

**STRATEGY FOR THE RECEPTION OF
ASYLUM SEEKERS AND IRREGULAR
MIGRANTS**

FOREWORD

Asylum and irregular migration posed considerable challenges for Malta since 2002. These challenges required the consolidation of our asylum system, as well as the establishment and enhancement of a system for the reception of irregular migrants and asylum seekers.

The challenge posed by asylum and irregular migration is however not only one imposed by the material conditions of reception or the mechanics for granting international protection, but also by our assumptions and expectations. It has to be recalled that not that many years ago we considered Malta a country of emigration, with countless Maltese leaving in search of better opportunities in Australia, Canada, the United States and the United Kingdom amongst other countries.

The switch from country of emigration to country of immigration may not have been immediately obvious, but it was, or at any rate appears, to have been very sudden. This switch is also by no means limited to irregular migration and international protection. In fact, many have entered Malta via regular channels and settled here, be it from European Union Member States or third countries. The reasons for migrating are, in fact, manifold and diverse, practically as diverse as the phenomenon of migration itself.

Irregular migration and international protection in some ways present more obvious challenges, due primarily to the immediate reception needs of these migrants, but also to other factors such as distinguishing between those who require protection and those who do not.

The present consultation document addresses specifically the reception aspect, firstly because of its importance but also in view of the need to comply with higher standards, including those emanating from EU legislation. The aim of this document is therefore the establishment of a set-up for the enhancement and re-organisation of Malta's reception system. In so doing the document seeks to draw an adequate balance between human rights, health concerns and security.

The document is also based on feedback received from pertinent stakeholders and the public following a consultation process held during November 2015.

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INTRODUCTION

Malta has been experiencing a large influx of irregular migrants since 2002, when over 1,600 persons reached Malta's shores on board unregistered craft. This trend went on unabated although reductions in the number of arrivals were registered in 2003 and 2010. During 2008 and 2013 over 2,000 migrants entered Malta irregularly. The figure for 2014, although not as high, still exceeded the 500 mark. Despite the reduction in the number of irregular migrants in 2015 standing at more than 100 persons, the number of asylum applications received has been significant, given that applications were also received directly at the Office of the Refugee Commissioner. As at end October 2015 almost 1,400 asylum applications were lodged.

Needless to say, in the context of a country of 316 square kilometres and a population of over 400,000 such an influx has significant repercussions in terms of resources and accommodation logistics, as well as in relation to other key aspects, including international protection, integration as well as the return of those found not to be deserving of international protection.

Malta's ratio of asylum seekers in proportion to population has consistently been among the highest, and very often the highest, among all EU Member States. In fact, Malta received a total of 20.2 asylum applications per 1,000 inhabitants between 2009 and 2013, compared to an EU average of 2.9. It is also to be stated that the Maltese Office of the Refugee Commissioner does not only receive international protection applications from irregular migrants; for during 2014 up to 824 asylum applications were also received from migrants who applied directly at the Office of the Refugee Commissioner. All this goes a long way to show that even though asylum applications may be generally constant, the number is at the same time elevated when compared to the country's geographical and social circumstances and realities. Matters are further complicated by the fact that a majority of those who seek international protection in Malta are actually found to be deserving of such protection. This means that these people do not only require immediate reception arrangements, but also long-term solutions.

In view of the abovementioned circumstances, conditions in reception centres have been rendered difficult during certain periods; however over the last few years several initiatives were carried out in order to improve the living conditions of irregular migrants and asylum seekers residing in such centres, including by means of EU funding mechanisms. Similar to previous years, apposite European funding mechanisms and national funds will be utilised for the provision of adequate food supplies, bedding, clothing and medical support among other initiatives. Investment will also continue being made in reception facilities, where the required refurbishment initiatives in open and closed centres will be undertaken. Furthermore, Malta's Open Reception capacity will be enhanced by means of a new Reception Facility, with the utilisation of EU funds, in order to better address current and future needs.

The present document seeks to build upon the existing reception system, introducing improvements at several stages with a view to ensuring compliance with new EU obligations, as well as to improve the system from the perspective of national security on the one hand and humanitarian and human rights considerations on the other.

The objectives of this document may be summed up as follows:

- The adoption of a comprehensive approach to the reception of asylum seekers and irregular migrants, addressing all basic needs; and,

- The institution of procedures intended to better safeguard the rights of asylum seekers and irregular migrants, though always with reference to national security and public order, as well as public health.

The present document is evidently also built within the framework of developments that have taken place so far in the fields of international protection and the return of irregular migrants who have no protection needs.

It bears noting that in the international protection sphere Malta has updated its practices in line with the relevant EU Directives, with the result that it now has a well established and efficient system for the determination of international protection. Government will continue building up on this system where and as necessary.

As for the return sphere, Malta is in compliance with the Return Directive, which has been transposed into national legislation. Moreover, further action at the European level is expected in this field, which action should address challenges and difficulties being faced by several Member States.

CHAPTER 1: BACKGROUND (LEGISLATIVE AND OTHER DEVELOPMENTS)

i. The European Union

a. Legislation

The reception of asylum seekers is regulated by the Reception Conditions Directive, which has been transposed into Maltese legislation by the amended *Reception of Asylum Seekers (Minimum Standards) Regulations, SL 420.06*. The Directive has been re-cast as *Council Directive 2013/33 laying down standards for the reception of applicants for international protection*. This Directive was to be transposed into Member States' national legislation by 2015.

The transposition of the Directive requires, amongst others:

- the introduction into national legislation of reasons as to why an asylum seeker may be detained;
- the introduction into national legislation of alternatives to detention;
- a regular review of detention decisions; and,
- free legal aid when reviewing detention decisions.

