve the management of government centres for irregular migrants, drawing from the recommendations made in the Valenzia report, the best practices observed in the current network of reception centres and in other facilities in Europe and around the world, and in accordance with relevant standards espoused by international human rights law;
- (e) Strengthen contingency plans to avoid overcrowding and consequent deterioration of conditions during peak migration periods;
- (f) Ensure that all detained migrants have access to proper medical care, interpreters, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise;
- (g) Systematically inform detained migrants in writing, in a language they understand, of the reason for their detention, its duration, their right to have access to a lawyer, and the right to promptly challenge their detention and to seek asylum;
- (h) Ensure that all migrants deprived of their liberty are able to promptly and easily contact their family, consular services and a lawyer, at all times and free of charge;
- (i) Develop comprehensive human rights training programmes for all staff who work in reception centres, including training that enables them to identify detainees exhibiting mental health issues or in need of protection as victims of crime, and improve available mental health and support services in detention, based on the principle of informed consent;
- (j) Ensure the independent monitoring of reception centres so that they are all brought to the same standards;
- (k) End the detention of unaccompanied migrant children. Additionally, migrant children require more culture and language support to help with integration at school and in society, more activities outside of the shelters to occupy them when they are not in school, and monitoring, for at least one year, to ensure an easy transition from shelters to open centres.

4. Access to justice

111. The Special Rapporteur recommends that the Government:

- (a) Ensure full and proper access to justice for all detainees, including a more accountable system for lodging complaints within detention and reception centres;
- (b) Ensure that all detained persons who claim protection concerns are, without delay, adequately informed of their right to seek asylum, have access to registration of asylum claims and can promptly and easily communicate with UNHCR, lawyers and civil society organizations;
- (c) Establish a fairer and simpler system for migrant detainees to be able to challenge expulsion and detention orders;
- (d) Ensure that the appeal proceedings are based on the merits and validation of detention;
- (e) Provide explicit training for the Immigration Appeals Board and the Refugee Appeals Board on international human rights law and international refugee law;
- (f) Expedite the implementation of legislation that allows migrants to challenge effectively their detention at any time, in line with the standards laid out by the European Court of Human Rights, through periodic review by a court of law on the necessity and legality of detention, and ensure that these mechanisms are accessible for children and other vulnerable groups;
- (g) Provide unaccompanied children with free, competent and effective guardianship to ensure proper decision-making in all proceedings concerning

such children, as well as free legal representation, to assist in all immigration and asylum proceedings;

- (h) **Guarantee fully the right to free legal assistance in expulsion, detention and asylum procedures to all migrants and asylum seekers in primary legislation and secure it in practice in all situations of detention of migrants and asylum seekers.**

5. Cross-cutting concerns

112. The Special Rapporteur recommends that the Government:

- (a) **Provide access to basic services, such as health care, to everyone living in Malta, regardless of their immigration status, in accordance with international human rights standards;**
- (b) **Expedite the establishment of an integration unit that will focus on equality and non-discrimination for all, including for migrants and asylum seekers, inside the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties. It should initially focus on public awareness campaigns to eradicate stereotypes and discrimination against migrants while promoting tolerance and respect for diversity and on providing accurate data regarding migrants and asylum seekers and their economic and social contribution to Malta;**
- (c) **Reinforce the public awareness campaigns through effective enforcement of laws on prohibiting racist and xenophobic acts and on prohibiting hate speech and racially motivated violence against migrants and asylum seekers. Ensure that any such cases are prosecuted and punished, and that appropriate compensation is awarded to the victims;**
- (d) **Fully implement its legislation to combat direct and indirect racial discrimination with regard to the enjoyment of economic, social and cultural rights by immigrants, in particular refugees and asylum seekers, including access to private rental housing and the labour market;**
- (e) **Fully implement the Employer Sanctions Directive, including by developing comprehensive measures to penalize Maltese employers who abuse the vulnerability of migrants by paying them low or exploitative wages;**
- (f) **Avoid the criminalization of irregular migrants in language, policies and practice, and refrain from using incorrect terminology, such as “illegal migrant”.**

Report of the Working Group on Arbitrary Detention on its follow-up visit to Malta

Addendum: Follow-up visit to Malta (7 October 2016) [A/HRC/33/50/Add.1](#)

Conclusions

80. The significant reduction in the number of arrivals since 2013 has contributed to an improvement in the situation. More people found at sea by the Maltese and Italian coast guards are being transported to Italian harbours. Most migrants in an irregular situation are now coming to Malta by air.

