

BECOMING VULNERABLE IN DETENTION

National Report Malta



Civil Society Report on the Detention of
Vulnerable Asylum Seekers and Irregular
Migrants in the European Union

(The DEVAS Project)



Jesuit Refugee Service Malta



This report was prepared by JRS Malta as part of the DEVAS project, coordinated by JRS Europe and implemented in partnership with NGOs in 23 EU Member States. The project was co-financed by the European Commission under the 2007 European Refugee Fund Community Actions.

The contribution of the many detainees who accepted to share their experience, the volunteers who carried out the interviews and those public authorities who cooperated in this project is acknowledged with gratitude.

BECOMING VULNERABLE IN DETENTION

Jesuit Refugee Service Malta

National Report



accompany | serve | defend

Table of Contents

Introduction.....	3
Methodology.....	4
Part I Administrative detention of asylum seekers and irregularly staying third-country nationals in Malta.....	5
1.1 Summary of national legislation.....	5
1.1.1 Legal grounds for ordering detention.....	5
1.1.2 Legal grounds for right of appeal against the detention order/for right to challenge detention.....	5
1.1.3 Legal grounds for instructions on right of appeal/instruction on right to challenge detention.....	6
1.1.4 Legal grounds for legal maximum duration.....	6
1.1.5 Legal grounds for health care in detention.....	7
1.1.6 Legal grounds for the protection of person with special needs, or particularly vulnerable people.....	7
1.1.7 Legal grounds for accompanied and unaccompanied minors.....	7
1.1.8 Legal grounds for providing release.....	8
1.1.9 Legal grounds for any other rights.....	8
Part II Administrative detention on the basis of social conditions.....	8
2.1 The perspective of detainees.....	8
Part III Determining vulnerability within the context of administrative detention in Malta.....	11
3.1 Determining factors.....	12
3.2 Identifying vulnerable groups in administrative detention.....	13
Part IV Recommendations.....	13
4.1 Recommendations.....	13

Introduction

This report was prepared by JRS Malta as part of the DEVAS project. The objective of this project, which was coordinated by JRS Europe, was to investigate and analyse vulnerability in detained asylum seekers and irregular migrants: both the way in which pre-existing vulnerable groups cope with detention and the way in which detention can exacerbate vulnerability in persons who are otherwise healthy. As part of this project, research was conducted in 23 EU Member States. The outcome of this project was a Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the EU¹, incorporating national reports from 23 member states, a comparative analysis of the results obtained through the research conducted and recommendations for policy-making on the detention of irregular migrants for the purpose of removal.

The national report presents the results of the research conducted in Malta. The first part of the report outlines national law, policy and practice relating to detention of asylum seekers and irregularly staying third-country nationals in Malta. The second part of the report examines the detainees' perspective of the social conditions of their detention. The third part outlines the procedures in place for the identification and assessment of vulnerability, within the context of administrative detention in Malta. Finally, it presents conclusions and recommendations from the results of the study.

In Malta, persons detained in terms of the Immigration Act² are held in facilities specifically designated for this purpose all of which are situated inside army or police barracks. During the period when the research for this project was conducted³, there were 8 such facilities in use: four at Safi Barracks; two at Lyster Barracks and two at Ta' Kandja. The centres are administered by a specially established civilian force known as the Detention

Service (DS), which is run by army officers and whose members are recruited mostly from retired members of the security forces.

At the time the research was conducted, the centres were filled to capacity following the arrival of a record number of migrants, by boat from Libya, during 2008 and the early months of 2009⁴. All such arrivals are immediately detained in terms of the Immigration Act.

National law does not place a time-limit on detention. Detention lasts until an asylum application is determined, in the case of those granted some form of protection. Since June 2005, asylum seekers whose application is still pending after the lapse of 12 months are released to await the outcome of their asylum application in the community. Those whose asylum application is finally rejected before the lapse of 12 months and those who do not apply for asylum are detained for 18 months⁵. The only exceptions are those who are found to be vulnerable, after an individual assessment of their situation, as in terms of government policy⁶ vulnerable immigrants are not detained. Within this context, the assessment of vulnerability assumes particular significance.

The situation on the ground in the centres today is totally different from that in which the research was conducted as, after Italy and Libya reached an agreement regarding the return of boats intercepted by the Italian navy in international waters and set up joint patrols off the Libyan coast, arrivals dropped to 1475 in 2009⁷ and until April 2010 there were no arrivals. As a consequence of

¹ http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%20010_PUBLIC_28Jun10.pdf

² This Act, and the subsidiary legislation enacted thereunder, regulates immigration into Malta. The Act provides for the mandatory detention of all immigrants issued with a removal order or refused admission into Malta.

³ Between February and September 2009.

⁴ From 2002, Malta experienced a sharp increase in the number of undocumented migrants arriving by boat in an irregular manner, usually leaving from Libya. In 2002 alone 21 boats carrying 1686 immigrants arrived in Malta in this manner, compared to just 57 in 1 boat the previous year. In the years that followed, with the exception of 2003, the number of arrivals did not decrease significantly: in 2003 some 502 immigrants arrived in 12 boats; in 2004, 1388 immigrants arrived in 53 boats; in 2005, 1822 immigrants arrived in 46 boats and in 2006, 1780 immigrants arrived in 57 boats⁴. The year 2008 witnessed a massive increase of arrivals of migrants of 2775 in total⁴.