Moreover, the Directive regulates specific aspects of material reception, including in particular vis-à-vis the classification of detainees.

The return of irregular migrants, including the detention of such migrants with a view to returning them, is regulated by *Council Directive 2008/115 on common standards and procedures for returning illegally staying third-country nationals*. The provisions of this Directive have been transposed into national legislation by the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12*.

b. Other Actions

EU funding mechanisms are available to Malta and other Member States, including with a view to providing adequate reception conditions to asylum seekers. The availability of these funds has, over the years, contributed to the provision of accommodation and services in both Detention and Open Centres. At the same time however, it has to be recognised that not all the reception-related difficulties a Member State may face can be resolved by the availability of funds.

ii. The European Convention on Human Rights

Malta's reception system also has to be adapted in line with European Court of Human Rights (ECtHR) jurisprudence relating to the European Convention on Human Rights (ECHR).

The legislative measures to be taken are the following:

- Amendment of Article 25A (10) of the *Immigration Act (Cap 217)*, so as to enable detainees to challenge the reasons for their detention, as opposed to only the duration of their detention; and,

- The inclusion, in the amended *Reception of Asylum Seekers (Minimum Standards) Regulations, SL 420.06*, of reasons as to why an asylum seeker may be detained, the inclusion of an obligation for each asylum seeker to be informed of the reasons for detention and remedies available in a language he or she may be reasonably supposed to understand, and the introduction of alternatives to detention.

Moreover, steps continue being taken with a view to improving reception conditions, including in particular at Detention Centres.

CHAPTER 2: INITIAL RECEPTION, DETENTION AND OPEN CENTRE PROCESSES

i. Background

In the past Malta has adopted a migration detention policy in respect of persons who enter the country in an irregular manner. In the event that an asylum seeker is still in detention after twelve months, then he or she is released. On the other hand, an irregular migrant who is not an asylum seeker could be detained for up to 18 months.

Notwithstanding the above, the detention requirement was waived with respect to vulnerable persons¹, including families with children, pregnant women and unaccompanied minors.

ii. Review of Initial Reception and Detention Processes

Malta's initial reception and detention policy is being reviewed in line with:

- the provisions of recent European Court of Human Rights judgements relating to Malta;
- the re-cast Reception Conditions Directive, the provisions of which have been transposed into Maltese legislation in 2015; and,
- the provisions of the Return Directive, which have been transposed in the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12*.

Moreover, the review is guided by the safeguarding of national security and public health, as well as by human rights and humanitarian considerations.

iii. Procedures upon Arrival

All persons entering Malta irregularly would be pre-screened immediately upon arrival by the Police and Health authorities, in accordance with current procedures.

a. Police and related Procedures

The Armed Forces of Malta hand over all irregular migrants, who they may have apprehended or rescued, to the Police Immigration Section, which is responsible for the initial registration and screening of the migrants.

The Police process follows the following sequence:

- Health Authorities are informed immediately of the incident and informed of the site where the boat or AFM rescue craft will be berthing in due time. In the event of an unannounced arrival, the authorities convene at the site of disembarkation. A small medical team (especially when there is information of persons needing assistance) is sent on the site of the berthing for first aid purposes;
- Health professionals are summoned to call at the Police Immigrants Examination Area (hereafter called examination area), where the first medical tests are carried out;

¹ The term vulnerable persons used in this policy document refers to the provisions for vulnerable persons as defined in Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast).

- Concurrently the Police Forensic Section is called and requested to proceed at the same area in order to take fingerprints and photographs of the persons concerned for records purposes, including for the EURODAC² system;
- The Police Mechanical Section is called and transport is ordered on the site of berthing depending on the amount of persons arriving;
- The Police Mess is called in order to prepare water and snacks for the persons who will be arriving;
- If the arrival is outside normal working hours, Immigration personnel are called to proceed to the examination area. They would be detailed to accompany the immigrants from the place the boat berths to the Police Headquarters Migrants' Reception Area. Some remain at the reception area to prepare the examination and interviewing rooms;

The Agency for the Welfare of Asylum Seekers (AWAS), as the entity responsible for Initial Reception, is contacted by the Armed Forces of Malta (AFM) Control Room at the earliest possible in order to be able to identify appropriate accommodation for the migrants in question.

Moreover, further action is taken once the migrants arrive at the Examination Area:

- Immigrants are immediately given a police number for identification purposes. This is in the form of a tag worn around the wrist to avoid being mislaid, at least until the person becomes familiar with his or her police number. This information is communicated to the Health Authorities at the earliest possible;
- Alleged unaccompanied minors, family groups with children and other manifestly vulnerable persons are the first to be processed upon arrival at the Examination Area. If they declare to be under age and are unaccompanied, immediate action is taken to inform AWAS;
- Immigrants are also searched for possible illicit objects which they may be carrying, identity documents or other documents which could be of assistance in verifying their nationality or other information. Those having a substantial amount of cash are informed, in a language that they may be reasonably supposed to understand, that the funds would be taken for safekeeping by the Police until release from the Initial Reception Centre or Detention. A receipt is handed over to the migrant concerned indicating any goods, including documents, and cash taken over for safekeeping by the Police. Detailed records shall also be kept at the Police end. Any item so taken over shall be returned to the migrant concerned immediately upon release. Moreover, any documentation so withheld by the Police shall be made accessible to a person in detention or his or her lawyer, particularly where this is required in relation to the review of detention or the determination of his or her asylum application; and,
- All migrants are spoken to individually by Immigration Police in a preliminary interview.

During the interview the Police:

- In the absence of travel documents, shall take the full particulars of the individual; and,
- Try to establish the *modus operandi* of the smuggling operation.