81. The Working Group reiterates that the right to seek and enjoy asylum should be recognized as a basic human right in accordance with the Universal Declaration of Human Rights and relevant applicable international law.

82. The Working Group was able to verify substantial changes in the system of treatment of these persons compared with the situation prevailing during its first visit in 2009. The Working Group is nevertheless of the view that the Government of Malta should employ more resources to enable its public servants to be sensitive to the fact that refugees and asylum seekers have experienced traumatic events and are fleeing their places of origin due to fear of persecution. Asylum seekers, immigrants and

refugees who arrive in Malta in an irregular manner continue to be systematically and routinely detained.

83. The Working Group takes note of the legislative changes already introduced to reform the automatic nature of detention for migrants in an irregular situation, refugees and asylum seekers. Legislation concerning the application of the directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals has been adopted, the Immigration Act has been amended in order to allow for detentions to be challenged, temporary permits to work for up to three months have been established, and a voluntary return programme has been designed.

84. However, the period of detention still varies from 2 to 12 months pending adjudication of an asylum request. The drastic reduction in arrivals by sea and the improvement in internal administrative procedures have allowed the reduction of the average detention period to two months. Those with rejected applications are still detained for up to 18 months as permitted by law. Automatic detention continues to be the norm and early release the exception, a situation which is not in conformity with international law. Authorities asserted that initial detention was necessary in order to identify the detainee, verify her or his nationality, and establish his or her age and the state of his or her physical and psychological health. These reasons cannot justify detention during long periods of up to 12 months. In cases involving people whose application for asylum has been refused and who are awaiting deportation, their detention can last for up to 18 months.

85. The Working Group is aware of the positive steps taken by the Government to establish a new system of reception for asylum seekers, refugees and migrants in an irregular situation, through the establishment of initial reception centres. After one week in such a centre, immigrants, refugees and asylum seekers will be transferred either to an open centre or to a detention centre, like Safi Barracks, on the basis of an individual detention order, which can be appealed before the Immigration Appeals Board.

86. The Working Group would like to highlight the positive measures taken in relation to children and to migrants with psychosocial and intellectual disabilities. Children will no longer be detained; after their identity, health and age is registered by the corresponding governmental agency, the Agency for the Welfare of Asylum Seekers, they will be transferred to special houses or placed in the care of foster families.

87. The Working Group found migrants in an irregular situation and asylum seekers in the Corradino Correctional Facility, the main prison of the country, where 543 persons are currently detained. The Working Group observed that people in pretrial detention continued to be held together with convicts, in contravention of international norms.

Recommendations

In relation to migrants, asylum seekers and refugees

89. The Working Group recommends that the Government:

- (a) End the regime of mandatory and automatic detention for asylum seekers, refugees and migrants in an irregular situation and replace it with a reception system;
- (b) End the military presence in the management of the detention centres;
- (c) Ensure that migrants in an irregular situation, refugees and asylum seekers are informed about their rights, as well as the regulations and procedures, following their arrival in Malta;

- (d) Further reduce the duration of administrative detention of migrants in an irregular situation. The Working Group recommends that detention should be applied when necessary, reasonable in all circumstances, proportionate to a legitimate purpose, non-discriminatory and subject to judicial review. The criteria of necessity and responsibility should always be respected. In addition, the Working Group recommends that less restrictive measures should be applied, such as bail, home curfew, deposit of documents, reporting conditions, community release or supervision-designated residence;**
- (e) Extend free legal aid to migrants in an irregular situation, refugees and asylum seekers before the appeal stage of the review process. Such aid should not be limited to recourse before the Immigration Appeals Board but rather extended to appeals before the Civil, Constitutional and European Courts, as well as international human rights bodies;**
- (f) Design long-term planning for people living in open centres. The Government should explore alternative placement options. The Working Group suggests that the Government of Malta work together with civil society organizations and religious bodies that have ample experience in providing community-based placement to create more opportunities for migrants, asylum seekers and refugees to reside in the community;**
- (g) Prioritize the cooperation of civil society organizations, particularly religious institutions with considerable expertise and experience in these areas. These organizations have a substantial contribution to make regarding the legislative drafts that the Government is preparing in order to design a new system for reception of immigrants, refugees and asylum seekers that is not based on detention.**