

**NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE
ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS
IN MALTA**

Prof. Henry J. Frendo
University of Malta, Msida
Chairman, Refugee Appeals Board
henry.frendo@um.edu.mt

1. NORMS OF TRANSPOSITION

- Q.1 Council directive 2003/9/EC of 27 January 2003 (laying down of minimum standards for the reception of asylum seekers) was duly transposed by the Government of Malta. This was effected by Legal Notice Number 320, duly published in the Government Gazette No. 1782 of 28 Sept. 2005. Notice of its coming into force was given by Legal Notice Number 383, duly published in the Government Gazette on 22 Nov. 2005. In exercise of the powers conferred by article 19 of the Refugees Act 2000, the Deputy Prime Minister and Minister for Justice and Home Affairs enacted these regulations as part of Chapter 420 of the Laws of Malta (the Refugee Act 2000). The legal nature of this main norm is thus that of a subsidiary legislation to the parent Act, of which it now forms an integral part. A paper copy of the relevant notifications as published is being annexed to this report in Maltese and in English (the former is the national language but both languages have constitutional recognition), together with details about the relevant electronic source. The norm is only devoted to the directive, so much so that LN 320 of 2005 specifically mentions it in Part I (1[1]), p. B4591, but of course it is complementary to the general principles relating to asylum stated in the law itself.
- Q. 2 There were no other norms as such, other than routine internal departmental circulars and memoranda. There are no formal collated administrative instructions as such regarding the implementation of the legislation.
- Q. 3 The Government of Malta, as the central authority, in a state which is neither federal nor comprises regional authorities, is the level of government competent to adopt the legal norms in question.
- Q. 4 The legal technical choice transposing the directive is legislative; although it speaks of “regulations” it is actually a law in the form of subsidiary legislation, not simply a regulation outside of the law.
- Q. 5 The provisions of the directive were redrafted and adapted to national circumstances. While retaining all the essentials of the directive, generalities (such as, for example, the reference to member states or a competent authority) were rendered more specific and practical. However, having had very little

experience in this field since UNHCR stopped being responsible for third country resettlement in 2001/2, and given the extraordinary number of illegal arrivals since then, Malta may be said to be on a steep learning curve in the matching of theory to practice; any honest performance assessment of detention *qua* reception policy would need to keep such a geo-political context in mind.

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- Q. 6. On the whole, all the substantive parts of the directive have been adopted, as required, even if in some cases the Refugee Act, as amended or earlier, made similar provisions for what is requested by the directive. However, please see the table of evaluation of the transposition, with comments where necessary, at the end of this report, before the appendices.

2. BIBLIOGRAPHY

- Q. 7, 8 and 9: N/A. There are no books about the juridical or other aspects of this directive's transposition or its implementation. There have been plenty of newspaper articles and letters to the editor, mostly of a polemical nature, about the whole question of illegal immigrants/asylum seekers, and to some extent about reception conditions, costs, problems etc. On 29 January 2006 I published a center-page spread on 'Malta's changing immigration and asylum discourse', with graphics and tables, in *The Sunday Times*, Valletta. This however is a researched analysis of the appellant caseload during 2005, based on my paper to the Challenge programme's conference which I organized and hosted in December 2005 on 'Migration, Asylum and Security' (mainly comparing the Eastern to the Southern borders of the Union). In March 2006 a European Parliament report by the LIBE Committee delegation, with Giusto Catania as rapporteur, was published (Committee on Civil Liberties, Justice and Home Affairs, 30 March 2006, pp. 13), following some meetings in Malta and a visit to reception/detention centres. In spite of clearly limited resources including sheer space, and a continuing intensification of the Malta illegal immigrant crisis, some improvements have been implemented since the circulation of this report, to which however a substantive reply was published by the Director of Detention Centres, Lt. Col. Brian Gatt, in *The Sunday Times* ('The other side of the story', 8 Apr. 2006). In his follow-up report on Malta in 2006 for the Council of Europe, the Commissioner for Human Rights Alvaro Gil-Robles noted that progress had been made to improve the situation of living conditions in the detention centres (*passim*). When I myself visited the Lyster and Hal Far centres, hundreds of asylum-seekers had been let out after a year a little earlier, so over-crowding was less noticeable; some of the beds in the dormitories seemed to be unused. The premises, including the floor, toilets, sinks and showers, were reasonably clean, while outdoor space comprised newly-acquired table tennis tables of which inmates were making very full use. There was a common room with tables and television. With the exception of Ta' Kandja and Hermes block at Lyster Barracks, Hal Far, immigrants are generally allowed outside all day, whereas in the other cases they only get two hours. Football and basketball are also played, but hardly any productive work is performed or possible. One inmate complained