² Council Regulation No [2725/2000](#) of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

Moreover, the Police shall:

- Hand over a booklet to the migrants, which booklet sets out the migrants' rights and obligations. The booklet is available in English, French and Arabic; and,
- Refer the migrants to the office where fingerprints and photographs are taken.

When the above process is completed the migrants are examined by the medical team. The migrants are then given a light snack and embarked on the bus which will eventually take them at the centre identified to host them. Information on the arriving migrants is immediately provided to AWAS and the Office of the Refugee Commissioner, as well as other relevant authorities and organisations.

b. Health Procedures

Migrants would be initially screened by Port Health doctors to ascertain whether they can proceed to Police General Headquarters, or whether they are in need of urgent referral to hospital or a health centre as required, in which case an ambulance is immediately called for.

Once migrants are transferred to Police General Headquarters, Port Health and the Infectious Disease Prevention and Control Unit (IDCU) doctors conduct a detailed clinical review of the patients concerned to attend to their immediate clinical needs. During this review, minor ailments like wounds and burns are attended to. Any cases requiring hospital investigations/admissions are referred to Mater Dei Hospital. Furthermore, symptomatic screening is conducted for Tuberculosis (TB) and physical check-ups are conducted for any evident signs of other infectious diseases (e.g. scabies, chicken pox and lung consolidation).

Screening for active TB is coordinated by the IDCU in accordance with the National TB Strategy. A digital X-ray Unit was commissioned in June 2013 utilising emergency response funds at Lyster Detention Centre enabling the screening of irregular migrants at this Facility. A pool of radiographers is available to image the irregular migrants by means of a Chest X-Ray. These are reported by radiologists at Mater Dei Hospital (MDH) and results are communicated to IDCU.

Children under the age of 11 years and pregnant women are screened by means of a Mantoux test (a screening tool for tuberculosis applied to the skin), which is conducted by Chest Unit nurses and read within 48 hours. Further investigation may be required for any suspected cases. Migrants with possible active TB are referred to the Chest Clinic or to Accident and Emergency Department for further investigation.

Children with communicable diseases requiring specialist intervention would continue being cared for by the Paediatric Infectious Diseases specialist. All irregular migrants are updated with vaccinations in accordance with the local immunisation schedule by the Immunisation Centre at Primary Care.

Children who are at high risk of TB, in accordance with the Bacillus Calmette–Guérin (BCG) protocol, are assessed for HIV status and, if negative, given the BCG vaccine.

iv. Accommodation

a. Initial Accommodation of newly arrived Irregular Migrants

Newly arrived irregular migrants shall be accommodated at an Initial Reception Facility, a contained environment, in order for them to be medically screened and processed by the pertinent authorities, including AWAS and Police officials. The stay of an irregular migrant at an Initial Reception Centre shall be of limited duration and in no case shall such duration extend beyond the granting of medical clearance by the Health authorities.

b. Legal Grounds for Detention

Those irregular migrants who do not apply for international protection, or whose application for international protection has been definitively rejected, may be detained pursuant to the *Immigration Act (Cap 217)* and the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12*. Asylum seekers who entered Malta regularly and whose application has been definitively rejected, provided that their stay is no longer regular, may also be detained in line with the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12* with a view to ensuring their return. An assessment of whether the continuity of detention is justified shall be made in accordance with SL 217.12 if the migrant is not returned. Any migrant in respect of whom detention is to be pursued shall be transferred to a Detention Centre upon release from the Initial Reception Facility; whilst those not detained or eventually released from detention shall be offered accommodation in an Open Centre.

An assessment on the need or otherwise to detain individual asylum applicants who are manifestly not vulnerable shall be made in accordance with the *Immigration Act (Cap 217)* and the *Reception of Asylum Seekers Regulations, SL 420.06*. This assessment will be conducted by Immigration Police. In those cases where a detention decision is issued, the asylum seeker concerned shall be transferred to a Detention Centre upon release from the Initial Reception Facility. Those who are not issued with a detention decision, including those subjected to alternatives to detention pursuant to the *Reception of Asylum Seekers Regulations, SL 420.06*, and those subsequently released from detention, shall be offered accommodation in an Open Centre.

Asylum applicants shall not be issued with a return decision, irrespective as to whether they are subject to a detention order or not. A return decision shall be issued only in the event that an asylum application is definitively rejected in accordance with relevant legislation, in which case the person in question would become subject to the relevant provisions of the *Immigration Act (Cap 217)* and the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12*, including detention with a view to effecting return.

In considering whether to detain any irregular migrant or asylum seeker the authorities shall take in due consideration the guidelines in Annexes A and B of this document. Moreover, the Police authorities may seek to provide training to Police officers making recommendations in this regard to the Principal Immigration Officer, which training may be delivered by representatives of the United Nations High Commissioner for Refugees (UNHCR) or other experienced stakeholders.

Appeals and reviews shall be heard and conducted in accordance with the SLs 217.12 and 420.06 as applicable.

Notwithstanding the above, an asylum seeker shall in no case be detained for more than 9 months, upon which time he or she becomes entitled to access to the labour market in accordance with the recast Reception Conditions Directive; whereas detention in terms of the return procedure shall be of 6

months, which may be extended by a further 12 months in accordance with the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, SL 217.12*.

In view of the introduction of the right to free legal aid for the first review of the lawfulness of detention, asylum seekers whose detention is being reviewed shall have access to the existing legal aid pool that assists those clients contesting the Refugee Commissioner's decision at appeals stage. Reviews of the lawfulness of detention shall be heard by the Immigration Appeals Board.

c. Alternatives to Detention

The *Reception of Asylum Seekers Regulations, SL 420.06* shall specify that asylum seekers who entered the country irregularly, who are not vulnerable, and who are not subjected to a detention decision, may be required to abide by one or more of the following conditions for a period not exceeding 9 months, namely:

- to report at an assigned place within specified timeframes;
- to reside at an assigned place;
- to deposit or surrender documents; or
- to place a one-time guarantee or surety.