⁵ This time limit was established by a government policy document published in January 2005 entitled '*Irregular Immigrants, Refugees and Integration*', Ministry for Justice and Home Affairs & Ministry for Family and Social Solidarity, available at http://www.mjha.gov.mt/downloads/documents/immigration_english.pdf.

⁶ *Ibid.* pg.13.

⁷ "1475 migrant arrivals, 319 repatriations, by end September", *Times of Malta*, 22 October 2009.

the drop in arrivals, detention centres were far less crowded in the last few months of 2009 and by the first quarter of 2010 only two detention facilities within Safi Barracks were being used to house detainees, as the number of detainees had dropped to approximately 250. However, both the law and policy regarding detention of illegally staying third country nationals and the rules regulating the treatment of vulnerable persons in detention and their release on grounds of vulnerability remain unchanged.

Methodology

Research was conducted by project partners according to a common methodology, consisting of four standardised questionnaires: a legal questionnaire and three qualitative and quantitative interview questionnaires - one for detainees, another for NGO staff and another for detention centre staff.

Partners were instructed to visit at least 3 centres and to interview at least 30 detainees in each, or all the detainees if there were less than 30 in that particular centre. There were no specific criteria for selecting the detainee sample; partners were allowed to interview any detained asylum seekers or irregular immigrant who was available to them, provided s/he consented to participate in the study.

In Malta, interviews were carried out with 89 migrants detained in seven facilities in three administrative detention centres, between February and September 2009: Hermes Block and Tent Compound at Lyster Barracks; Warehouses 1 and 2, C Block and B Block at Safi Barracks and the new detention facility at Ta' Kandja. The sample included asylum seekers administratively detained while their asylum application was being processed and persons whose asylum applications were denied by the competent authorities and were at law liable to removal. An interview was also carried out with a member of staff of a local NGO actively engaged in working in detention centres. JRS Malta also completed a legal questionnaire, detailing the legal provisions regulating detention and the treatment of vulnerable asylum seekers.

All of the immigration detention centres in use at the time when the research was conducted housed both asylum seekers and illegally-staying third

country nationals awaiting removal. Moreover, persons at risk of vulnerability could be found in all of the centres in use at the time.

Out of the seven centres in which interviews were carried out, four housed only single men. In the initial weeks of the project women and family units were housed in Hermes Block at Lyster Barracks. After this facility was closed for refurbishment in April/May 2009, single women were detained separately from men at the new facility in Ta' Kandja. Couples were detained at B Block in Safi Barracks⁸.

Data was collected from men, women and unaccompanied minors who at the time of their interview were still being detained pending age assessment. Of the 89 people interviewed, 71 were male and 18 were female. The breakdown is as follows: 38 Somalis, 8 Eritrean, 5 Ethiopians, and 38 West Africans out of which 22 were Nigerians. The number of detainees chosen to be interviewed per centre reflected the composition of the detainee population, both in terms of age and gender as well as in terms of nationality/ethnicity. Additionally, selected respondents included a number of persons who appeared to be in a particularly vulnerable situation, some of whom were referred and released in terms of the procedure described in Section 3 of this report, and others who would not normally be considered vulnerable. In choosing the people to be interviewed, the recommendations of JRS staff members who were in regular contact with the detainees were taken into account.

As a number of respondents could not speak English, interviewers used interpreters to facilitate communication and to fill the questionnaires. The interviewees' consent for the use of a particular interpreter was always requested at the beginning of the interview; where the interpreters were chosen from among the detainee population, they were always chosen with the consent of the interviewees. The data collected was recorded on the questionnaires themselves and in other instances on a digital voice recorder.

⁸ Since mid-2009, men and women are no longer housed in the same accommodation centres unless they are a family grouping.

Part I Administrative detention of asylum seekers and irregularly staying third-country nationals in Malta

1.1 Summary of national legislation

Immigration into Malta is regulated by the Immigration Act of 1970, Chapter 217 of the Laws of Malta, and the subsidiary legislation enacted there under. The treatment of asylum seekers is regulated by the Refugees Act 2000, Chapter 420 of the Laws of Malta, and related subsidiary legislation, in particular the Reception of Asylum Seekers (Minimum Standards) Regulations (S.L. 420.06 of 22 November 2005)⁹.

1.1.1 Legal grounds for ordering detention

In terms of the Immigration Act, detention is the automatic consequence of a refusal to grant admission into national territory¹⁰ or the issuing of a removal order in respect of a particular individual¹¹.

Removal orders are issued by the Principal Immigration Officer, an administrative authority, against persons considered liable to removal as “prohibited immigrants”. This includes those who enter or are present in Malta without the required authorisation from the immigration authorities and those who become “prohibited immigrants” for one of the reasons listed.

Unlike immigrants detained by virtue of a removal order, immigrants refused access to national territory, “shall be deemed to be in legal custody and not to have landed”¹².