to me about drinking water, although many Maltese drink tap water. I later confirmed that the mineral water supply had finished and was being replenished. This was a male only centre. At Hal Far, where inmates are separated by category (single males, females, and married couples) a lending library had been set up and was run by a Ghanaian youth and a Liberian youth, to whom I spoke. A well-built young adult who said he was from Darfur and wanted “freedom” spoke fluent Arabic when I addressed him in the language. I saw female inmates strolling about in the street within the compound picking oleanders and sticking them in their hair, before they were all called to dinner. This consisted of food ordered from professional caterers and served in covered plastic containers. The type of food provided to inmates is chosen by themselves in consultation with the caterer, for example no Muslims are served with pork during Ramadan. My own impressions thus differ from those emphasized so harshly in the Catania report; but nobody knew of my visit in advance. While I was there I heard some banging on a door: it transpired that this was from somebody who had been locked up as a punishment and wanted to talk to the centre’s director, Capt Brincat (who seemed to enjoy considerable respect and who also spoke fluent Arabic). None of the soldiers I saw on duty in either centre were armed. A few days later however there was an organized violent break-out involving over 300, including several who had only disembarked on Maltese shores a few weeks earlier - blocking the streets in the vicinity of the international airport. This revolt the army and police controlled with some difficulty and much restraint; various officers were wounded, including a senior policeman who was hit by a stone in his chest. Considerable damage was caused to equipment and furnishings. Nobody was apprehended or booked.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

Q.10. Malta never had such a demographic and humanitarian problem before 2002, just after it had waived its opt-out on the New York protocol of 1967 by its new Refugee Act, which came into force in the Autumn of 2001; and when it seemed likely that Malta would soon join the European Union. Reception conditions for illegal immigrants who requested asylum have had to be improvised in a panic, in response to a steady stream of arrivals, mainly by sea and undocumented, from 2002 onwards. Just before the first boat-loads started landing or being rescued out at sea by the Armed Forces of Malta, a brand new reception centre had been inaugurated at Hal Far capable of taking comfortably as many as 120 persons, with equipped wards, kitchen, sanitary and sports facilities, which I had inspected. Within days, however, more than twice as many illegal immigrants demanding asylum had disembarked.

Malta being geographically far the smallest member state of the European Union, with a total land area of only 246 sq. km., and at the same time also its most densely populated country (with over 402,000 inhabitants as of 2006, competing with Singapore now as the most densely populated country in the world), Malta’s

number of arrivals and coping with them have to be seen in proportion to size, population and resources, **otherwise no fair or objective assessment of the situation may be made at all.** Moreover, politically, socially and psychologically, Malta never was part of the European expansionist movements in Africa, the Near East or elsewhere; on the contrary, it always was on the receiving end. Invaded by the French in 1798, then colonized by the British for nearly two centuries, the Maltese, heirs to an ancient civilization, have had to struggle to survive as one of the world's smallest ethnic-linguistic minorities, to obtain for themselves civil and constitutional rights and, bereft of natural resources, to improve their socio-economic lot with difficulty. A very young nation-state, proud of its European-Mediterranean identity, Malta was independent for just 42 years before it joined the European Union, and found itself faced by this mass migrant phenomenon.

