

Malta

PROGRESS UNDER THE GLOBAL STRATEGY BEYOND DETENTION 2014-2019, MID-2016

IN MALTA, the reporting period was characterized by a near-total decline in the arrival of asylum-seekers by sea and an increase in the number of asylum-seekers arriving by other regular and irregular means. Due to this trend, the number of persons detained decreased. Nevertheless, the legislation and policy governing the detention system have undergone several important changes. The passing of revisions to the *Immigration Act* and the *Refugees Act* (Reception Regulations) in December 2015 prohibited the detention of children except as a measure of last resort and removed a requirement to detain persons arriving to Malta irregularly, while also providing for administrative review of detention. Meanwhile, a new policy framework also issued in December 2015 outlined the creation of an Initial Reception Centre (IRC), where asylum-seekers would be confined, screened medically, and assessed for release to the community or issuance of a detention order. Although UNHCR welcomed the improvements that these changes heralded, UNHCR publicly observed that several aspects of the changes remained unclear, or had not generated full compliance with key legal principles governing detention.¹ Furthermore, although UNHCR's monitoring of detention and the IRC in early 2016 confirms that some notable improvements to the reception system have occurred, UNHCR considers



KEY DEVELOPMENTS

- Adoption of a revised legal³ and policy framework⁴ for the reception of asylum-seekers which puts an end to the automatic and mandatory detention of asylum-seekers who have entered in Malta in an irregular manner, provides for legal grounds for detention, ensures free legal assistance, the possibility to challenge detention orders, and establishes the automatic review of detention orders. It also stipulates that minors and families with children should only be detained as a measure of last resort and for the shortest possible period. Nevertheless, the authorities may detain unaccompanied and separated asylum-seeking children (UASC) and children with families for the sole purpose of completing medical checks, and for a period that should not be longer than 7 days, at the IRC, a closed facility.
- Creation of two Initial Reception Centres– one for children and families and one for adults – where the authorities hold persons arriving by boat until the completion of medical and identity checks. The IRC for adults went into operation on February 23, 2016 to hold 15 persons of concern relocated from Italy under the EU relocation scheme. Another group was relocated and held at the IRC on March 1, 2016. On May 10, 2016, the IRC for children and families (Hal-Far) went into operation with the arrival of a Syrian family with two children through the EU relocation scheme. They were detained for medical clearance upon arrival for 70 hours and then released to an open reception centre.

¹ UNHCR Malta, *Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers*, available at: <http://www.refworld.org/docid/56e963824.html>.

that the IRC is a place of detention² and, thus, has questioned its legality under Maltese law, especially when it comes to children.

The 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 (e.g. 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 (IDC) 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*⁵ (Position Paper), published in September 2013. UNHCR and the asylum community in Malta had already been active on the issue of detention for a number of years and UNHCR had been coordinating with Jesuit Refugee Service (JRS) and the Malta Red Cross for several years. With the Global Strategy as a strong platform for coordination, they are currently meeting bi-monthly to discuss detention issues and the roll-out of the NAP. UNHCR also meets regularly with the Board of Visitors for Detained Persons, the National Preventive Mechanism (NPM) under the *Optional Protocol to the Convention against Torture (OPCAT)*, to engage in similar discussions, and meets separately with authorities responsible for detention, at least bi-monthly, during visits to detention centres.

² See UNHCR *Detention Guidelines*, p. 9, which defines detention as the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities. The place of detention may be administered either by public authorities or private contractors; the confinement may be authorized by an administrative or judicial procedure, or the person may have been confined with or without "lawful" authority.

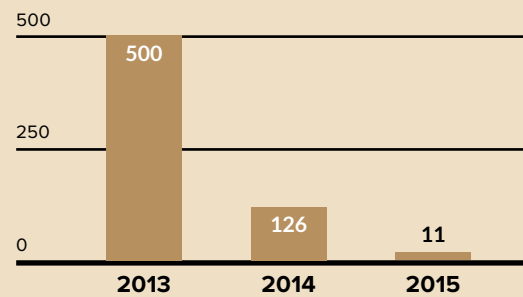
³ Act No. XXXVI of 2015, the *Immigration (Amendment) Act*, 30 December 2015), available at: <http://goo.gl/q1bqJx>; L.N. 417 of 2015, *REFUGEES ACT (CAP. 420), Reception of Asylum Seekers (Minimum Standards) (Amendment) Regulations*, 2015, available at: <http://goo.gl/DovWiD>. Consolidated legislation, including Amendments, is not yet available online.

⁴ Minister for Home Affairs and National Security, *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, December 2015, available at: <https://goo.gl/mAkKY3>.

⁵ UN High Commissioner for Refugees (UNHCR), *UNHCR's Position on the Detention of Asylum-seekers in Malta*, 18 September 2013, available at: <http://www.refworld.org/docid/52498c424.html>

GOAL 1 End the detention of children

NUMBER OF CHILDREN DETAINED

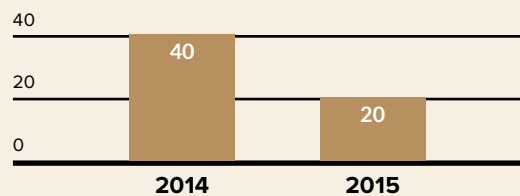


In 2014, out of the 126 children, 64 were children in families and 62 were unaccompanied. UASC were detained for 27 days on average and released after result of age assessment; families were detained for 19 days on average. In 2015, out of the 11 children, 11 were detained upon arrival and released after completion of age assessment.

- Legal framework partially ensures that children are not detained.