Article 16 of the Immigration Act provides that any person who is in Malta without the required leave from the immigration authorities or who is “reasonably suspected of having so acted”, may be taken into custody without warrant by any police officer and while he is in custody shall be deemed to be in legal custody.

1.1.2 Legal grounds for right of appeal against the detention order/for right to challenge detention

Maltese law does not provide for the issuing of a detention order; detention is the automatic consequence of a removal order or of a decision to refuse admission into national territory.

Maltese law contains no provision for automatic judicial review of detention. Article 25A (5) of the Immigration Act provides for the possibility of an appeal from a decision to issue a removal order. Any such appeal must be presented to the Immigration Appeals Board, within three working days from the date of issue of the removal order. If the removal order is revoked, the immigrant concerned is automatically released from custody.

The Board has the authority to grant the immigrant concerned provisional release from detention, even on a verbal request, during the course of any proceedings before it under such terms and conditions as it deems fit.

In addition, in terms of article 25A(9) of the same Act, the Board has jurisdiction to hear and determine applications, made by persons held in custody by virtue of a deportation or removal order, to be released from custody pending the final determination of their asylum application or their deportation/removal from Malta, as the case may be. In such cases, release will only be granted where, the Board is of the opinion that, the continued detention of the applicant is unreasonable as regards duration, in the light of the circumstances of the case, or where there is no reasonable prospect of deportation within a reasonable time.

The Board may refuse to grant release where the individuals concerned have refused to cooperate with legitimate attempts to remove them from national territory. The law further restricts the scope of this remedy, by prohibiting release in certain cases. Persons released by virtue of this remedy must report at least once a week to the Immigration authorities. Moreover, in certain circumstances, they may be taken into custody again, pending their removal from Malta.

⁹ Hereinafter referred to as the ‘Reception Regulations’.

¹⁰ *Immigration Act 1970* (Malta), Article 10(3).

¹¹ *Ibid.* Article 14(2).

¹² *Ibid.* Article 10(3).

In practice, it would seem that the Board considers government policy on detention to be reasonable in the vast majority of cases and only grants release in exceptional circumstances. There is no fixed time limit within which the Board has to decide applications so procedures have lasted up to 3 and a half months and, in some cases the applicant was released in terms of government policy, before a decision was taken on his request for release.

Article 409A of the Criminal Code¹³ also provides any detainee with the possibility of applying to the Court of Magistrates to challenge the lawfulness of his detention. If the court chooses to release the applicant, the Attorney General may apply for the person's re-arrest if he is of the opinion that the continued arrest was founded on any provision of this code or of any other law. The law imposes very strict timelines for the determination of such applications, which are usually rigorously observed by the courts.

This remedy was used on at least three occasions by immigrants (two asylum seekers and one rejected asylum seeker) to challenge their detention, but all three applications were rejected. On each of these occasions¹⁴ the Court held that as there is a national law (the Immigration Act) authorising detention, which imposes no limit on the amount of time a person may spend in detention, such detention is lawful. According to the Court, the scope of this remedy does not include an examination of whether there are other circumstances which make the detention unlawful, e.g. if the detention violates the individual's fundamental human rights.

Irregularly staying third country nationals may also challenge the lawfulness of their detention in terms of article 34 of the Constitution of Malta and article 5 of the European Convention on Human Rights, which is now part of Maltese law and can be invoked before the local courts. In one such case¹⁵, the First Hall of the Civil Court

justified detention on the basis of national security concerns as the Court highlighted the need to "avoid a flood of 'irregular' people running around in Malta". Detention was held to be necessary for the stability of the country. Other cases are pending before the First Hall of the Civil Court (Constitutional Jurisdiction)¹⁶. Legal proceedings of this nature generally take months, if not years, to be finally determined.

1.1.3 Legal grounds for instructions on right of appeal/instruction on right to challenge detention

Maltese law does not make specific provision for instructions on the right to appeal from a removal order or to challenge detention.

1.1.4 Legal grounds for legal maximum duration

Asylum seekers may be detained for a maximum of one year. This time limit is not specifically stated in the law. Regulation 10(2) of the Reception Regulations states that asylum seekers shall be granted access to the labour market if a decision at first instance has not been taken within one year of the presentation of an application for asylum and that this access shall not be withdrawn during the appeal stage of the RSD procedures¹⁷. As it is impossible to work while in detention, these provisions have been interpreted to mean that all asylum seekers will be released from detention if their application is still pending after one year.

There is no legal time limit on the detention of rejected asylum seekers and illegally staying third country nationals who do not apply for asylum. In terms of a government policy document¹⁸, published in January 2005, no immigrant may be detained for longer than eighteen months.

¹³ Chapter 9 of the Laws of Malta, 1854 (Malta).