Excluding all those entering on tourist visas and then claiming asylum, among others, Malta's arrivals of "asylum-seekers" by sea alone reached 1,686 in 2002; 502 in 2003; 1,388 in 2004; 1,822 in 2005; and 334 before mid-June 2006; a total of nearly 6,000 (5,732) in less than five years. By July 2006, the 6,000 figure had been surpassed as over 1,000 have arrived so far since January, and are continuing to disembark, sometimes on their own simultaneously in different parts of the island, weekly if not daily. Previously, asylum-seekers and/or refugees in Malta had been handled in conjunction with UNHCR, which assumed responsibility for their third country resettlement (Ugandan Asians in 1972, Christian Iraqis in 1991). Malta being only a transit country. Over time, small minorities (Sephardic Jews, Hindu Indian merchants, Christian Serbs and Croats) had integrated even into such a closely-knit, largely homogenous Catholic community without affecting social cohesion. In 2002 this changed, with a continuing onrush of mainly Muslim sub-Saharan Africans, with whose countries of origin and cultures Malta had had very little if any contact in the past. In the central Mediterranean, with a huge search and rescue area inherited from colonial times, Malta was also expected to abide by the 'first come first served' Dublin II Convention. All this has led alarmingly to a multi-faceted national crisis of an unprecedented proportion, dimension and nature, with consequent political overtones on the rise. According to the Catania report (p. 3) arrivals amounted to 45% of the annual native birth-rate with one person arriving illegally in Malta the equivalent, in demographic terms alone, to 140 in Italy, 150 in France and 205 in Germany. On the basis of the island's size, one immigrant would be equivalent to 953 in Italy and 1,129 in Germany. Thus, 6,000 over less than five years, if they stayed, would translate into several hundreds of thousands by comparison.

As a result of this situation, army barracks and whatever space was available, such as a school compound, even Police Headquarters outside Valletta, had to be transformed into reception centers. Eventually, the Ministry for Justice and Home Affairs retained responsibility for the closed/ detention centers, while the Ministry for Family and Social Solidarity assumed responsibility for the open centers and other social services. Other government-funded autonomous bodies, together with

NGOs such as the Emigrants Commission, among others, began to help out with various aspects of need. The Detention Service is responsible for the coordination of the entire detention system: this has recruited 56 civilian staff as casual service detention officers and is due to recruit 50 more in the near future. While DS staff tend to regard asylum-seekers as insisting on their rights while ignoring their obligations, to better regulate and monitor the DS modalities entitled 'Detention Centre Rules and Standing Instructions' came into effect on 8 Sept. 2006. In a similar vein, DS staff complain that while sanitary facilities and hot water are sufficient, it is the immigrants who have a habit of vandalizing these as a form of non-compliance, thus for example letting the water run after use, thereby emptying the water heaters which cannot keep up with demand.

Q. 11. On arrival, asylum-seekers who have entered the country illegally are medically examined and taken into detention until their identity and status may be ascertained. They are informed of their rights and obligations at law, and fully maintained at state expense until their status is determined. Those who are granted refugee status, usually about 4%-5%, are released immediately and benefit from rights which are practically the same as those of a tax-paying citizen. Those who are granted humanitarian status too are released and benefit from various entitlements, including the right to obtain a work permit. In the case of minors, accompanied or unaccompanied, of pregnant women, and of families with children, these are quickly released and provided for separately according to category. Apart from NGOs and also UNHCR (which however is totally absent from the process of managing any accommodation for any category of illegal immigrants who request asylum), the state-funded agency *Appogg* (Support) identify vulnerable persons as a matter of course for fast-tracking with a view to implementing chap. iv of the directive as best they can, after the necessary basic screening for health or age (in the case of unaccompanied minors) has been conducted. Vulnerable persons are then accommodated in open centres in town: in spite of continuing pressures and limited resources, these are generally held to be of a high standard. Of the remainder, these will be interviewed by the Office of the Refugee Commissioner and, if rejected, they can appeal, for which process they are entitled, if they wish, to free legal aid. If there is no final decision by the adjudication process after a year has passed (with legal aid, etc), those concerned will be released from closed centers and offered hospitality, including free board and lodging, in open centers, where they are free to come and go as they please, as well as to seek employment, usually with the help of the Employment and Training Corporation or NGOs. If appellants are again rejected a second time, they normally will be held in closed centers for up to 18 months, until they are finally released and, in many cases, these may continue to be catered for in open centers. No immigrant is known to have been detained beyond the maximum period due to administrative short-comings. However it may be that some immigrants have been detained beyond 18 months for health reasons primarily because of TB. In August 2006 the Ministry for Family and Social Solidarity could not cope with the number of releases due to a want of accommodation, so a number of immigrants were released three to four weeks after completion of the

one year in detention. No official police statistics exist as to how many have been repatriated, or of what nationality, since this problem arose suddenly in 2002, but it is estimated that in all up to 1000 (mainly Egyptians) may have been repatriated out of the 6,000 arriving by boat alone to date, while a number of others would have moved elsewhere on their own steam.

