

NATIONAL ACTION PLAN The Republic of Malta

What is the UNHCR Global Strategy - Beyond Detention?

In June 2014, UNHCR launched its Global Strategy - Beyond Detention 2014-2019, which aims to support governments to end the detention of asylum-seekers and refugees. The Strategy lays out three main goals: (1) to end the detention of children; (2) to ensure that alternatives to detention (ATDs) are available in law and implemented in practice; and (3) to improve conditions of detention, where detention is necessary and unavoidable, to meet international standards. To support the implementation of the Global Strategy, focus countries have developed National Action Plans ('NAP'). This document is a summary and public version of the NAP.

All documents relating to the Global Strategy - Beyond Detention 2014-2019 are available at <http://www.unhcr.org/detention>

The process of developing the National Action Plan

In Malta, this National Action Plan ('NAP') was put together collaboratively through bilateral consultations with the Ministry for Home Affairs and National Security (MHAS) and other relevant agencies operating under its remit (for example, the Agency for the Welfare of Asylum Seekers (AWAS) and the Detention Services). Consultations were also organised with local NGOs that are members of the International Detention Coalition and/or that conduct activities in detention centres. The actions set out in the NAP are based on a comprehensive analysis of the past and current detention situation in the country, as well as the need to address the specific law, policy and practice issues that are articulated in UNHCR's [Position on the Detention of Asylum Seekers in Malta](#) (Position Paper), published in September 2013.

The actions foreseen

Goal 1. End the detention of children

In 2014, the Maltese authorities took steps to address the detention of children. In January 2014, [legislative provisions](#) (in the form of delegated legislation) transposing the [EU Returns Directive](#) (2008) stipulated that children and families with children should only be detained as a measure of last resort and for the shortest possible period. In March of the same year, the [Prime Minister publicly declared](#) that children should not be in detention, and AWAS undertook a review of age assessment procedures for unaccompanied and separated children. An Initial Reception Centre (IRC) was established in 2015 to accommodate unaccompanied and separated children, as well as families with children, who arrive in Malta in an irregular manner. It is expected that legal provisions regulating the detention of children (similar to the ones transposing the EU Returns Directive) will be introduced in delegated legislation transposing the recast EU Reception Conditions Directive (2013).

UNHCR will support the Government in implementing the announced policy decision of no longer detaining children by taking specific actions. In February 2015, UNHCR presented the publication *Safe and Sound, What States can do to ensure respect for the Best Interests of Unaccompanied and Separated Children in Europe* (2014) to AWAS staff and management and other stakeholders in order to share the relevant international standards and practices applicable to children in a reception context. Following a joint technical assessment of the situation of UASC by IOM and UNHCR in 2014, several follow up stakeholder consultations have been hosted by the Malta President's Foundation for the Wellbeing of Society. The overall recommendation made in the IOM-UNHCR report was for the establishment of a separate reception mechanism for all children arriving as asylum-seekers in Malta.

In relation to the Initial Reception Centre, UNHCR will carry out counselling activities for children and their families and assist with gathering first information relevant for possible transfers in the context of the Dublin III Regulation. In addition, UNHCR has committed to deploy a child protection expert to provide guidance and training on the applicable international protection standards for children. Further joint and/or coordinated activities will be pursued in 2016 and beyond, and steps will be taken together with key stakeholders including AWAS and other Government entities, as well as relevant NGOs, to continue improving the reception framework for children and guide the implementation of relevant standards.

Goal 2. Ensure that alternatives to detention are available in law and implemented in practice

Under Goal 2 of the Global Strategy - Beyond Detention, Malta's NAP calls for several actions aimed at supporting the implementation of a comprehensive ATD policy, which takes into account the special circumstances and particular needs of individual asylum-seekers. The Immigration Act provides the possibility for persons who are detained to apply for bail; however, this has not been effective in practice owing to the conditions imposed by the Immigration Appeals Board which the vast majority of asylum-seekers who arrive by boat in an irregular manner are unable to fulfil. Key priorities will be to ensure that the reviewed legal framework regulating detention is in line with international standards, in particular assessing the extent to which the necessity and proportionality tests are taken into account in individual decisions to detain, asylum-seekers have access to information and legal aid and to speedy legal remedies. Activities in the NAP foresee the continuation of dialogue with relevant authorities on the development of ATDs that are specific to the Maltese context, as well as supporting the Government in its implementation of existing ATDs, such as reception in open accommodation centres and community based arrangements. In 2015, in the context of the forthcoming transposition of the recast EU Reception Conditions Directive, UNHCR briefed members of the Maltese judiciary regarding on relevant international standards. Further follow up briefings are planned for the coming years, including for the Immigration Appeals Board, the quasi-judicial body responsible for examining decisions to detain.

Goal 3. Ensure that conditions of detention, where detention is necessary and unavoidable, meet international standards

UNHCR and NGOs have in general enjoyed access to all detention centres in Malta. Although the use of detention in Malta has decreased significantly in 2015 compared with previous years, due to the low number of asylum-seekers arriving in an irregular manner, UNHCR continues to conduct detention visits, applying the methodology of the UNHCR, APT and IDC [Monitoring Immigration Detention: Practical Manual](#) (2014). Relevant interventions with the authorities will continue to be made in order to improve conditions in detention, as well in support of individual asylum-seekers, as appropriate. Such monitoring will continue to be a priority activity for UNHCR as long as the use of detention for asylum-seekers continues.

Detention overview

In 2013, UNHCR published a comprehensive Position Paper to address issues relating to the use of detention for asylum-seekers arriving irregularly in Malta. While there have been some further adjustments to the system since this document was published – in particular in respect of the detention of children – the broader conclusions drawn by UNHCR remain valid. In 2014, AWAS piloted a reviewed age assessment procedure for persons declaring to be under the age of majority and who are detained. UNHCR welcomed the review, but identified a number of issues with the new age assessment procedure for UASCs. Further, Malta has undertaken some renovation of reception and detention facilities in the course of 2014 and 2015. However, concerns remain regarding material conditions in detention. Positively, the MHAS announced that a comprehensive review of the current reception system as well as migration management legislation and policy are underway, including with a view to transposing relevant EU legislation. So far, UNHCR's concerns as outlined in the Position Paper have yet been addressed. For example, the law permits the detention of asylum-seekers for the purpose of removal, and there is no general mechanism in place to consider less coercive and alternative measures in individual cases at the time of the decision to detain. The bail system, the only statutory alternative available, is neither effective nor generally accessible to asylum-seekers arriving in an irregular manner. In these circumstances, it is UNHCR's position that the mandatory and automatic detention of all asylum-seekers who arrive in an irregular manner, for the purposes of removal, is unlawful and arbitrary. A revised Immigration Act is in the final stages of approval in the Maltese Parliament. This draft Bill introduces several amendments that would improve some aspects of the legal framework such as, positively, safeguards against *refoulement* and a system of individual review of detention decisions.

Good practices and alternatives to detention

Government policy provides that certain categories of vulnerable persons, including UASCs, persons with disabilities, persons with severe medical and psychological conditions and pregnant women, are not to be detained. In practice, such persons are usually released following a vulnerability or age assessment procedure by AWAS. UNHCR is also pleased that the IRC initiative, set up in 2015, creates a separate track for UASCs and families with children, where their particular circumstances are taken into account.

For more information, please contact Roberta Buhagiar (buhagiar@unhcr.org) or Mireille Mifsud (mifsud@unhcr.org).

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