

**Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

MALTA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

Malta acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* 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*.¹ 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.

The great majority of asylum-seekers in Malta arrive irregularly by boat, many of them rescued by the Maritime Squadron of the Armed Forces of Malta. The Government maintains a policy of mandatory detention for all irregular arrivals; only unaccompanied and separated children and the most vulnerable cases (pregnant women, families with children, serious medical/mental health cases) are released early, after they go through an, at times, lengthy vulnerability/age assessment procedure.

According to government policy, asylum-seekers may be detained for up to 12 months, after which they have a right to access the labour market and are released from detention. Rejected asylum-seekers may remain in detention for up to 18 months, after which they are released as per the detention policy.² After release those granted protection (refugee status, subsidiary protection or temporary humanitarian protection) have access to open accommodation centres established by the authorities. The general living conditions in these centres have improved, but some facilities remain rudimentary and are often overcrowded.

The authorities consider resettlement or intra-EU relocation as the most viable solution for beneficiaries of protection, mainly due to Malta's high population density and limited size. The 'particular pressures' faced by Malta have been a prominent feature of the current EU discourse regarding the management of mixed migration movements in the Mediterranean. While there is good access to education opportunities and the labour market, so far, few beneficiaries of protection have managed to integrate successfully in Maltese society, and a significant number have left the island on their own. In total, 1,830 beneficiaries of protection have been resettled or relocated from Malta between 2005 and 2012.³

¹ Chapter 420 of the Laws of Malta

² *Irregular Immigrants, Refugees and Integration – Policy Document*, available at: <http://www.enaro.eu/documents/immigration-English.pdf>

³ Figures correct as of end of December 2012. More than 1100 of them have been resettled to the US.

As of January 2013, UNHCR statistics indicate that 8197 persons have been granted international protection by Malta since the establishment of national asylum procedure in 2002. However, the number of refugees and subsidiary protection beneficiaries currently present in Malta is thought to be lower as the statistics do not reflect those who have left the island without notifying the authorities. Since 2002, Malta has received more than 16,600 arrivals,⁴ the vast majority of whom arrived irregularly by boats departing from Libya. In 2012, there were a total of 1,890 arrivals (1,246 men, 373 women, 222 boys, 41 girls, and 8 infants). 65% of the people arriving by boat in 2012 originate from Somalia.

During the last decade, Malta had an average recognition rate of around 60%, with a large majority obtaining subsidiary protection status. Of all those granted international protection in Malta the majority originate from Somalia (60%), Eritrea (20%) and Sudan (4%). During the last decade around 3% of all asylum seekers have been recognized as refugees. In 2012, 11 Ethiopians, 7 Eritreans and 3 Somalis were granted refugee status.

II. ACHIEVEMENTS AND BEST PRACTICES

Rescue at sea

During the last decade Malta has contributed to the rescue of thousands of individuals who were attempting to cross the Mediterranean Sea. The interventions by the Armed Forces of Malta continue to be a crucial element of the rescue-at-sea capacity in the central Mediterranean.

Transposition of EU asylum legislation

Malta has transposed and implemented, and continues to work to implement, European Union asylum legislation through the enactment of a range of domestic legal instruments.

RSD Procedures and Protection Rate

Malta has maintained a high protection rate, with around 60% of all asylum-seekers being granted some form of international protection status. The Office of the Refugee Commissioner has developed capacity to process asylum applications in an efficient manner within a relatively short time-frame.

Accommodation in open centres

Malta provides transitional accommodation arrangements to all asylum-seekers and beneficiaries of protection after release from detention. While the material conditions in these accommodation centres have not always been in line with minimum standards, the authorities have taken steps to address this. UNHCR notes that the use of certain accommodation facilities⁵, which were considered particularly problematic, was discontinued in 2011.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Detention of asylum-seekers

In Malta, there are no specific legislative provisions regulating the administrative detention of asylum-seekers. In Maltese immigration law, detention is the automatic consequence of a refusal to grant admission into national territory or the issuance of a removal order in respect of a particular individual.⁶ Maltese law contains no legal limit on the maximum duration of detention of asylum-seekers. A 12-month time limit applicable to asylum-seekers is inferred on the basis of

⁴ Figures as of the end of December 2012.

⁵ Eg. tents at Hal Far Tent Village and Hal Far Hangar.

⁶ Article 14(2) of the Immigration Act, Chapter 217 of the Laws of Malta: "Upon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta..."

the EU Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, which stipulates that asylum-seekers should be given access to the labour market after one year.⁷

The duration of detention for asylum-seekers and migrants arriving by boat is regulated by a government policy, which provides that irregular immigrants stay in closed centres while their asylum applications are being processed, with the limitation that immigrants are released from detention after 18 months.⁸

Maltese law does not contain legal guarantees (on “refugees unlawfully in the country of refuge”) to ensure compliance with Article 31 of the 1951 Refugee Convention. Asylum-seekers arriving in Malta without leave from the Principal Immigration Officer are termed as “prohibited migrants”.⁹ Despite UNHCR’s and other entities’ consistent efforts over a number of years to positively influence Maltese legislation and practice, asylum-seekers who arrive in an irregular manner are still systematically and routinely detained, at times facing tough detention conditions in immigration detention facilities, some of which are still lacking basic minimum standards in several respects. UNHCR is concerned that Malta imposes prolonged periods of administrative detention for asylum-seekers without providing adequate avenues to effectively challenge their detention. There is also no general mechanism in place to consider viable and less coercive measures other than detention.