¹⁴ *Napoleon Mebrahtu vs. Commissioner of Police, Magistrates Court, 26 June, 2003; Karim Barboush vs. Commissioner of Police, Criminal Court, November 5, 2003; Kifne Asmelash Gebrezgabihir vs. Commissioner of Police, Magistrates Court, June 27, 2006.*

¹⁵ *Essa Maneh et. vs. Commissioner of Police, Civil Court, First Hall, 16 December, 2009.*

¹⁶ *Tafarre Besabe Berhe v Commissioner of Police et, Civil Court, First Hall (Constitutional Jurisdiction).*

¹⁷ *Reception of Asylum Seekers (Minimum Standards) Regulations, 2005 (Malta) Regulation 10 (3).*

¹⁸ *Op. Cit. Ministry for Justice and Home Affairs & Ministry for Family and Social Solidarity, pg. 11.*

1.1.5 Legal grounds for health care in detention

In terms of article 13(2) of the Refugees Act¹⁹ asylum seekers are entitled to receive state medical care and services. The law does not specify the scope of the healthcare to be provided and whether asylum seekers have the right to access health care under the same conditions as nationals in the public system or if they are covered under a specific scheme. However, in practice this provision is generally understood as providing access free of charge to most of the medical services that nationals receive. Regulation 11 of the Reception Regulations provides that, where applicants are working regularly or have sufficient means, they may be required to cover or contribute to the cost of material reception conditions. Moreover, in “exceptional circumstances” the law provides the possibility to modify these reception conditions in case “asylum seekers are in detention or confined to a border post” provided that “these different conditions cover basic needs”²⁰.

The law makes no provision for undocumented migrants’ access to health care. There is only a non-legally binding “policy document” establishing that all foreigners in detention are “entitled to free state medical care and services”²¹. As with the provisions specifically applying to asylum seekers, this policy is informally interpreted as access free of charge to the standard health care coverage in Malta (preventive, investigative, curative, and rehabilitative services). This applies to all undocumented migrants and asylum seekers in detention in Malta.

1.1.6 Legal grounds for the protection of person with special needs, or particularly vulnerable people

Regulation 14(1) of the Reception Regulations provides that, in the implementation of the

provisions relating to material reception conditions and health care, account 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. Regulation 11(2) also states that material reception conditions for asylum seekers shall be such as to ensure an adequate standard of living for persons who have special needs.

Moreover, in terms of government policy on immigration, people who are vulnerable by virtue of their age or physical conditions shall not be detained²².

1.1.7 Legal grounds for accompanied and unaccompanied minors

In terms of the Refugees Act, an “unaccompanied minor” is a person below the age of eighteen who arrives in Malta unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered Malta²³.

The regulations mentioned in section 1.1.7 above, regarding material conditions of reception for vulnerable asylum seekers, apply to both accompanied and unaccompanied minors. In addition the Reception Regulations stipulate that where the provisions on reception conditions are applied to minors, the best interests of the child shall constitute a primary consideration²⁴.

Apart from this rather vague provision, the law only contains provisions regarding the education and placement of minors. Regarding education, the law provides that minor asylum seekers or minor children of asylum seekers shall have access to education on equal grounds as Maltese nationals for so long as an expulsion

¹⁹ *Refugees Act 2001*, (Malta)

²⁰ *Reception of Asylum Seekers (Minimum Standards) Regulations 2005* (Malta) Article 12(6)

²¹ Op. Cit. *Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity*, pg. 12.

²² Ibid. Pg. 13.

²³ *Refugees Act 2001* (Malta), Article 2.

²⁴ *Reception of Asylum Seekers (Minimum Standards) Regulations 2005* (Malta) Regulation 14

measure against them or their parents is not enforced. Such access shall not be postponed for more than three months, extended to one year for specific education, from the date of application for asylum²⁵. Regarding placement, the Reception Regulations provide that accompanied minors shall be lodged with their parents or the adults responsible for them by law or by custom²⁶. In practice, however, in assessing the family link, responsibility by custom may not be acknowledged by the authorities resulting in the splitting of an alleged family. Finally, the Reception Regulations stipulate that an unaccompanied minor aged sixteen years or over may be placed in accommodation centres for adult asylum seekers²⁷.

In terms of government policy on immigration, people who are vulnerable by virtue of their age shall not be detained. The law makes no provision regarding the procedures in place to implement this policy, which are regulated solely by what can be described as administrative practice.

1.1.8 Legal grounds for providing release

Procedures for release are implemented by the immigration authorities. All such procedures are regulated by policy and practice rather than by law.

1.1.9 Legal grounds for any other rights

National law does not contain provisions regarding the rights of illegally staying third country nationals held in detention.

Article 13(2) of the Refugees Act provides that asylum seekers have the right to access state education and training. Moreover Regulation 12(1) of the Procedural Standards Regulations²⁸ provides the right to be protected from forced removal pending the final outcome of an asylum

application. Article 10 of the Reception Regulations provides for access to the labour market after 12 months from the date of an application for protection.

Part II Administrative detention on the basis of social conditions

2.1 The perspective of detainees

The data in this section was obtained from the interviews carried out as part of this project. In all a total of 89 interviews were carried out with detainees in almost all of the centres currently in use.

Availability of information

From the results of the study, it transpires that information provided to detainees regarding their situation in detention is scarce.

The majority of the interviewees stated that they are not aware of **the reason for their detention** (58%). Those who were informed were given such information by the police when they were taken into custody (30%) or by people who were not in charge, such as other detainees (24%). Only a very small proportion of people considered themselves to have been properly informed (13.5%).

Almost 80% of respondents expressed their need to get more **information on procedures and/or on the duration of detention**. This frustration was very often expressed through anger during the interviews. For the detainees, clarity and precision, particularly regarding the length of detention, are important, both as a general right to know (38.6%) as well as in preparation for the future (33.3%).