These conditions shall be applied whenever no detention decision is issued in respect of the person concerned, but where it is still considered that there may be a risk of absconding.

Whenever such conditions are imposed due consideration shall be given to the person's circumstances, so that it is possible for the person concerned to abide by relevant conditions, e.g. undocumented persons shall not be required to deposit or surrender documents; persons having no financial resources shall not be required to place a guarantee or surety etc...

Any person who fails to comply with alternative to detention conditions may be issued with a warning or be detained. Any person so detained would be detained under the same terms and conditions as for any other detainee in terms of the *Reception of Asylum Seekers Regulations, SL 420.06*.

Alternatives to detention cannot be imposed on any person in respect of whom grounds to detain asylum seekers do not apply.

d. Vulnerable Persons

Vulnerable persons in terms of the *Reception of Asylum Seekers Regulations, SL 420.06* shall not be detained after being released from the Initial Reception Facility. Such persons shall instead be immediately accommodated at Open Centres suited to their specific circumstances.

Irregular migrants who are undoubtedly children shall immediately be treated as such without recourse to any age assessment procedures. Age assessment shall be undertaken in all other cases.

Any irregular migrant claiming to be a minor who has however been found, upon completion of the age assessment procedure, to be an adult, would be referred by AWAS to the Police authorities. The Police authorities shall, depending on the circumstances of the case, consider whether a Detention Order should be issued in respect of such person.

e. Accommodation at Open Centres

Asylum seekers and beneficiaries of international protection released from detention shall, if no alternative accommodation arrangements are available to them, be offered accommodation at Open Centres. Irregular migrants (i.e. persons who have not submitted an asylum application or whose applications have been definitively rejected) may also be offered accommodation at Open Centres if humanitarian considerations so require; provided that priority shall be accorded to asylum seekers and beneficiaries of international protection.

The objective of Open Centres is to provide accommodation to asylum seekers and beneficiaries of international protection until such time as they are able to settle independently in the community. The nature of such accommodation is therefore, by necessity, temporary.

Open Centres will not only accommodate asylum seekers who would have reached Malta in an irregular manner, but also asylum seekers who would have reached Malta in a regular manner, provided that Malta is the State responsible for determining their asylum applications. This includes asylum seekers formally resettled or relocated to Malta.

Other migrants, on the other hand, are provided with accommodation until such time as they can be returned to their country of origin or other arrangements have been made.

Unless there are overriding humanitarian considerations, no migrant shall be allowed to reside at an Open Centre for more than 12 months.

f. Accessibility

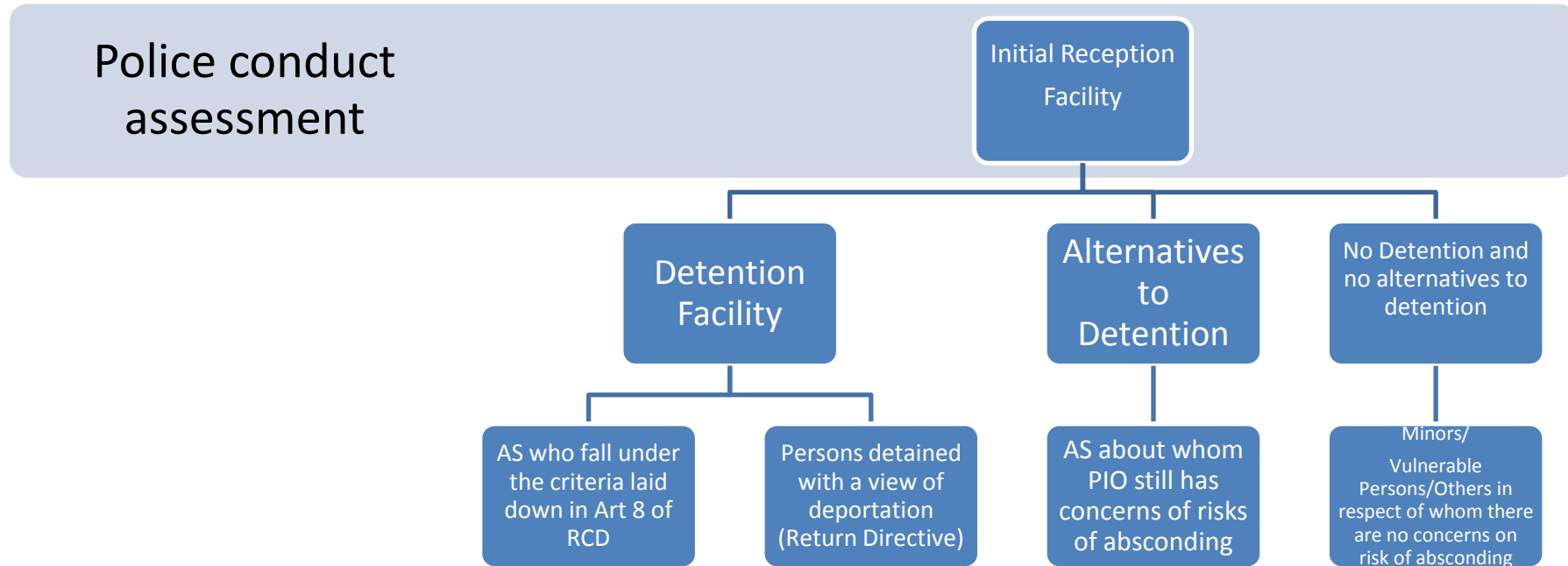
All services provided by the Centres shall be accessible to any person with disability.

g. Training

The Detention Service and AWAS shall seek to provide training to staff, including through the utilisation of services by the National Commission for the Promotion of Equality (NCPE), in relation to such matters as equality, religious tolerance, racism, sexual harassment and gender and other stereotypes.