The main difference in reception conditions normally lies between ‘closed’ and ‘open’ centers, with special provision made in different open centers for children and minors, pregnant women, families, or others with special needs. The record number of asylum-seekers granted humanitarian status in Malta may also benefit from free board and lodging in open centres, which are an MFSS responsibility, with NGO assistance (for example, the Emigrants Commission), although some security is also provided. The Social Security Act grants contributory and non-contributory benefit entitlements to such persons, but little assistance seems to be forthcoming in moving out of open centres those who have enough resources to find independent accommodation. Procedure with regard to any termination of free board and lodging facilities is regulated by the Integration/Repatriation and Service Agreement, in conjunction with the Dutch agency COA; there are also internal regulatory policies and procedures for management of the open centres.

The average time needed to deal with an asylum application depends on many variables but as a rule the Refugee Commission will conduct full-scale interviews within 6-7 months and never longer than 12 months. It is not known that there are now any asylum applicants in detention whose cases have not been taken care of within the span of one year, one way or the other. Moreover, with the improvement in legal aid provision in 2005, following requests by the Refugee Appeals Board, the backlog and span of the more recent appeals now has been drastically cut down, with such decisions being taken within a few weeks of the legally-assisted submission of an appeal. However, all failed cases at first instance, even the most manifestly unfounded and from relatively safe countries, are entitled by law to appeal, and they are generally encouraged to do so by NGOs such as the Jesuit Refugee Service, who regularly visit the centres.

4 GENERAL RULES ON RECEPTION CONDITIONS

- Q. 12. Material reception conditions are provided for in kind but, in the open centers, some allowances, such as a daily transport allowance, may also be given. There is no voucher system; but such things as telecards are often provided by Detention Services and/or NGOs. Children attend public schools, as well as benefit from whatever state-funded health care they may need; the latter applies to asylum-seekers and rejected cases in all reception centers, closed or open (art.10, ch. 420) Reception conditions are sufficient to ensure “a standard of living adequate for the health of applicants and capable of ensuring their subsistence.” Board and lodging as well as housing, food, clothing, health care and all such matters, are provided as necessary without distinction in the closed centres. Those having

special needs – children, pregnant women, any handicapped or elderly cases - are catered for in open centres geared to their needs, with hospitalization if and as necessary.

As for comparisons, no Maltese nationals or aliens are provided by the state with free board and lodging, with water, electricity and other bills paid for, except prisoners. Even elderly Maltese citizens in the state's fully over-subscribed old folk homes contribute part of their pension for their upkeep. Severe housing cases, which are rather uncommon, may be assisted by the state or NGOs such as the YMCA, but hardly ever indefinitely on a daily free board and lodging arrangement. There is some subsidized social housing because of the scarcity of rented accommodation and the high property prices, which most people, especially young people, cannot afford without hefty life-long bank mortgages.