The results indicate that this lack of information induces stress among detainees, many of whom feel that an injustice is being done, but are powerless to do anything about it. This is no doubt aggravated by the fact that detention follows a very long and difficult journey, which in itself places detainees in an even more vulnerable situation. For example, a detainee explained: "70 out of 78 people on the boat died on

²⁵Ibid. Regulation 9.

²⁶Ibid. Regulation 12(3)

²⁷Ibid. Regulation 15

²⁸*Procedural Standards in Examining Applications for Refugee Status Regulations*, 2008 (Malta)

the journey, and the newspaper said that the government said that the remaining eight should be released immediately, but six of us are still in detention. Why are we in detention? How long will I stay?"

Centre

It results from the interviews conducted that overcrowding in the detention centres coupled with poor sanitation is a significant problem for many detainees, with some 75% of respondents identifying it as such. More than 75% of those interviewed were negative about their room and almost 73% complained about the centre space. A third complained about hygiene, in particular those accommodated in the Safi detention centre. One interviewee said: *"It is not clean; toilets are dirty, even the basket for food is not clean."* 83% of respondents highlighted the lack of privacy, stating that there is no space to ever be alone in detention. A number of detainees feel that there is a direct link between living conditions and ill-health. In the words of one detainee: *"At times, we were 370 in a single warehouse. People are sick and they infect others. You are afraid to get sick."*

Rules

Almost half of the detainees interviewed said that there are no rules in detention. One detainee stated that: *"Here it's a jungle. There are no rules."* A quarter of those who acknowledged the existence of rules feel that they are arbitrary and inadequate. Although they tried to advocate for a change, these rules have proven very difficult to change in practice.

Staff

It results from the study that there is a lack of communication with the Detention Service staff, who are the main interlocutors for the detainees. It should be stated however that, at times when the centres are filled to capacity, the staff to resident ratio is very low, as staff are hugely outnumbered by detainees. This naturally makes communication between staff and detainees extremely difficult.

The level of interaction with staff varies greatly according to the individual member of staff. A majority of those interviewed felt that staff

generally fails to support their general needs. One detainee explained that: *"They talked to us through the window. They are mostly polite but generally indifferent."* Another detainee complained that: *"They don't even give us the food properly, they throw it towards us."* However, it should be noted that 20% of respondents reported having positive support from the staff. In the words of one detainee: *"If we need something or we have a problem, we can speak to them. I generally get on well with them"*.

From the overall responses to the questionnaire it would appear that, as a rule, the problem in staff-detainee interaction seems to be linked to the lack of facilities or the lack of power of the staff to change the situation and meet the detainees' needs, rather than to intentional discrimination or ill-treatment.

Safety

Regarding safety, 28% of respondents reported being physically assaulted while in detention, of which 68% by other detainees, and 32% by the staff. One respondent explained that: *"It happened when I asked for my Sim card, since I had all my contacts in it. They took me to the staff room but they couldn't switch on my mobile as the battery was dead. I told them I can get a similar battery from friends outside. I tried to explain that the numbers are really important for me but they refused. After I insisted, they punched me on both the leg and my face."* 18% of those who claimed to have experienced such incidents said that they filed a complaint about the physical assault, but none reported any change as a result.

A higher number of interviewees reported incidents of verbal abuse: 40% of respondents reported that they had been mocked, of which 58% claimed to have been mocked by staff. One detainee said that: *"Whenever I try to speak to them, they tell me that I am a black animal and to go away from them. They also keep telling us that we are illegal immigrants and Malta is going to deport us back to our countries of origin."* Another detainee said: *"Sometimes... the soldiers... insult your colour, nationality, tell you to go back to Africa"* As for mocking between detainees, 42% of respondents

reported such problems. It resulted that disputes due to different culture, language or religions were relatively low (12.25%), and that disputes among detainees are often due to conflicts over limited resources and poor living conditions. One detainee explained: *“It happens when I argue with someone about cleaning, flushing toilets, changing TV station, and so on.”*

Activities

Almost 80% of those interviewed reported that there were no activities provided in the centre. It is pertinent to note, however, that most of the persons interviewed were not interested in any activities but were focused primarily on their freedom (40%). A number mentioned the wish for education (25%). The vast majority of detainees interviewed had access to television and telephone. However only half of the interviewees reported that they had free access to outdoor space while nobody had access to internet or computer.

Medical care in detention

Half of the persons interviewed said that they had access to medical staff once a week while a quarter of them reported to have access to medical staff less than once a month. The results varied according to the different centres.

Physical Health

62% of respondents declared that their physical health was affected by their detention; almost 69% stated that their health was very good when they arrived but only 25% rated it good at the time of the interview. The reasons mentioned for the negative changes are mainly inadequate facilities (69%) followed by psychological issues (18%) or lack of medical facilities (11%). In the words of one interviewee: *“It has a bad impact on me. Since I am here I have chest pain, headache and body pain. It is because of the noise and no activities.”*

Mental health

Almost 80% reported that their mental health has been affected by being in detention.