In view of the above, UNHCR is particularly concerned that the current practice is at odds with Article 31 of the 1951 Convention, and the fundamental rights to liberty and security of persons, as enshrined in international and European human rights instruments. On this basis, it is UNHCR’s position that the Maltese practice of detaining, for the purposes of expulsion, all asylum-seekers, who arrive on the territory in an irregular manner, is unlawful as this is not specifically authorized by Maltese law, European law or international law. In addition, UNHCR also considers that the Maltese practice of detaining all asylum-seekers who arrive in an irregular manner to be arbitrary in terms of well-established international law standards.

The special circumstances and needs of particular asylum-seekers in detention¹⁰

Maltese law is also silent on whether certain persons are exempt from detention on grounds of their vulnerability. The Maltese Reception Regulations¹¹ state that the specific situation of vulnerable people, including minors and pregnant women, will be taken into account.¹² These Regulations further state that the best interests of the child shall be a primary consideration.¹³ However, Regulation 15 states that unaccompanied minors over 16 may be placed in detention centres for adult asylum-seekers. Taken in the context of a system of mandatory detention, this legal provision raises serious concerns. In this context it is relevant to note that the Recast EU

⁷ Transposed by Regulation 10(2) of Subsidiary Legislation 420.06 Reception of Asylum-Seekers (Minimum Standards) Regulations, Legal Notice 320 of 2005, 22 November, 2005.

⁸ Ministry for Justice and Home Affairs and the Ministry for the Family and Social Solidarity, 2005. It is not sufficiently clear whether persons who arrive in an irregular manner by boat still fall within the remits of the policy document since the Returns Regulations clearly exclude persons who arrive by boat (many of whom are asylum-seekers) from the purview of the Special Procedural Safeguards while the Immigration Appeals Board has decided that these safeguards do in fact apply to persons who arrive by boat.

⁹ Article 5 of the Immigration Act, Chapter 217 of the Laws of Malta.

¹⁰ In terms of the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline 9, these include victims of trauma or torture, children, women, victims or potential victims of trafficking, asylum-seekers with disabilities, older asylum-seekers, lesbian, gay, bisexual, transgender or intersex asylum-seekers (LGBTI).

¹¹ Subsidiary Legislation 420.06 Reception of Asylum Seekers (Minimum Standards) Regulations, Legal Notice 320 of 2005, 22 November, 2005.

¹² Reception Regulations 14(1): “[A]ccount shall be taken of the specific situation of vulnerable persons which shall include minors, unaccompanied minors and pregnant women, found to have special needs after an individual evaluation of their situation.”

¹³ Regulation 14(2) of the Reception Regulations.

Reception Directive, which is yet to be finally approved, makes reference to Article 37¹⁴ of the 1989 United Nations Convention on the Rights of the Child¹⁵, and children may be detained only as a measure of last resort and only if alternatives cannot be effectively applied and unaccompanied children may be detained only in exceptional circumstances.

Procedures for early and exceptional release are regulated by policy and practice rather than by law and are implemented by the immigration authorities. Release is not automatic, and vulnerable persons are still, in practice, detained upon arrival. Vulnerable persons such as unaccompanied and separated children, pregnant women, families with children, and persons with severe medical and psychological conditions are usually released from detention after they undergo a vulnerability or age assessment procedure by the Agency for the Welfare of Asylum Seekers (AWAS). The procedure can take a number of days, weeks, and in some cases even months, since this usually depends on the limited capacity of AWAS which at times struggles with the number of arrivals by boat, particularly during the summer months. There is currently no procedure of judicial oversight for identifying and releasing vulnerable asylum-seekers or migrants in detention. In this context it is pertinent to note that Article 18(2) of the EU Asylum Procedures Directive¹⁶ states that “*where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.*”

During 2011 and 2012, UNHCR have put forward a number of specific recommendations to the authorities regarding the reception system. These include addressing the situation of unaccompanied and separated children in detention pending age assessment, separating different groups within detention facilities, improving access to medical services and psychological support, recruiting female detention service officers, facilitating recreation and learning opportunities, addressing the needs of women in detention, improving sanitary facilities, improving access to personal documents and phone cards, and increasing civilian involvement in the management of detention centres. While there have been efforts to renovate accommodation facilities and also project based support activities implemented in detention, UNHCR notes that several of these recommendations have yet to be addressed.

According to UNHCR’s guidelines, detention of asylum-seekers and refugees should normally be avoided and be a measure of last resort. Alternatives to detention should be sought and given preference, in particular for certain categories of vulnerable persons. If detained, asylum-seekers should be entitled to minimum procedural guarantees. *UNHCR’s Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* highlight that “the position of asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight

¹⁴ “States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

¹⁵UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>

¹⁶Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *Official Journal L 326*, 13/12/2005 P. 0013 – 0034.

because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic experiences, need to be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.”¹⁷

Following its visit to Malta in 2009, the UN Working Group on Arbitrary Detention recommended, among others, that the Government of Malta “*Change its laws and policies related to administrative detention of migrants in an irregular situation and asylum-seekers, so that detention is decided upon by a court of law, 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;*”¹⁸

In 2012, UNHCR had discussions with the Maltese authorities in relation to a government review of the reception system in Malta and submitted comprehensive recommendations for improvements.