Other training initiatives would be undertaken as necessary.

Reception/Detention/Open Centre Sequence for Asylum Applicants who would have entered Malta irregularly



CHAPTER 3: THE INITIAL RECEPTION FACILITY

The objective of the Initial Reception Facility is to accommodate newly arrived irregular migrants in a contained environment in order for such migrants to be medically screened and processed by the pertinent authorities, including AWAS and Police officials. Irregular migrants shall be accommodated in this Facility separately from any other irregular migrants and only until the required medical clearances are obtained.

The period of stay at the Initial Reception Facility shall ordinarily be limited to no more than 7 days; although the period of stay may be longer if health-related considerations so dictate. If the period of stay at the Initial Reception Facility exceeds 7 days the health authorities shall communicate to the migrants concerned, in a language they may be reasonably supposed to understand, the reasons for such extension of stay at the Initial Reception Facility. The Initial Reception Facility would be administered by the Agency for the Welfare of Asylum Seekers, within the Ministry for Home Affairs and National Security. Access to the Facility shall be limited to employees, including authorised employees of Government and international agencies, and representatives of relevant and accredited NGOs, all of whom shall be inoculated against prevalent potential diseases. AWAS shall establish a procedure for the admission and delivery of services by NGOs at the Facility.

The Facility shall operate a classification system for the accommodation of irregular migrants:

- single males;
- single females;
- family units; and,
- unaccompanied minors.

Reception standards in the facility shall be equivalent to those provided in Detention facilities. However, efforts shall be made to provide minors with physical reception conditions and activities appropriate to their age. The Facility shall comprise:

- a clinic compliant with specifications issued by the Health Authorities;
- medical isolation facilities;
- telephone facilities; and,
- facilities for the delivery of services by State stakeholders.

Directly Observed Therapy (DOTS) is required for persons on TB treatment but is also requested, where this is considered necessary, for HIV. In the Initial Reception Facility DOTS would be carried out by a team of nurses contracted out by the authorities for the medical management of migrants in the facility. Records are to be kept and be made available to IDCU medical officer as required.

A case worker³ shall be assigned to each migrant, who shall follow the migrant concerned through the Initial Reception phase and the Detention phase, where applicable.

During their time in the Initial Reception Facility irregular migrants would be informed of their right to apply for international protection by the Office of the Refugee Commissioner, as well as of any other relevant rights.

³ The case workers would be AWAS employees.

In the event that a Detention Order is issued in respect of an irregular migrant who applies for international protection, he or she shall be informed of the reasons for his or her detention.

During this phase the migrants would also:

- be assessed by professionals from the Agency for the Welfare of Asylum Seekers with a view to identifying vulnerabilities. At the same time, where required, age verification procedures would be initiated; and,
- be interviewed by Immigration Police with a view to establishing their identity and nationality.

The vulnerability assessment procedure undertaken by AWAS shall take into account potentially traumatic experiences undergone by the individual migrant. The condition and circumstances of the individual, both psychological and physical, shall be taken into consideration in this regard. If necessary, AWAS professionals may call on the assistance of other specialised professionals whilst conducting vulnerability assessments. In this regard, AWAS shall, in cooperation with relevant stakeholders, draw up a referral mechanism with a view to facilitating vulnerability assessment procedures.

Whenever the result of the vulnerability assessment is positive, i.e. the subject of the assessment is considered vulnerable; the result shall be communicated to the Police authorities so that the migrant in question shall not be subject to a detention decision. In those cases where vulnerability emerges only after a migrant has been detained, the result shall be communicated to the Police authorities so that the detention order is withdrawn with immediate effect. The migrant in question shall be released from detention and offered accommodation at an Open Centre.

As regards age assessments, use shall be made of psycho-social assessment procedures approved by AWAS management. Medical age assessment procedures shall be undertaken only as a last resort, when the age of the migrant in question remains in doubt.

CHAPTER 4: DETENTION

i. Legal basis and duties of the Detention Service

Detention Centres are secure facilities which are administered by the Detention Service which:

- Respect the personal safety and confidentiality of all detained persons;
- Provide for their basic needs, including food that is culturally appropriate, as well as clothing;
- Respect ethnic and cultural diversity; and,
- Provide educational, recreational and pastime activities.

The Detention Service has been established with responsibility for the administration of all Detention Centres.

All members of the Detention Service are subject to the terms, standards, disciplinary procedures and conditions laid down in the “Standing Instructions for the Detention Service: Detention Centre Rules,” which have been issued to all officers in the Detention Service by the Head of the Detention Service.

ii. Reception Standards

The Detention Service shall provide basic services to detainees, including meals and, when required, clothing items. Moreover the premises shall be equipped with lighting, ventilation, heating and fittings, including toilet and shower amenities, adequate to maintain health and basic comfort. All detainees shall have access to open air at least once every day and for not less than 1 hour.

Moreover, detainees shall have access to free medical care and attention. A detained person who has been required to submit to a medical examination will, so far as reasonably practicable, be asked to consent to the examination, and will be informed by the doctor of the outcome.

iii. Types of Detention and Classification

The Detention Service shall operate two distinct services, namely a Service operating under the regime of the amended *Reception of Asylum Seekers Regulations*, and another operating under the regime of the *Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations*.