According to the detainees interviewed, this deterioration is due to several factors, which include: the fact of being locked up, being separated from the world, worries, mental health problems, living conditions, separation from loved ones and past traumas. One detainee said: *“My wife in Somalia has delivered baby and she is sick, I couldn’t do anything about my family, being in detention. I cannot stop thinking about them and this is deteriorating my mental health.”* 65% of those who reported such problems said that their needs, in particular access to appropriate treatment, are not being met.

Interaction in the centre

Over half of the population interviewed felt that their personal interaction with other detainees was positive. At the same time, 56.3% stated that problems had arisen between other detainees. A majority felt that the tension was mainly due to cultural differences (53.4%) and common life in detention (17%). 10% mentioned communication problems resulting from tensions caused by delays in release.

Contact with the outside world

A majority of those interviewed stated that they have families in their country of origin and identified the fact that they are unable to support them while in detention as an added source of stress. Almost 40% said that they kept in touch with their family by telephone but some 80% stated that they do not have regular access to it.

In fact, access to the telephone is quite restricted; in some centres there is only one landline for all the residents, and only very limited credit is provided to each detainee. Moreover, detainees might not have their contact numbers with them as most of their belongings are confiscated upon arrival.

Regarding outside visits, NGOs come first (71%), followed by lawyers (49%), religious persons (42%), UNHCR (15%), and family members (4%). It should be noted that most centres do not allow visits from family

members or friends. The limitation of contact with the outside world is mainly due to a lack of the necessary infrastructure (no internet, lack of adequate telephone and calling cards).

Nutrition and sleep

74% of respondents said that they do not like the food served in detention, and almost 50% felt that it is of bad quality. 70% of those interviewed declared they had lost their appetite in detention. Specific complaints often related to the food being served cold or not cooked.

75% of those interviewed said that they do not sleep well at night, mainly because of stress. The living conditions (i.e. overcrowding, lack of hygiene, noise, etc.) are often mentioned (38%) as another cause for not sleeping well. A significant percentage of those interviewed (13.4%) mentioned external reasons, such as worries about others as the reason for their difficulties: *“He’s preoccupied with thoughts of the death of his brother... He stays awake crying to God because he is suffering. He dreams of his brother.”*

Difficulties

When asked to classify the most significant difficulties experienced in detention, most (52%) mentioned the impact of being detained in first place: the fact of being behind bars, locked up, with their life plan disrupted. The main difficulty quoted in second position is the living conditions, e.g. the lack of services, problems with food, lack of clothes. The third difficulty mainly reported was again the living conditions, particularly food (42% of the third option).

Outcome of detention

Only 3% of those interviewed reported that they knew the outcome of their detention and only 14% said they knew the exact date when they would be released. For the interviewees, this was a great source of worry and stress.

Part III Determining vulnerability within the context of administrative detention in Malta

In terms of government policy, published in January 2005: “Irregular migrants who, by virtue of their age and/or physical condition, are considered to be vulnerable are exempt from detention and are accommodated in alternative centres”²⁹.

In order to give effect to this policy, over time procedures were established with a view to determining whether or not detainees qualify for release on grounds of vulnerability, “by virtue of their age and/or physical condition”. These procedures, which will be described in the following sections, essentially target the following categories of ‘vulnerable’ persons: unaccompanied minors, families with minor children, pregnant women, elderly persons, persons with disability, persons with serious or chronic health problems and people with mental health problems.

In spite of the clear policy statement that vulnerable persons are exempt from detention, in practice, all, even those who clearly fall within one of the above-mentioned categories, are detained on arrival and only released once their vulnerability is assessed, the competent authorities have concluded that they are indeed vulnerable, the necessary clearances³⁰ are obtained and accommodation is found in the community. As these procedures take time to complete, vulnerable immigrants may spend months in detention.

²⁹ Op. Cit. *Ministry for Justice and Home Affairs & Ministry for Family and Social Solidarity*, Pg. 11.

³⁰ These include: health clearance in all cases, authorization of release by the Principal Immigration Officer in cases involving vulnerable adults excluding pregnant women and families with children where authorization is automatic.

3.1 Determining factors

The Agency for the Welfare of Asylum Seekers (AWAS), the government agency charged with determining whether or not a particular individual is in fact vulnerable, currently operates 2 separate procedures:

- a. The age assessment procedure, which is applied in cases involving persons claiming to be unaccompanied minors;
- b. The vulnerable adult's assessment procedure, used to determine vulnerability on other grounds, including old age, disability, and physical or mental health problems.

From the information available it would seem that in the case of pregnant women and families with children a simplified assessment procedure is implemented.

Both procedures are implemented exclusively by AWAS staff and there are no publicly available written rules regulating the manner in which procedures are conducted or the criteria upon which assessment is based. In fact, national law makes only fleeting and indirect reference to vulnerability assessment, simply stating that the vulnerable persons are those *"found to have special needs after an individual evaluation of their situation."*³¹

This, in addition to the fact that the procedures followed have changed over time, makes it very difficult to determine exactly how such assessments are conducted. However, from our observations it would appear that the following procedure is followed:

- a. Age assessment
 - Individuals claiming to be minors, who are not accompanied by an adult responsible for them, whether by law or by custom, are referred to AWAS for age assessment; referrals are usually made by the immigration police, where the person concerned declares that he is a minor upon arrival, or by the Refugee Commission,

where an applicant for asylum declares minor age in his Preliminary Questionnaire (PQ) form.