Recommendations:

- Refrain from detaining children and persons who credibly claim to be under-age.
- Explore alternatives to detention and less coercive measures such as reporting obligations for asylum-seekers, residence at open centres, and community supervision arrangements.
- Consider implementation of recommendations presented by the UNHCR and civil society organizations to the authorities in 2012.

Issue 2: Refugee Status Determination (RSD)

In Malta, RSD is conducted by the national authorities. As outlined above, the recognition rate has generally been high, with around 60% of those applying for refugee status obtaining some form of international protection. However, only around 3% were recognized as refugees. UNHCR notes that the number of decisions overturned by the Refugee Appeals Board remains remarkably low, even taking into account the initial high recognition rate. Since its inception in 2002, the Refugee Appeals Board has, on average, only granted refugee status in a few appeal cases every year. Also, there appears to be a lack of clarity regarding the formal competence of the Refugee Appeals Board. UNHCR has noted that some decisions have stated that the Board only has the competence to grant refugee status, and not other forms of protection, such as subsidiary protection. In other cases the Board has granted subsidiary protection status.

Access to legal assistance is a right granted throughout the asylum procedure. However, access to free legal aid is only available at appeal stage. Asylum seekers do not have guaranteed access to free legal aid at first instance (before the Office of the Refugee Commissioner). In practice, they are highly dependent on very limited legal support offered by one NGO providing legal assistance to individuals in detention.

Recommendations:

- Strengthen and consider restructuring the appeals system, so that the Refugee Appeals Board includes full-time board members with refugee law expertise operating on the basis of a more clearly defined formal competency.

¹⁷ UN High Commissioner for Refugees, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at: <http://www.unhcr.org/refworld/docid/503489533b8.html>

¹⁸ See page 19 of the WGAD report on its mission to Malta, A/HRC/13/30/Add.2, issued on 18.01.2010, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/103/03/PDF/G1010303.pdf?OpenElement>

- Strengthen and facilitate access to free legal aid at all stages of the asylum procedure.

Issue 3: Integration

Malta has gained important experience managing reception of asylum seekers and asylum claims. However, there is a lack of cultural mediators and interpretation services to assist mainstream government engagement with asylum-seekers and beneficiaries of protection. AWAS's role is to provide support for asylum-seekers and beneficiaries of protection in open centres, with a more limited role in detention carrying out vulnerability assessment procedures.¹⁹ UNHCR has noted important steps taken by the authorities to improve access to mainstream services. In practice, however, UNHCR still considers that there is a need to draft and implement a comprehensive integration policy for beneficiaries of protection. This should be accompanied by a strategy to improve public awareness on this issue.

UNHCR welcomes the recent initiative of the Minister for Social Dialogue, Consumer Affairs and Civil Liberties, who indicated that priority will be given to facilitating the integration process and has identified a focal point within her Ministry to pursue this in cooperation with civil society and relevant international organizations.

Citizenship

Recognized refugees are eligible to apply for citizenship after 10 years of continued residency in Malta. An application for citizenship must be submitted to the Department of Citizenship and Expatriate Affairs, however citizenship is granted at the discretion of the Minister of Foreign Affairs, according to Article 10 of the Maltese Citizenship Act.²⁰

Family reunification

Recognized refugees are entitled to family reunification, and UNHCR has noted that some have reunified successfully with their family in Malta. The right of family reunification is, however, not available to beneficiaries of subsidiary protection, who constitute the vast majority of persons granted international protection in Malta.

Education, employment and social welfare

Asylum-seekers have a right to free education²¹, and refugees and beneficiaries of subsidiary protection have a right to state education and training.²² While they have the opportunity to study at the university without paying the tuition fees applicable to EU and third country nationals, it is often difficult for beneficiaries of protection to pursue education as, without financial assistance, most remain dependent on holding or searching for a full-time job.

Asylum-seekers (who have still not received a decision on their claim) are released from detention in order to be able to access the labour market after one year from the date of arrival. Asylum-seekers can obtain legal employment if an employer is willing to apply for a license on their behalf; however, this license is issued in the employer's name, meaning the asylum-seeker is then tied to that particular employer. It should be also taken into account that access to the labour market for asylum seekers is without prejudice to priorities given to EU nationals, nationals of the

¹⁹ According to Regulation 6(1) of Subsidiary Legislation 217.11, Agency for the Welfare of Asylum Seekers Regulations, Legal Notice 205 of 2009, 17 July, 2009, "the function of the Agency shall be the implementation of national legislation and policy concerning the welfare of refugees, persons enjoying international protection and asylum-seekers."

²⁰ Chapter 88 of the Laws of Malta.