Each Service provided by the Detention Service shall ensure that detainees are accommodated in accordance with a classification system:

- single males;
- single females; and,
- family units that do not comprise minors.

iv. Activities and Services

Detention Service facilities shall comprise or have access to:

- a clinic compliant with specifications issued by the Health Authorities;
- Medical Isolation Facilities;
- telephone facilities;

- an office for the delivery of information by the Office of the Refugee Commissioner;
- rooms for one-to-one interviews by the Office of the Refugee Commissioner;
- rooms for one-to-one interviews by the authorities, professionals, legal counsels and NGOs concerned;
- facilities for leisure and the delivery of education programmes, as well as,
- a place of worship.

Educational and other activities shall be delivered to migrants in detention, including language training. Prospective returnees shall also be encouraged to take up voluntary return opportunities in preference to forced return.

Relevant professionals identifying potential vulnerabilities and needs shall have access to profiling documentation available at the Initial Reception Facility.

Directly Observed Therapy (DOTS) has been traditionally organised for TB, but is also requested, where this is considered necessary, for HIV. In the Detention Centres DOTS would be carried out by a team of nurses contracted out by the authorities for the medical management of migrants in the facility.

AWAS case workers shall be assigned to irregular migrants, who shall follow the migrants concerned through the Initial Reception phase and the Detention phase, where applicable. During this phase the migrants would also:

- Continue being assessed as necessary by professionals from AWAS with a view to identifying vulnerabilities; and,
- they would continue being interviewed by the Immigration Police with a view to establishing their identity and nationality.

v. Access to Detention Centres

UNHCR, relevant international organisations, health officials, legal counsels and relevant accredited NGOs shall have access to asylum seekers in Detention Centres in accordance with the *Reception of Asylum Seekers Regulations*.

Subject to authorisation by the Principal Immigration Officer, legal counsels, relevant international organisations and relevant accredited NGOs shall have access to prospective returnees in Detention Centres, in accordance with the *Procedures for Returning Illegally Staying Third Country Nationals Regulations*.

Representatives of the media may be given access to Detention Centres subject to authorisation by the Minister responsible for Home Affairs.

Persons in detention may receive visits from family members and friends up to once per week, on such dates and times as are determined by the Detention Service administration, provided that visits by such persons are approved by the Principal Immigration Officer, who shall be provided with the list of persons who would visit each detainee. The duration of any visit and the number of visitors in respect of any particular visit shall be established by the Detention Service administration according to the needs of security, discipline and good order. Such visits shall take place in the room or rooms designated for such purpose by the Detention Service administration. The Detention Service administration shall keep a register of all visits to persons in detention and such record shall include

the date and time of the visits and particulars relating to the identity of the visitor. All such visits shall be conducted under appropriate supervision. Moreover, no prohibited items, as defined by Detention Service administration, may be handed over to persons in detention and all items handed to persons in detention would be subject to inspection by Detention Officers.

vi. Monitoring of Detention

The operations of the Detention Service shall be monitored by the Board of Visitors for Detained Persons set up by the *Board of Visitors for Detained Persons Regulations*, S.L. 217.08. The Board shall ensure that detainees are accorded their rights and that they are protected from any form of abuse.

CHAPTER 5: OPEN CENTRE ACCOMMODATION

i. Services provided by Open Centres

Asylum seekers and beneficiaries of international protection released from the Initial Reception Facility or from Detention shall, if no alternative accommodation arrangements are available to them, be offered accommodation at Open Centres managed by the Agency for the Welfare of Asylum Seekers, or an entity or NGO working in partnership with the Agency. Such accommodation shall also be offered, on the same terms and conditions, to asylum seekers who would have reached Malta regularly, wherever Malta is the State responsible for determining their asylum application, and to beneficiaries of international protection granted protection by the Maltese authorities who would have been resettled or relocated into Malta.

Irregular migrants (i.e. those who have not applied for international protection or been definitively rejected) may also be offered such accommodation for humanitarian reasons, provided that priority shall be accorded to asylum seekers and beneficiaries of international protection.

Persons shall be accommodated at Open Centres according to a classification system:

- single males
- single females
- family units

Such persons shall be accommodated at the Open Centres for not more than 12 months unless humanitarian considerations dictate otherwise; provided that irregular migrants may be required to leave Centres earlier. Residents shall be offered integration-oriented and other courses intended to address skills gaps. Agency for the Welfare of Asylum Seekers personnel, and other personnel operating an Open Centre, shall have access to assessments of migrants made at the Initial Reception Facility and at the Detention Service.

Any minors forming part of family units, irrespective of the status of their parents or their own status, shall have access to free State education.

Persons accommodated at Open Centres shall be provided with accommodation free of charge and, so long as they are not employed, with an allowance intended to cover daily expenses, such as meals and transport.

Migrants considered vulnerable, with the exception of unaccompanied minors, shall also be accommodated at Open Centres as per above. However, such persons shall be offered additional support, be it psychological, medical or otherwise as required.

Unaccompanied minors shall be accommodated at apposite Centres, dedicated to meet their specific needs. The centres, further to being equipped with all the basic amenities as for the other centres, will also cater to other needs, including meals and clothing among others. Furthermore, all unaccompanied minors shall have access to State School education free of charge. Whenever necessary, particularly with reference to linguistic needs, preparatory classes shall be made available to such minors at State Schools.

The Centres housing unaccompanied minors shall be administered by AWAS.

Procedures to trace the family members of Unaccompanied Minors would be initiated by AWAS once such minors are accorded International Protection, in accordance with Regulation 18 of the amended *Procedural Standards in Examining International Protection Regulations* (SL 420.07). In the eventuality that family members are positively identified, further action would be taken, possibly with a view to reuniting the minor with his or her family members, provided that this is in the best interest of the child.