4. PROCEDURAL ASPECTS

- Q. 13. A. In Maltese national legislation a request for international protection is presumed to be under the Geneva Convention. Normally this is for refugee status.
- B. Temporary humanitarian status is given when the applicant does not qualify as a Convention refugee but cannot be sent back home because of the still perilous state of the country of origin, although in Malta hardly any applicant ever comes directly from such a country of origin. At law, humanitarian status can be given by the Refugee Commissioner or by the Minister, not by the Refugee Appeals Board, which can only determine refugee status or otherwise. Since 2002, most applicants in Malta have been granted a renewable temporary humanitarian status, once they were found not to be refugees.
- C. There are no legal provisions to privilege or discriminate in favour of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation, nor have there been any such requests at all, but the Minister might consider exercising his discretion in any such case at a high level were it ever to arise.
- Q. 14. In the case of illegal entry, reception conditions are available from the moment of entry, upon arrival, and continue to be so once an asylum application has been submitted, until this is determined or otherwise, as already explained above. Article 13 (1) of the directive is limited to when an asylum application is submitted, but in Malta's case all illegal immigrants/would-be-asylum seekers start to get board and lodging as well as medical attention immediately, upon disembarking from their boats. The waiting period for health clearance in the case of vulnerable groups is usually 4-6 weeks. In the case of applicants on tourist visas, or expired tourist visas, who may be residing in hotels, these normally would only be detained when their visa expires. In the case of those with expired

visas, who have not entered Malta illegally, in practice they may continue living on their own until their application is determined, or they could be detained. (Reception conditions). However, there is a two month prescription to apply for asylum.

- Q. 15. At present Malta is in the unusual situation where reception conditions may never end, even after a second rejection and final release from detention, if the person concerned moves to an open center and of course is not repatriated. For the time being, such reception conditions are also being enjoyed by many who are actually employed, unless they opt to find their own place where to live and assume responsibility for their food, rent, bills, etc. On a point of law, an unsuccessful appeal may be referred to the Constitutional Court, which would further delay considerably any final adjudication.
- Q. 16. Asylum shopping very probably would be discovered, disqualified and rejected by the adjudicating process, but there are so far no special rules or practices to penalize successive applications for asylum by the same person in actual fact.
- Q. 17. A leaflet ‘Your Entitlements, Responsibilities and Obligations while in Detention’, in English, French and Arabic, is given more or less upon arrival to all those who enter Malta illegally, on the assumption that they would all be requesting asylum. This includes, *inter alia*, the procedure for applying for refugee status and access to legal services, and is in accordance with Chapter II, article 5 (1), para. 1, of the directive. Copies in the various languages are annexed to this report.

Information concerning other aspects of reception conditions, such as organizations providing legal assistance or health care, mentioned in para. 2 of the same article, is conveyed orally rather than in writing, not least by members of a number of NGOs and the ICRC who regularly visit the centers, where they have ready access. Routines may vary from one center to another, e.g. at what time is lunch served. From what I myself have observed (at Lyster Barracks, Hal Far), the staff at the centers take it upon themselves personally to call the attention of residents at the appropriate times, and to attend to any sanitary or medical needs that arise from time to time, by calling a doctor or an ambulance, or, again on the basis of what I observed (at a warehouse in Safi Barracks) just handing out aspirins to someone who complains of a headache, either directly or, in this case, through the intermediary of another asylum-seeker who volunteers to serve as a resident-helper.

- Q. 18. There is no such formalized list but everybody knows who these few organizations are, because their members visit regularly and meet with the asylum-seekers as well as advise them. The Jesuit Refugee Service, for instance, provides fill-in-the-blanks print-outs which asylum-seekers can simply initial if they wish to appeal and to request a legal aid lawyer to help them in their submissions. A good percentage of asylum-seekers being illiterate or semi-literate, having such lists in writing would not be much help. Admittedly, interpretation and translation

resources can be rather restricted. The organizations active in Malta in the reception centers are the following five: 1) The Emigrants Commission; 2) the Peace Laboratory; 3) the Jesuit Refugee Service; 4) the ICRC and 5) UNHCR.

- Q. 19 A – D. The issuance of such a status document within 3 days after an application is lodged (Art. 6) does not apply in the case of new arrivals who are in closed centers.