²¹ Regulation 9(1) of Subsidiary Legislation 420.06, *Reception of Asylum-seekers (Minimum Standards) Regulations*: "Minor children of asylum-seekers and asylum-seekers who are minors shall have access to the education system under similar conditions as Maltese nationals for so long as an expulsion measure against them or their parents is not actually enforced..."

²² Regulation 14(1)(a)(iii) and 14(1)(b)(iii) of Subsidiary Legislation 420.07, *Procedural Standards in Examining Applications for Refugee Status Regulations*.

EEA and legally resident third country nationals.²³ Refugees and beneficiaries of subsidiary protection are granted a general employment license independent of their employer. Both refugees and beneficiaries of subsidiary protection have “access to employment” by law.²⁴ An ongoing study conducted by UNHCR notes that beneficiaries of international protection are often paid very low wages for irregular work, sometimes below minimum salary regulations. At times, even though persons of concern have work permits, employers choose not to officially register their employment.

Asylum-seekers have a right to material reception conditions that ensure an adequate standard of living.²⁵ Asylum-seekers released from detention and registered as residents in an open centre are entitled to receive a *per diem* allowance of €4.66. Beneficiaries of subsidiary protection are entitled to “core social welfare benefits” by law.²⁶ 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. These benefits are available only for those granted refugee status.

Medical care

Refugees and beneficiaries of subsidiary protection are entitled “to receive core State medical care.”²⁷ The Migrant Health Unit was set up by the Government in order to provide limited cultural interpretation services, but this service is not available in the detention context. Medical care in detention is provided by a subcontracted company. During the summer when detention centres have often been overcrowded due to the large number of arrivals, resources are stretched and there is little flexibility in the system to expand capacity to monitor needs and prioritize health interventions in detention.

In addition, there are significant needs in terms of mental health services for asylum-seekers and beneficiaries of international protection. Unless an individual is admitted to the mental health hospital, it is difficult to be properly assessed and to access appropriate care and treatment. This is particularly problematic for asylum seekers held in detention.

Racial discrimination

Problems of racial discrimination and xenophobia raise concerns also in Malta, particularly in the employment sector and the property market where beneficiaries of international protection face difficulties renting independent accommodation. Common labour discrimination practices include substandard working conditions and lower wages. Incidents of racial violence are not frequent but nevertheless of serious concern. Legislation has been developed to address such incidents, but UNHCR notes that some individuals are reluctant to report violent attacks to the police or other relevant authorities²⁸, partly due to the perception that the perpetrators will not be prosecuted in court or that the remedy will ultimately be ineffective.

In recent years Malta has supported the National Commission for the Promotion of Equality, in the implementation of anti-racism research and campaigns. UNHCR welcomes these initiatives; however, there is still a need for more efforts to engage a broader set of mainstream stakeholders in addressing these challenges.

²³ Regulation 10(4) of Subsidiary Legislation 420.06, *Reception of Asylum-seekers (Minimum Standards) Regulations*.

²⁴ Regulation 14(1)(a)(iii) and 14(1)(b)(iii) of Subsidiary Legislation 420.07, *Procedural Standards in Examining Applications for Refugee Status Regulations*.

²⁵ Article 13(2) of the Council Directive 2003/9/EC of 27 January 2003.

²⁶ 14(1)(b)(iii) of Subsidiary Legislation 420.07, *Procedural Standards in Examining Applications for Refugee Status Regulations*.

²⁷ Regulation 14(1)(a)(iii) and 14(1)(b)(iii) of Subsidiary Legislation 420.07, *Procedural Standards in Examining Applications for Refugee Status Regulations*.

²⁸ Such as the National Commission for the Promotion of Equality (NCPE)

Recommendations:

- Develop a comprehensive integration policy for beneficiaries of international protection.

Citizenship

- Consider making citizenship more predictably accessible to a broader group of beneficiaries of international protection residing in Malta.

Family reunification

- Facilitate the right to family unity by considering all beneficiaries of international protection as eligible to apply for family reunification when fulfilling necessary criteria;
- Complete the transposition of the EU Family Reunification Directive.

Education, employment, and social welfare

- Consider developing financial support or accessible loan schemes for all beneficiaries of international protection pursuing higher education;
- Strengthen monitoring of and interventions with employers to ensure fair treatment and prevent discrimination and abuse;
- Improve access to the labour market also for asylum-seekers by considering a general employment license system, not one dependent on the employer.
- Facilitate access to child support for families who are beneficiaries of subsidiary protection, including through accessible child care arrangements.

Medical care

- Improve access to medical care in detention centres, including by strengthening capacity for assessing needs and implementing referral mechanisms ;
- Strengthen structures to carry out psycho-social assessments and provide necessary treatment in detention, open centres and for individuals living in the community.

Racial discrimination

- Strengthen the capacity of the National Commission for the Promotion for Equality to promote awareness, follow up and monitor responses in all cases of abuse and discrimination and institute legal proceedings in this regard.