Open Centre facilities shall comprise or have access⁴ to:

- an office for the delivery of information by the Office of the Refugee Commissioner;
- rooms for one-to-one interviews conducted by AWAS officials;
- rooms for one-to-one interviews by the Office of the Refugee Commissioner;
- rooms for one-to-one interviews by the authorities, professionals, legal counsels and NGOs concerned;
- facilities for the delivery of educational programmes; and,
- Medical Isolation Facilities.

ii. Material Reception Conditions

The objective of Open Centres is to deliver accommodation that is decent and comfortable, but not of a permanent nature. Residents shall be encouraged to take up employment and leave the Centres, if possible, within 6-8 months, and within no more than 12 months unless humanitarian considerations dictate otherwise.

Open Centres will be equipped with lighting, ventilation, heating and fittings, including toilet and shower amenities, adequate to maintain health and basic comfort in accordance with sanitary regulations.

Moreover, residents shall have access to mainstream medical care services.

Accommodation quarters, as well as services provided, shall:

- Respect the personal safety and confidentiality of residents;
- Provide for their basic needs; and,
- Respect ethnic and cultural diversity.

Accommodation quarters shall, to the extent possible, allow a degree of privacy to residents, although this shall not be understood to necessarily imply separate rooms for each resident. Family units, insofar as possible, shall be housed in separate rooms to enable the continuity of family life.

Centres for unaccompanied minors, further to providing the basic amenities of other centres, shall deliver a homely and child-friendly environment.

iii. Security and Communal Activities at Open Centres

Residents at Open Centres shall be allowed to move freely in and out of the Centres; however access control systems shall be used to prevent access to unauthorised persons.

⁴ The facilities would not necessarily be available in each Open Centre. However, Open Centre residents would have access to relevant facilities available and services.

The scope of Open Centres is to provide accommodation and education opportunities to residents. All other communal activities should be engaged by residents outside the Open Centres. Residents shall also be encouraged to make use of mainstream services outside the Centres. Information shall be provided to Open Centre residents concerning available services and how to access them.

All Government Departments and entities are to ensure that refugees, beneficiaries of subsidiary protection and asylum seekers are given access to the services they are entitled to in terms of the Refugees Act (Cap. 420) and other applicable legislation.

CHAPTER 6: MEDICAL SERVICES AVAILABLE TO MIGRANTS AT INITIAL RECEPTION, CLOSED AND OPEN CENTRES

i. Background

Irregular migrants are often unfamiliar with the national health care system and do not know how, when and where to seek help. Language barriers may also impede utilisation of health services. Health professionals are nowadays facing new challenges due to cultural differences in the explanation for the cause of disease and the interpretation of symptoms. Cultural diversity in health care poses a challenge to service providers who need to manage complex differences in communication styles, attitudes as well as expectations.

ii. Migrant Health Liaison Office

Migrants are offered assistance by a specialised unit to cater for challenges that have developed in the Health Sector due to cultural diversity. The functions of the Migrant Health Unit include:

- provision of health education sessions to migrant population groups in the Centres according to gender, age and specific health issues;
- provision of assistance to migrants in accessing health care through the right channels;
- organisation of Health Information Sessions at the Centres;
- the drawing up of in-service studies;
- education and training initiatives for health and social care professionals and university students in Cultural Issues in Health Care;
- provision of translated materials (booklets and posters) for migrants on health topics; and,
- participation in EU programmes, seminars and workshops on the issue on migration and health.

Furthermore, migrants would be offered assistance in health care services by cultural mediators in order to overcome cultural and linguistic challenges that may arise during medical consultations. Therefore, migrants who can communicate well in English and have a sufficiently high educational level would be able to enrol for the training programme ‘Cultural Mediators in Health Care’ with the said office.

ANNEXES

Annex A: Detention of Asylum Applicants: Guidelines for Police Officers drawing up recommendations for the Principal Immigration Officer

i. Scope

The *Reception of Asylum Seekers Regulations* (SL 420.06) stipulate that an asylum applicant may be detained on the basis of one of the following grounds:

- (a) in order to determine or verify his identity or nationality;*
- (b) in order to determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding on the part of the applicant;*
- (c) in order to decide, in the context of a procedure, in terms of the Immigration Act, on the applicant's right to enter Maltese territory;*
- (d) when the applicant is subject to a return procedure under the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, in order to prepare the return or carry out the removal process, and the Principal Immigration Officer can substantiate, on the basis of objective criteria, including that the applicant already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;*
- (e) when protection of national security or public order so require; or,*
- (f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.*

An asylum applicant may therefore only be detained if one of the above grounds applies, and only for as long as that ground remains applicable.

The aim of this document is to assist Police Officers in drawing up recommendations to the Principal Immigration Officer as to whether individual asylum applicants who entered Malta irregularly, or who are otherwise irregularly present, should be detained or not. Such recommendations, as well as the decision of the Principal Immigration Officer, is to be based on the grounds set at law, cited above, as well as on the related considerations set out hereunder.

ii. Considerations relating to the detention or otherwise of individual asylum applicants

- (a) In order to determine or verify his identity or nationality;*

This ground for detention does not apply where the asylum applicant is in possession of genuine travel and/or identification documents.

On the other hand, at least in principle, it applies whenever asylum applicants are undocumented, meaning that no proof of identity or nationality exists.

However, the fact that an asylum applicant lacks documentation does not automatically imply that he or she should be detained. If alternative evidence for his or her nationality exists, especially if cumulative, then the asylum applicant should not be detained on the basis of this specific ground.

Alternative evidence would, in particular, include:

- Credible and consistent testimony by the asylum applicant in question;
- Credible and consistent testimony by other asylum applicants who reached Malta along with the asylum seeker in question; and,
- Known disturbances in the country/region of origin that led to an outflow of asylum applicants from the country/region in question.