A full largely self-explanatory set of all relevant documents is being annexed to this report in hard copy. An initial one which is issued immediately upon the lodging of an application with the Refugee Commission entitled 'Preliminary Questionnaire' also serves as an ID document. This registers the individual's desire to apply for refugee status in Malta under art. 8 of the Refugee Act. Another priority document relates to unaccompanied minors, addressed by REFCOM to the Department of Social Welfare Standards, for the appointment of a guardian under the Children and Young Persons Care Order Act (Legal Notice 253 of 2001). A third document, entitled 'Information to Asylum Seekers', is a declaration of intent regarding an application for refugee status listing briefly the rights and obligations involved, including the possibility of legal aid and contact with UNHCR, as well as cooperation. This form is handed out in English, French, Arabic, Amharic, Somali, Spanish, Tigrean and Turkish. The fourth form would be a formal application for refugee status, which caseworkers would use in/for interviews. Such an application is also filled in if the prescribed two months have passed, but normally there would be no interview as the application would be time-barred. The fifth document is the 'Eligibility Memorandum'. If refugee status is granted, this is only in English. If not, or temporary humanitarian status only is granted, this would be available in English, French, Arabic, Amharic, Tigrean, Spanish and Turkish. Addressed to the applicant and copied to the authorities re the outcome of the case, informing him/her of a right to appeal. On release from detention, all onetime applicants and/or appellants, including those who have been rejected at all stages of the adjudication process, are given a blue sheet, an I.D. document, which they are meant to have renewed by the immigration authorities at set intervals and/or if there is a change of address.

- E. An asylum-seeker who is not in detention may get a travel document for serious humanitarian reasons.
- F. There is a central system of registration (coordinated by the Ministry for Family and Social Solidarity). An inter-departmental, inter-ministerial one is being prepared under the aegis of the Ministry for Justice and Home Affairs. The Emigrants Commission also has a data base and a well-organized filing system, including arrivals and departures; and so do the Refugee Commission and the Refugee Appeals Board in so far as their own caseloads are concerned.

- Q. 20. A. If not in detention, asylum-seekers are free to move on the entire territory of the member state.
- B. A refugee can live wherever he likes. An asylum-seeker out of detention can stay in one of the open centers, depending on space available and practicability. There is a coordinator of placements from the Ministry for Family and Social Solidarity who acts reasonably in the best interest of the beneficiaries but depending on practical or special considerations, including those regarding available space, as may be seen from what follows.
- C. Special categories (minors, pregnant women, families) have special homes to which they are directed in various parts of the island, where they are generally offered free board and lodging, medical attention, etc.
- D. The Ministry for Family and Social Solidarity finds the best available places for asylum-seekers – for example, for families at Dar il-Qawsalla, for minors at Dar is-Sliem; trying not to mix nationalities to avoid trouble, Somalis might be placed in one area, Eritreans or Ethiopians in another, for example by the state-funded autonomous Appogg agency, a quango, at their open center in Hal Far. In spite of capacity limits and a strain on resources, all asylum-seekers are somehow or other accommodated and catered for, unless they just leave or opt out of the system. There is no appeal provision for asylum-seekers with regard to preferences regarding in which reception centre they are placed – these are all within easy reach of each other, sometimes within easy walking distance.
- E. Asylum-seekers in open centers can just about leave at will but, as a praxis, if an asylum-seeker stays away for a week or more without any notice, his/her place can be allocated to some other asylum-seeker. If they reappear, some arrangement would be made according to possibilities. On release from detention, those who are still asylum-seekers (as well as the twice rejected cases, who are not repatriated) can go and live wherever they choose to on the island. Those who change address, however, are supposed to inform the Principal Immigration Officer (the Police Commissioner).
- Q. 21. A. There is not yet “internal legislation” about reduction or withdrawal of reception conditions. If an asylum-seeker is convicted of a crime, s/he goes to prison, thus forfeiting reception conditions in the open centre during the time spent in prison. If s/he escapes from detention and is caught, s/he will be disciplined by solitary confinement for a short period, and the time spent outside added to that he normally would have spent in detention. If s/he otherwise breaks the rules, say by causing damage or threatening others, some other penalty may be imposed, but there is little one can do. No special separate quarters exist for offenders or relapsers other than prison, if the offence is serious enough to lead to a conviction.