Issue 3: Age, gender and diversity issues

Children

The main laws covering unaccompanied and separated children are the *Refugees Act* and *The Children and Young Persons (Care Orders) Act*.²⁹ In 2013, the Children’s Commissioner published the “Manifesto for Children,” which identifies two main problems affecting migrant or asylum-seeking children. First, children born at sea, outside Maltese territorial waters, and on unregistered vessels may not be registered as having been born in Malta and are thus without a nationality in case they have not acquired their parents’ nationality. Second, the Manifesto states that where the age of a person declaring to be a minor is in doubt, the child should not be placed in detention but rather in age-appropriate accommodation until age verification procedures are completed.³⁰

In terms of immigration law and policy, both accompanied and unaccompanied children who arrive in Malta in an irregular manner are automatically detained and there are no special facilities in detention to address the needs of children. Release is only possible when age assessment procedures are completed. Age assessment procedures may take up to several weeks or months depending on the number of boat arrivals and the capacity of AWAS to conduct

²⁹ ACT XVIII of 1980, as amended by Acts XIII of 1983 and XIII of 2002; and Legal Notice 423 of 2007.

³⁰ http://www.tfal.org.mt/MediaCenter/PDFs/1_Manifesto%20for%20Children%202013%20-%2020%2028for%20PDF%29.pdf, at pages 24-25.

assessment procedures. This means that during the initial reception period, children are detained with adults, sometimes in poor conditions³¹.

Women

UNHCR considers it a significant improvement that in recent years single women are detained separately from men and that couples declaring to be married are detained in a separate facility. Nonetheless, as mentioned above, pregnant women, unaccompanied girls and other vulnerable women need to undergo a vulnerability assessment procedure before release is authorized by the immigration authorities. UNHCR notes that in 2011 a significant number of women got pregnant while detained with their partners. UNHCR welcomes and supports the initiative by AWAS to develop an SGBV prevention and response framework for the open centres in Malta.

UNHCR has noted that a high number of single women (including unaccompanied children) are becoming pregnant while in Malta. UNHCR has supported awareness activities and individual support provided to females in open centres to address the situation. Targeted support to refugee women is also recommended in view of a number of women suffering from post-natal depression.

Women in detention

Many of the guards and personnel in detention centres are former military or police staff. While an increase in the number of female personnel has been sought, identifying suitable candidates has proven challenging. As a result, women and girls in detention centres are in permanent contact with male guards and support personnel.³² This has raised concerns, particularly in centres where showers and sanitary facilities do not have private partitions. Malta is encouraged to consider further utilization of civilian personnel, including females, in the management of the closed centres. Several incidents involving sexual and gender-based violence in detention centres have been brought to the attention of UNHCR and partners, some have resulted in criminal charges being filed. UNHCR has supported the authorities with organizing regular training sessions for detention guards, including with sessions dedicated to addressing issues relating to women in detention. However, training efforts can only be a part of the solution to the issues mentioned above.

Human trafficking

Although no reliable statistics are available, UNHCR considers it likely that a number of women who have arrived irregularly in Malta are victims of trafficking. The capacity of the authorities to identify and engage with (potential) victims has been very limited. In 2011, the Government launched the Malta Action Plan on Combating Trafficking in Persons.³³ The implementation of the Action Plan is coordinated by the Trafficking in Persons Coordinator, with the support of the relevant ministries and other authorities concerned. This includes the Human Trafficking Monitoring Committee, one of whose objectives is to set up an identification mechanism. UNHCR welcomes these as important steps towards improving the situation. However, UNHCR is not aware of any victims of trafficking yet identified through this mechanism or of any specific structure of support services which have been set up exclusively to assist victims of trafficking. A victim of trafficking who co-operates³⁴ with the Maltese authorities may be granted a six-month

³¹ There have been some exceptional cases, when children have been identified immediately upon arrival and transferred to special facilities rather than to detention. UNHCR considers this a good practice that should form the basis for the general system for dealing with unaccompanied children in Malta.

³² UNHCR is aware of only two female detention service officers working in detention.

³³ http://mjha.gov.mt/MediaCenter/PDFs/1_Action%20Plan%20Trafficking.pdf

³⁴ According to Regulation 2, "co-operate" means the giving of information by the third country national to the immigration authorities related, *inter alia*, to his arrival in Malta as a victim of trafficking or related to his illegal arrival in Malta and includes, in particular, the names of persons of traffickers and their accomplices or details related to points of departure, which information leads to, or contributes significantly to, the tracing or prosecution of the trafficker".

residence permit.³⁵ UNHCR has also noted that the Office of the Refugee Commissioner has in some cases granted refugee status to victims of trafficking.

Persons with disabilities

In 2012, Malta ratified the UN *Convention on the Rights of Persons with Disabilities*. Beneficiaries of international protection who have mental or physical disabilities are often accommodated at the Good Shepherd Home in Balzan, an NGO-managed open centre for vulnerable asylum-seekers and beneficiaries of international protection. While UNHCR welcomes that certain open centres specifically offers support by housing vulnerable individuals, it is also noted that the Balzan centre does not have the facilities and resources required to provide adequate individualized care for persons with disabilities. Mainstream support facilities providing support for people with special needs are in principle available also to people of concern to UNHCR, but in practice the capacity is often not sufficient to ensure effective access to such services.