(b) In order to determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding on the part of the applicant;

This ground for detention shall apply whenever there is a risk of absconding, in particular whenever:

- an asylum seeker, whether documented or otherwise, has on past occasions sought to escape, avoid or mislead the authorities; or,
- whenever an asylum seeker is documented, but entered Malta irregularly.

Provided that, whenever the second consideration is the only one to apply to a particular case and there are no other compelling reasons for detaining the applicant in question, the Principal Immigration Officer shall consider the likelihood of returning the person in question in the event that his or her asylum application is definitively rejected. In case the assessment concludes that such person is not likely to be returned within a reasonable timeframe, he or she would be released.

(c) In order to decide, in the context of a procedure, in terms of the Immigration Act, on the applicant's right to enter Maltese territory;

This ground for detention may only be applied in relation to asylum seekers in possession of required travel documentation, who have entered Malta via a regular border crossing, but whose entry has been irregular (e.g. stowaways), as well as in relation to asylum seekers at a border crossing point, whether documented or otherwise.

Unless other grounds for detention apply, the asylum applicant in question shall be released as soon as it is determined that he or she has a right to enter Maltese territory. On the other hand, if the person has no right of entry he or she may be detained in terms of this criterion.

Access to the territory shall be granted:

- in the event that the asylum application is not deemed inadmissible; and,

-in the event that the asylum application does not fall under the responsibility of another Member State.

Unless, without prejudice to the principle of non-refoulement, other reasons set out at law preventing access to the territory apply.

(d) When the applicant is subject to a return procedure under the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, in order to prepare the return or carry out the removal process, and the Principal Immigration Officer can substantiate, on the basis of objective criteria, including that the applicant already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

This ground for detention may be applied whenever the applicant has been informed of his or her right to apply for international protection upon entering Malta, but he or she has refrained from submitting an application, and has only submitted the application upon or after being served with a return decision, or upon being informed that he or she would be returned.

(e) When protection of national security or public order so require;

This ground for detention may be applied whenever there is reasonable suspicion or certainty that the asylum applicant has committed an offence which would constitute a criminal offence in Malta, particularly a serious criminal offence, and that there is a risk of another offence being committed in Malta.

This ground may also be applied in any case where an applicant is considered to pose a serious threat to fundamental State interests.

An asylum seeker may also be detained whenever he or she would have entered Malta irregularly as part of an influx of such proportions and/or suddenness that it is deemed to have an adverse effect on public order.

(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

This ground for detention may be applied whenever an asylum seeker is to be returned to another State bound by the Regulation, which State is responsible for determining his or her asylum application, provided that an assessment of the case concludes that there is a risk of absconding. The assessment of the risk of absconding shall be made with reference to point b) above.

iii. Alternatives to Detention

Whenever a recommendation is made to the Principal Immigration Officer not to detain an asylum applicant given that none of the above grounds apply or the risk of absconding is not deemed sufficiently high, the Officer making the recommendation shall also indicate whether alternatives to detention should be applied in the specific case and, if so, which.

Annex B: Detention of Irregularly present Third Country Nationals with a view to Return: Guidelines for Police Officers drawing up recommendations for the Principal Immigration Officer

i. Background

According to Regulation 11(8) of the *Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals*, the Principal Immigration Officer shall conduct a review of the detention of any person detained with a view to his or her return. The first such review shall take place within no more than three months from the date when detention for the purpose of effecting return commenced.

Whenever the detention of any person with a view to return has reached (and exceeded) six months the Principal Immigration Officer shall inform the Immigration Appeals Board, which would supervise and, if necessary, revise the review.

ii. Provision of background information

When making a recommendation to the Principal Immigration Officer on the release or otherwise of a person from detention in accordance with the aforementioned Regulation, irrespective of whether the review is being conducted after a period of three months of detention or after a longer period of detention, the Officer responsible shall:

- Document any attempts made to obtain travel documentation and/or authorisation from the (presumed) country of origin for the return of the person in question; and,
- Indicate response received from the (presumed) country of origin.

iii. Criteria and relevant considerations for a Recommendation

A recommendation to release the person in question shall be made whenever it transpires that:

- a) a reasonable prospect of removal no longer exists for legal or other considerations, as per Regulation 11(14); or
- b) the conditions laid down in Regulation 11(6), namely the risk of absconding or the third country national being uncooperative, thereby hindering the return procedure, no longer subsist; and,
- c) the removal procedure is no longer 'in progress' and 'executed with due diligence' (Proviso to Regulation 11(6)).

An officer shall consider that the above criteria for release from detention are met when:

-The person in question has acquired a permit to stay in Malta;

-It is not possible to conduct the return of the person in question due to war or civil unrest in the country of origin, as well as other circumstances that render the return impossible to effect; or,

-No response has been received from the (presumed) country of origin, notwithstanding attempts made to acquire travel documentation or authorisation to return the person in question.

A recommendation to continue to detain the person in question for a further period shall be made whenever it transpires that:

- a) there are reasonable prospects of return;
- b) there is a risk of absconding in the event of release;
- c) the person in question is trying to hinder the return process; and,
- d) the removal procedure is ongoing and being executed with due diligence.

An officer shall consider that the above conditions for continued detention are met when:

-a request for travel documentation and/or authorisation from the (presumed) country of origin has been made less than two months previously and a reply is being awaited;

-a response from the (presumed) country of origin has been received and it is anticipated that an interview by the consul would be held;

-pursuant to a consular visit, travel and/or other documentation for the person in question are being awaited;

-a travel document has been obtained and proceedings to effect the return are due to commence or have commenced; or,

-the person in question is hindering the return process by refusing to reveal his or her identity, nationality and/or other details, whilst attempts are still being made to effect the return.