- In cases where the individual concerned makes conflicting statements regarding his/her date of birth, e.g. in cases where the age declared on arrival and that declared in the PQ are different, a preliminary interview is conducted by one member of AWAS staff. It would seem that some claims to minority age are rejected solely on the basis of this interview.

- Those who pass this preliminary stage, as well as those who do not need to go through it, are interviewed by a panel of three members of AWAS staff known as the Age Assessment Team (AAT), who may take a decision on the individual's claim or, in case of doubt refer the individual for Further Age Verification (FAV).

- From the information available it seems that the FAV consists of an X-ray of the bones of the wrist.

- Before an FAV is carried out, an interim care order is issued and the Minister for Social Policy who then becomes formally responsible for the individual concerned, who is presumed to be a minor (though only for the purposes of this procedure), authorises the medical test.

- Where a person is found to be a minor, an application is made for the issue of a care order by the Minister for Social Policy in respect of the minor; once the said order is issued, the person concerned is released from detention.

- Where a person is deemed to be an adult s/he is given a letter communicating the decision.

b. Vulnerability assessment (adults)

- Adults who appear to be vulnerable in terms of government policy are referred to AWAS for assessment; in such cases referrals are made by the police on arrival, in cases where the individual concerned is

³¹Reception of Asylum Seekers (Minimum Standards) Regulations, 2008 (Malta) Regulation 14.

clearly vulnerable, by the Detention Service, medical staff and by NGOs working in detention. AWAS has created a Referral Form, to be used when referring such cases for assessment.

- Individuals referred are first assessed by a social worker who conducts an interview and writes a report recommending release or otherwise.
- The said report is passed to the Vulnerable Adults Assessment Team (VAAT), a panel made up of 3 members of AWAS staff, which takes a final decision regarding whether or not the individual concerned should be recommended for release or whether some other action, e.g. follow-up in detention, is more appropriate.
- In case of a positive recommendation the case is referred to the Principal Immigration Officer (PIO) who takes a final decision on whether or not to authorise release; in our experience such release is usually granted by the authorities concerned.

Given the relatively fixed parameters within which vulnerability assessment, which is practically exclusively linked to release from detention, takes place, the determining factor for a positive finding of vulnerability is the existence of a link to one of the recognised categories of 'vulnerable persons', i.e. minor age; old age³²; pregnancy; serious, acute or chronic illness; disability; and serious mental health problems.

The results of the research would seem to indicate that detention, i.e. both the fact of being detained for an unknown length of time, as well as the conditions in which migrants are detained, cause significant stress and lead to a deterioration in detainees' physical and mental health. Although this finding implies that prolonged detention increases detainees' vulnerability to some extent, it should be noted that, in most cases this would not necessarily

³² Persons are usually considered elderly once they have reached the age of 60.

imply a positive finding of vulnerability by the agency responsible for vulnerability assessment and consequent release from detention. It is only in cases where the individual's mental and/or psychological health has deteriorated to a significant extent that it may give rise to a positive finding of vulnerability within the context of such procedures.

3.2 Identifying vulnerable groups in administrative detention

As was mentioned earlier, vulnerable detainees are usually identified either by the Immigration Police on arrival in Malta, or by Detention Service personnel, fellow detainees or NGO personnel when in detention. They are then referred to AWAS for assessment. In cases where AWAS believes that the detainee concerned is vulnerable, they would issue a recommendation for release from detention, as outlined above.

It should be stated however that following identification and referral, the individuals concerned are held in detention pending the outcome of the vulnerability assessment procedure. During this time they continue to be held in the same facilities as other detainees and are not provided with any special care or support.

Part IV Recommendations

4.1 Recommendations

The results of this research strongly indicate that many of those interviewed believe that a number of factors directly related to, or resulting from, their detention in Malta are at the root of a marked deterioration in their physical and mental health/well-being. Detainees interviewed complained of increased stress, frustration, loss of appetite, problems sleeping and feelings of powerlessness. They identified the following as causes: the fact that they are deprived of their liberty, the lack of information about their situation, their inability to do anything about their situation, the poor

conditions in which they are detained, and the lack of possibilities to engage in gainful activities, all of which are often exacerbated by past traumas experienced in their country of origin or on the journey to Malta.

Although there is no clear definition of what constitutes vulnerability, these results would seem to indicate that detention significantly increases vulnerability, even in persons who would not *prima facie* appear to belong to one of the categories normally considered to be at risk of vulnerability.

The system that currently operates in Malta, while recognising the particular vulnerability and special needs of certain individuals and allowing for the provision of alternative reception arrangements for them, fails to take this broader, though possibly less acute, level of vulnerability into account. We believe that it is extremely positive that the needs of particularly vulnerable individuals are addressed by the government agency responsible for the welfare of asylum seekers and migrants. However, the results of this research would seem to indicate that any measures taken to address or mitigate those factors that create or increase the risk of vulnerability would not only improve detainees' quality of life but would possibly also reduce the incidence of acute vulnerability, to the extent that this is precipitated or aggravated by detention.