LGBTI persons

With regards to lesbian, gay, bisexual, transgender and intersex persons, there are currently no structured identification mechanisms specifically addressing their needs and no individualized support within detention facilities. Where their security cannot be assured in detention, release or referral to alternatives should be considered; solitary confinement is not an appropriate way to ensure their protection.³⁶

Recommendations:

Age, gender and diversity issues

Children

- Take all necessary measures to ensure that children are not detained, regardless of whether they are separated or accompanied by their families.
- Improve age assessment practices by ensuring the capacity is sufficient to implement a timely procedure and ensure that age assessments are undertaken only in cases of serious doubt.
- Establish a formal best interest determination procedure to operationalize Article 3 of the CRC and ensure the child's best interests are given primary consideration throughout the asylum/immigration process.

Women

- Pursue recruitment efforts to increase the number of female staff in detention centres.
- Improve material reception conditions for women residing in open centres and develop structures and safeguards to prevent and combat SGBV.
- Pursue implementation of an effective procedure for identifying and responding to the needs of victims of human trafficking.

LGBTI persons

- Improve identification mechanisms and safeguards to specifically address the needs of LGBTI persons in detention and provide individualized support in detention and open centres.

Issue 4: Statelessness

³⁵ *Permission to Reside for Victims of Trafficking or Illegal Immigration who Co-operate with the Maltese Authorities Regulations*, Subsidiary Legislation 217.07, Legal Notice 175 of 2007.

³⁶ Guidelines 9.7, para 65, UNHCR Detention Guidelines 2012.

Malta is currently one of only four EU Member States which are not party to the *1954 Convention relating to the Status of Stateless Persons*. Malta is also not a party to the *1961 Convention on the Reduction of Statelessness*. In September 2012, at the UN High Level Meeting on the Rule of Law in New York, the Delegation of the European Union made a pledge that all EU Member States which have not already done so will ratify the *1954 Convention* and consider ratifying the *1961 Convention*. Accession to the Statelessness Conventions would establish a framework to prevent and reduce statelessness and avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons.

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the *1954 Convention* also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

The Maltese *Citizenship Act*³⁷ contains some provisions that are not in line with international standards to prevent or reduce statelessness. Regarding the acquisition of nationality by children born on the territory, whilst a number of safeguards are in place, there is no such safeguard in place for children who would otherwise be stateless, because they are born to stateless parents or foreigners who are unable to confer their nationality on a child born abroad. 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; Maltese women were only able to confer nationality by registration. 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.³⁸

Despite these shortcomings, there are also some positive elements within the *Maltese Citizenship Act*; it gives Maltese citizenship to foundlings³⁹, though this safeguard against statelessness is limited to new-born foundlings, and conditions renunciation of citizenship on the possession of a foreign citizenship.

The Act contains specific provisions relating to the deprivation of citizenship but only includes a safeguard against statelessness in case of deprivation of nationality for reasons of a prison sentence of not less than twelve months.⁴⁰ Malta's Demographic Review documents 24 stateless persons in the country having acquired Maltese citizenship in the years 2008-2010.

In this context UNHCR welcomes the recommendation by CEDAW requesting “*the State party to consider acceding to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.*”⁴¹

³⁷ Chapter 188 of the Laws of Malta.

³⁸ Article 10(1).

³⁹ Article 5(1).

⁴⁰ Article 14 (3).

⁴¹ See para 39 of the CEDAW concluding observations on Malta, 47th Session, November 2010, available at:

In 2013, UNHCR has embarked on a mapping exercise to clarify existing and potential gaps in legislation, policy and practice as regards group and individuals affected by statelessness. The intention is to develop a better basis for further discussion with the Maltese authorities on possible ways to address these challenges, including as regards possible accession to the relevant international instruments. On the basis of the ongoing study, UNHCR intends to approach the relevant Maltese authorities for further dialogue on this issue during 2013 and 2014.

Recommendations:

- Consider acceding to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- Identify and address current gaps in national legislation and policy, especially regarding documentation and citizenship issues that affect children residing in Malta, with a view to amending such laws and policies to prevent statelessness.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
March 2013**

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures Reports

- Universal Periodic Review:

Malta

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Malta, as well as the 2010 report of the mission of the UN Working Group on Arbitrary Detention to Malta.

1. Treaty Body Reports

Committee on the Elimination of Racial Discrimination

CERD/C/MLT/CO/15-20, 79th Session

14 September 2011

13. While noting the large flow of immigrants and efforts made by the State party in dealing with it, the Committee is concerned about reports according to which their legal safeguards are not always guaranteed in practice. It is also concerned about the detention and living conditions of immigrants in irregular situation in detention centres, in particular of women and families with children. (art. 5).

The Committee recommends that the State party strengthen its efforts to effectively guarantee the legal safeguards for all immigrants detained, in particular to inform them about their rights, including the legal assistance and to provide assistance to those who seek asylum. The Committee also recommends that the State party continue its efforts aimed at improving the living and conditions of detention of immigrants and thus comply with international standards, in particular the modernization of detention centres and the placement of families with children in alternative open accommodation centres. The Committee further recommends that the State party adopt the project conducted by the Refugee Commissioner in order to improve the refugee system.

Due to the large flows of migrants into the territory of Malta, the Committee recommends that the State party continue to seek assistance from the international community and in particular from European Union partners as well as bilateral cooperation.