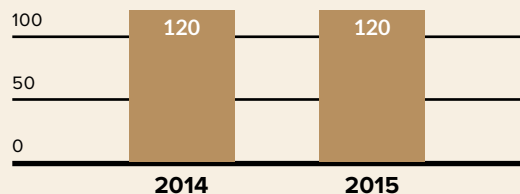
GOAL 2 Ensure that alternatives to detention (ATDs) are available

NUMBER OF PLACES AVAILABLE IN CARE ARRANGEMENTS FOR UASC



Source: Agency for the Welfare of Asylum Seekers (AWAS).

NUMBER OF PLACES AVAILABLE IN ATDs FOR FAMILIES



Source: AWAS.

PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions			
Directed residence			
Residence at open/semi-open reception/asylum centres ¹			
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety			
Community supervision arrangements			

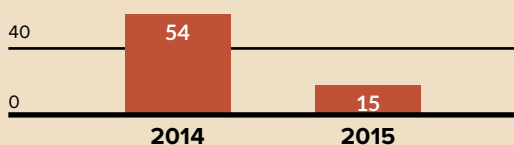
☑ available in legislation ☑ used in practice

1. Residence at open/semi-open reception/asylum centres is used as a reception option.

- ☑ Mechanism allowing asylum-seekers to stay legally in the community.
- ☑ When residing in the community, asylum-seekers have access to basic rights (accommodation, medical and psychological assistance, education. Legal assistance is available at the stage of the appeal of a negative decision at first instance).
- ⊘ No case management* provided in ATDs.

GOAL 3 Ensure that conditions of detention meet international standards

NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)



NB: The reduction of monitoring visits directly relates to the diminution of persons in detention.

- ☑ Malta is a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

LEGEND: ☑ Yes ⊘ No ⊙ Partially
N/A Not available U Unknown

SOURCE: All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

* See UNHCR *Detention Guidelines*, p.44.

Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

During the initial roll-out period of the Global Strategy, UNHCR Malta submitted observations on the delegated legislation transposing the EU Reception Conditions Directive,⁶ which contributed to the introduction of new safeguards and procedures relating to the application of less coercive measures or alternatives to detention (ATDs), safeguards on the detention of children, access to free legal assistance, access to detainees for families and NGOs (although with restrictions) and to the removal of restrictions on UNHCR's access to detainees. However, the legislation passed still lacks provisions on necessity, proportionality, and reasonableness, despite UNHCR's comments to this end.

With regard to the Initial Reception Centres, UNHCR reached an agreement with the authorities securing UNHCR's presence at the centres, with the specific role of providing information and making referrals where appropriate. UNHCR conducted its first visit at the IRC for adults to monitor conditions on 25 February 2016 and a second visit was conducted on 2 March 2016 after another group was relocated and held at the IRC on 1 March 2016. A first visit to the IRC for children and families was conducted on 11 May 2016. In both centres UNHCR provided information and counselling to persons of concern, including the two children held with their parents at the IRC for children.

UNHCR also conducted regular monitoring visits to detention centres (54 between June and December 2014, and 15 in 2015), updating a detailed mapping of issues after every visit and producing a comprehensive report of findings and recommendations, structured around the UNHCR, APT and IDC *Monitoring Manual*.⁷

⁶ United Nations High Commissioner for Refugees (UNHCR), *UNHCR's Observations on Malta's Revised Legislative and Policy Framework for the Reception of Asylum-Seekers*, 25 February 2016, available at: <http://www.refworld.org/pdfid/56e963824.pdf>.

⁷ UN High Commissioner for Refugees (UNHCR), Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), *Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>



TRAININGS ORGANIZED IN MALTA DURING THE REPORTING PERIOD

1 on Reception and
alternatives to detention

3 on Child
protection

NUMBER OF PERSONS TRAINED IN MALTA DURING THE REPORTING PERIOD

30 on Reception and
alternatives to detention

36 on Child
protection

Gaps and challenges

The change in migration trends to Malta has impacted and will continue to impact the roll-out of the Global Strategy. Since 2014, boat arrivals to Malta have stopped, leading to the detention of few persons. Although persons arriving by regular means – in greater numbers than before – are still being detained, and although UNHCR Malta therefore continues to conduct regular monitoring visits, it can be difficult to reach the sample size needed to properly speak of “trends” and “developments” in the detention regime.

While the revised legislation no longer supports the automatic and mandatory detention of asylum-seekers who have entered Malta in an irregular manner, UNHCR remains concerned with the interpretation of the legal grounds for detention, lack of clarity on the applicability of ATDs, and the need to establish safeguards to ensure that detention is always used in proportionality to a legitimate purpose. Some of the guidelines for immigration authorities contained in the new policy document are not fully in line with well-established international human rights and refugee law standards, and could potentially lead to situations of arbitrary and unlawful detention.

Next steps

UNHCR Malta’s next steps under the Global Strategy will be to monitor the implementation of the new legal and policy developments to Malta’s detention framework, including the implementation of detention review mechanisms and the newly-established IRC. In order to do so, UNHCR will further enhance its relationship with NGO partners and Malta’s NPM through regular coordination meetings. Findings from the initial visits to the IRC will be discussed with the authorities and they will also be encouraged to take measures addressing the situation in detention, in light of the European Court of Human Rights' decision *Abdi Mahamud v. Malta*⁸ from 3 May, 2016. Finally, UNHCR will also pursue ongoing detention monitoring activities, including counselling and referral of persons of concern to ATDs, as well as regular meeting and contacts with detention staff and the Ministry of Home Affairs and National Security concerning the findings of monitoring activities.

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UNHCR Malta, August 2016.

⁸ *European Court of Human Rights, Abdi Mahamud v. Malta (application no. 56796/1)*