We are therefore making the following recommendations for action on the basis of the outcomes of this research:

Alternatives to detention for the reception of asylum seekers:

Given the negative impact of detention on detainees' physical and mental health, **JRS strongly recommends that alternatives to detention are put in place and that detention is only used as a last resort, where all other measures have proved ineffective.**

Length of detention:

Many of those interviewed identified the uncertainty regarding the exact duration of their

detention as a factor that causes significant stress and frustration.

The detainees' request for more clarity about the date of their release from detention and their complaints about the negative impact of the uncertainty on their mental health/psychological wellbeing are more than understandable. In addition, it must be stated that this lack of certainty is difficult to reconcile with human rights standards requiring guarantees of protection from arbitrariness.

The duration of detention is currently determined not only by government policy on release, but also by the duration and outcome of the refugee status determination (RSD) procedure, which is governed by complex rules and is largely outside the control of the detainees.

While we believe that tackling this problem effectively would necessitate a complete overhaul of the way in which the system works, the current information gap can be reduced by systematically and regularly providing detainees with clear information about the status of their asylum application, as well as information about how changes in the status of their asylum application will affect the date of their release.

We therefore recommend that:

A process is initiated with a view to evaluating the current law, policy and practice on detention, with a view to bringing it in line with human rights standards requiring the laws regulating detention to be sufficiently certain to guarantee protection from arbitrariness.

A procedure is put in place in order to ensure that detainees are systematically and regularly provided with clear and accurate information regarding the status of their asylum application, as well as information about how changes in the status of their asylum application will affect the date of their release.

Improved living conditions:

Detainees interviewed for this study consistently identified the conditions in which they are detained as a cause of significant anxiety and stress.

Although it is clear that in recent years the number of arrivals placed a huge strain on available resources, it is equally clear that the fact that local authorities have chosen to opt for a particular type of facility, usually capable of hosting large numbers of detainees in very basic conditions, has to some extent contributed towards the problems highlighted by the interviewees.

One major difficulty identified is the lack of communication between detainees and detention centre staff. It is clear that with large centres hosting up to 350 detainees communication between staff and detainees is made very difficult not to say impossible. This difficulty could be addressed by opting for adequately staffed centres hosting smaller number of detainees in humane conditions, which allow for adequate personal space and the possibility of enjoying privacy and security.

This which would also serve to minimise other difficulties relating to lack of adequate resources for the number of detainees held in a particular centre, overcrowding, lack of privacy, and security/safety and some sanitation concerns.

We therefore recommend that:

Where detention is resorted to, detainees are held in centres where conditions are in line with internationally recognised standards, furnished with sufficient resources for the number of detainees held therein, with adequate provision for privacy, security and safety and a daily regime of activities.

Centres are adequately staffed in order to ensure that staff is less stressed, and better able to engage in meaningful communication with detainees and respond to their needs promptly and efficiently.

Persons with special needs:

Given the fact that detention of itself appears to be a factor that significantly increases the risk of vulnerability, it is important that the needs of detainee population are monitored and that particularly vulnerable persons with special needs are promptly identified.

Moreover, it is imperative that once particularly vulnerable persons are identified, their needs for medical, psychological and other forms of care or support are catered for even while they are in detention.

We therefore recommend that:

Mechanisms are put in place to monitor the detainee population and to systematically identify particularly vulnerable persons with special needs.

Once identified, particularly vulnerable persons are provided with the care, support and treatment they require, even while they are in detention.

The detainee population is provided with proper access to medical care and psychological support, in order to prevent the further deterioration of their physical and mental wellbeing.

Jesuit Refugee Service Malta

SAC Sports Complex
50, Triq ix-Xorrox,
Birkirkara BKR 1631
MALTA

T: +356 21 44 27 51
F: +356 21 44 27 52

Email: info@jrsmalta.org

Copies of this report can be downloaded from:

www.jrsmalta.org
www.detention-in-europe.org

Date of publication: July 2010

Cover: Picture painted by refugees
depicting their time in detention.
Part of a mural that is currently
hanging in the JRS Malta office.



The DEVAS project is coordinated by
JRS-Europe in partnership with:

- Caritas Austria
- JRS-Belgium
- The Bulgarian Helsinki Committee
- Symfiliosi (Cyprus)
- The Association for the Integration and Migration (Czech Republic)
- The Estonian Refugee Council
- JRS-Germany
- The Greek Council for Refugees
- The Hungarian Helsinki Committee
- JRS-Ireland
- JRS-Italy (Centro Astalli)
- Caritas Latvia
- Caritas Vilnius
- JRS-Malta
- The Dutch Refugee Council
- Caritas Portugal
- JRS-Portugal
- JRS-Romania
- Caritas Slovakia
- JRS-Slovenia
- The Spanish Refugee Commission
- JRS-Sweden
- JRS-United Kingdom



Jesuit Refugee Service Malta

www.jrsmalta.org
www.jrseurope.org
www.detention-in-europe.org



*The DEVAS project is co-financed by
the European Commission*

*Methodological support provided by the Institute of
Ethics and Law, University of Vienna*