14. The Committee is concerned about the recurrence of riots against conditions of their detention (2005, 2008 and 2011) by detained immigrants in detention centres, for example at Safi Barracks, and about the reported excessive use of force to counter them (art.5).

The Committee recommends that the State party take appropriate measures to improve conditions of detention and refrain of resorting to excessive use of force to counter riots by immigrants in detention centres, and to avoid such riots. In that regard, the Committee recommends that the State party pursue the implementation

of the recommendations made in the Pasquale report on events occurred in the detention centre Safi Barracks, in 2005.

15. While noting different measures taken by the State party to facilitate the integration of immigrants in the Maltese society, such as the establishment of the Welfare Agency, the vocational and language training, the Committee is concerned about difficulties faced by immigrant women, in particular refugees and asylum-seekers, in effectively accessing to education, to social services and to the labour market. (art. 5)

In light of its General recommendations No. 25(2000) on gender-related dimensions of racial discrimination; No. 30 (2005) on discrimination against noncitizens and No. 32 (2009) on the meaning and scope of special measures in the International Convention of All Forms of Racial Discrimination, the Committee recommends that the State party to:

- (a) undertake focused measures to favour immigrant women and to integrate the racial dimension in all policies related to enhanced opportunities for women in the State party;**
- (b) carefully monitor the impact of its laws and policies on immigrant women, in particular refugees and asylum-seekers, in order to protect them against double discrimination and marginalization. In that regard, the Committee recommends that the Employment and Training Corporation also include in its initiatives the situation of immigrant women;**
- (c) provide the Committee with information in that regard in its next periodic report.**

16. While noting measures taken by the State party to combat racial discrimination, the Committee is concerned that immigrants, in particular refugees, asylum-seekers and irregular migrants continue to face discrimination in the enjoyment of their economic, social and cultural rights, in particular with regard to access to housing and employment. (art.5)

In light of its General recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State strengthen its efforts to apply its legislation to combat racial discrimination direct or indirect, with regard to the enjoyment of economic, social and cultural rights by immigrants, in particular refugees and asylum-seekers, including access to the private rental housing and to the labour market. The Committee recalls that, under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of that aim. The Committee requests that the State party provide it with information on the outcome of the case pending before the National Commission for the Promotion of Equality with regard to racial discrimination in renting private accommodation. The Committee also requests the State party to provide it with comprehensive data on economic, social and cultural situation of immigrants in its next periodic report.

17. While noting measures taken to promote diversity, tolerance and understanding between different ethnic groups, including through various trainings in schools and awareness-raising campaigns, the Committee is concerned about the absence of information on achievements and practical impact of such measures. (art.7).

The Committee recommends that the State party strengthen its efforts to eliminate stereotypes of immigrants, in particular refugees and asylum seekers and pursue its awareness-campaigns on equality, inter-cultural dialogue, tolerance, in particular by including in the school curricula and the media. In that regard, the Committee encourages the State party to foster an effective multicultural learning environment, and to take into account the provisions of the Convention in the draft national minimum curriculum for early education and care and compulsory education.

Committee on the Elimination of Discrimination Against Women

CEDAW/C/MLT/CO/4, 47th Session

9 November 2010

Trafficking and exploitation of prostitution

26. The Committee remains concerned about the paucity of data with regard to trafficking of women and girls into the State party. As such, the Committee was not provided with sufficient information on the actual situation in the State party and on the institutional mechanism in place to fight against trafficking. The Committee is concerned that the granting of temporary residency permits to victims is based on cooperation with the authorities in legal proceedings.

27. The Committee encourages the State party to provide, in its next periodic report, comprehensive information on the prevalence of trafficking in Malta. The Committee calls upon the State party to take all appropriate measures to ensure better identification and investigation of trafficking cases, particularly through the establishment of a mechanism to proactively ensure identification of and support for trafficked persons as well as enhanced training and capacity-building efforts for law enforcement officials, including immigration officials, so as to increase their ability to identify potential victims of trafficking. The Committee invites the State party to strengthen its measures to combat all forms of trafficking in women and children, including through increased international, regional and bilateral cooperation with countries of origin and transit, in line with article 6 of the Convention. In this respect, the Committee urges the State party not only to ensure the prosecution and punishment of individuals involved in trafficking, but also the protection and recovery of victims of trafficking. The Committee also urges the State party to consider using the Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the Office of the United Nations High Commissioner for Human Rights in 2002 as a basis for its plan of action. The Committee calls upon the State party to collect and analyse data on all aspects of trafficking, disaggregated by age, sex and country of origin, in order to identify trends. The State party is encouraged to undertake a study on the issue of trafficking, including the root causes, with a view to identifying priority areas for action, and to formulate relevant policies.

Refugee and asylum-seeking women

38. While welcoming several measures intended to ensure the protection of asylum-seeking and refugee women including programmes addressing the needs of pregnant women and minors, the establishment of separate open accommodation centres for refugee women, and early release from detention centres for families, the Committee is concerned at the State party's capacity limitations and effective access to education and social services for asylum-seeking and refugee women. The Committee is particularly concerned about the situation of asylum-seeking women, especially the fact that they often do not receive assistance from female public officials and that frequently the interpreters provided for the interviews are men. These facts create serious impediments to women asylum-seekers who are victims of sexual abuse. The Committee is further concerned about the lack of information on statelessness women in the State party.

39. The Committee calls upon the State party to keep under review and carefully monitor the impact of its laws and policies on women migrants, refugees and asylum-seekers with a view to taking remedial measures that effectively respond to the needs of those women. In this respect, the Committee urges the State party to fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status, including in the application stage by ensuring the availability of female interpreters. The Committee requests the State party to consider acceding to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Committee on the Rights of the Child

CRC/C/OPAC/MLT/CO/1, 43rd Session

17 October 2006

Dissemination and training

8. The Committee regrets the lack of information about dissemination and training with respect to the Optional Protocol.

9. The Committee recommends that the State party ensure that training activities on the Optional Protocol are provided to the armed forces. It further recommends that the State party develop systematic awareness-raising, education and training programmes on the provisions of the Optional Protocol specifically addressed to all relevant groups working with and for children, notably professionals working with asylum-seeking, refugee and migrant children entering Malta from countries affected by armed conflict, such as medical professionals, social workers, police officers, teachers, lawyers and judges. The State party is invited to provide information in this respect in its next report.

Measures adopted with regard to disarmament, demobilization, physical and psychological recovery and social reintegration

12. The Committee notes that the State party is a country of transit and destination of asylum-seekers and migrants, including children, some coming from countries affected by armed conflict. In this respect, the Committee, while noting that the Children and Young Persons (Care Orders) Act has provisions taking care of unaccompanied minors and that the residential set-up "Dar is Sliem" offers shelter and services to

unaccompanied asylum-seekers who are under 18, is concerned at the practice of automatic detention of all persons entering Malta in an irregular manner. While the duration of this detention has been recently reduced to a maximum of 18 months and despite the policy providing that children should not be detained, the Committee is concerned at the information that - in practice - some children and unaccompanied minors, including children coming from countries affected by armed conflict, are detained in certain cases pending the finalization of the process for their release.

13. The Committee recommends that the State party:

- (a) Identify at the earliest possible stage refugee, asylum-seeking and migrant children entering Malta who may have been involved in armed conflicts;**
- (b) Carefully examine the situation of these children, prohibit their detention in any case and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with article 6, paragraph 3, of the Optional Protocol;**
- (c) Systematically train authorities working for and with refugee, asylum-seeking and migrant children coming from countries affected by armed conflict; and**
- (d) Engage in international cooperation in this respect and provide further information on this issue in its next report.**

2. Special Procedure Reports

Report of the Working Group on Arbitrary Detention

Addendum: Mission to Malta

A/HRC/13/30/Add.2

18 January 2010

V. Conclusions

76. Although the Working Group is fully aware of the constraints faced by Malta, as a country with by far the highest population density in Europe and with limited resources, and that, since 2002, it has been experiencing a large increase of unauthorized arrivals of migrants and asylum-seekers, it considers that the mandatory legal detention regime applied to them is not in line with international human rights law. Migrants in an irregular situation arriving in the country are subjected to mandatory detention without genuine recourse to a court of law. The conditions of detention at the closed immigration detention centres adversely affect the ability of the detainees to challenge the lawfulness of their detention. Undocumented persons or migrants in an irregular situation arriving to Malta have not committed any criminal offence according to Maltese legislation.

77. The Working Group observes that the length of detention of migrants in an irregular situation and of asylum-seekers has not clearly been defined under law. Asylum-seekers are held in detention for a maximum of 12 months if their asylum

claim is still pending. Those migrants who do not apply for political asylum or whose applications have been rejected may end up in custody for 18 months at closed detention centres.

78. The Working Group acknowledges the Government's efforts to apply a fast-track procedure for the release of families of migrants with children, unaccompanied minors, pregnant women and breastfeeding mothers and people with disabilities, serious or chronic physical or mental problems. However, it observes that it may take up to three months to free them into open centres. It also notes the decriminalization in 2002 of illegal entry into the country and the adoption of measures aimed at reducing the time required for the processing of asylum applications.

VI. Recommendations

• Concerning detention under immigration powers:

(e) Change its laws and policies related to administrative detention of migrants in an irregular situation and asylum-seekers, so that detention is decided upon by a court of law, 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;

(f) Rule out immigration detention of vulnerable groups of migrants, including unaccompanied minors, families with minor children, pregnant women, breastfeeding mothers, elderly persons, persons with disabilities, people with serious and/or chronic physical or mental health problems;

(g) Provide in all cases for automatic periodic review by a court of law on the necessity and legality of detention;

(h) Provide for an effective remedy for detainees to challenge the necessity and legality of detention at any time of the detention period and ex post facto and define the circumstances;

(i) Where there remains a regime of mandatory administrative detention for migrants in an irregular situation, legally define its maximum period rather than basing it on Government regulations or policy;

(j) Provide for a system of legal aid for immigration detainees;

(k) Appeal to the international community to assist the Government in bringing its immigration detention regime into conformity with applicable international human rights law and standards. The Working Group observes that Malta is carrying a disproportionate burden and does not have the necessary financial and other resources at its disposal. This does not detract Malta from its international human rights obligations undertaken voluntarily as a sovereign nation;