- B. Art. 16 (2) has been transposed and is normally applied; late applications (after two months) are normally disqualified. There have been some such cases, for example applicants who had been caught with expired visas.
 - C. It is up to the Director of Detention Services or the Administrator of the Open Centre to admonish or somehow discipline the transgressor, if and when such cases arise. If there are grounds to believe that any such decision is not taken individually, objectively and impartially, the person concerned or his/her fellow residents would bring it to the attention of one or more of the NGO officials who regularly visit the centers, but there is so far no established appeal or arbitration procedure as such.
 - D. It is not known that there have ever been any instances of inhuman or degrading treatment, such as torture. The Detention Service insists that it has never received reports of sexual and gender based violence. As a matter of policy single females and families with children are accommodated separately from single males, but in Hermes Block at Lyster single females, families and single males are accommodated in one building; although measures have always been taken to separate these categories, incidents keep occurring of single males and females demolishing the barriers separating their quarters to live together. However the answer to this question really depends on how wide or narrow a definition one gives to inhuman or degrading treatment - if, for example, cases of overcrowding or length of detention are deemed to fit it. Vulnerable persons are provided with access to material benefits including food and clothing. A minimum access to emergency healthcare is guaranteed under all circumstances, apart from the regular visits by doctors *sur place*. The medical care given to immigrants whether physical or psychological is much the same as that offered to any Maltese citizen: any immigrant who displays a psychological condition is normally referred to a doctor and referred to a mental care specialist if his condition is confirmed.
 - E. N/A.
- Q. 22. A. There is an Immigration Appeals Board, set up in 2005, which can take cognizance of appeals against removal orders and suchlike, but its jurisdiction does not extend to asylum-seekers in connection with reception conditions. However, in the event that any asylum-seeker felt aggrieved by the unjust or discriminatory reduction, withdrawal or refusal of reception conditions, he can always have recourse to the First Hall of the Civil Court, whose decision in the last instance would certainly have to be respected.
- B. Malta also has a system of free legal aid for anybody who wishes to take action in court without have the necessary means to pay a lawyer (*informa pauperis*). More simply, one of the NGOs who regularly meet with the

asylum-seekers, such as the Jesuit Refugee Service, who have many lawyer volunteers, could easily intervene or even plead on behalf of the appellant, in the first instance with the Director of Detention Services, thus assuming the role of a *de facto* arbiter. He himself told me this would be possible.

C. N/A.

D. No; but although the Director of Detention is a man generally known for his integrity and reasonableness, in this *rappporteur's* opinion it would be advisable to have an arbiter or an arbitration committee so that, in the eventuality that there would be any such grounds for appeal, this provision would be regulated according to the letter of the law, as indicated in the directive, as transparently as possible. In this case, what is at stake would be "quality of reception conditions in general", possibly rather subjective, and from the point of view of the asylum-seekers vis-à-vis such hospitality as is or is not being offered to them.

5. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q. 23. Definitions tally. Families with children are not kept in detention, nor are pregnant women. Special fully-funded homes exist to cater for both these categories. The same applies for minor children. As may be seen from the transposition, available on internet and as already attached in hard copy to this report, part 1, article 2 on page B4592 defines "family members" as follows: - "family members" means, only in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in Malta, in relation to the application for asylum made in Malta:

- (a) the spouse of the asylum seeker;
- (b) the minor children of the applicant and his spouse referred to in paragraph (a) or of the applicant, on condition that the children are unmarried and dependant and regardless of whether they were born in or out of wedlock or adopted in manner recognized under Maltese law.

Q.24 A. Asylum-seekers whose cases are still being processed are kept in four closed centers for up to one year, unless there are humanitarian reasons to have them released much earlier, and for up to eighteen months if they have been rejected at all stages before that. There are four such centers, at Safi, at Hal Far, at Ta' Kandja and, so far, in Floriana, at Police HQ. Those released because their applications had not been fully processed within a year continue to be regarded as asylum-seekers, and generally move to open centers, where they continue to be provided for. These include a former school compound at Marsa, which can take up to about 500-600 residents, three other smaller ones at Hal Far, one so far managed by MFSS, another by Appogg, and another so far by the Police, with the first one now consisting of tents set on concrete blocks, with electricity, and adjoining communal sanitary and hygienic facilities (currently including a mosque and a chapel in separate tents).

Another centre, a cluster of houses catering for different categories, is in the Bon Pastur area in downtown Balzan, run by the Emigrants Commission, which also has some houses spread in localities such as the city of Valletta and its suburb of Floriana. Finally, some 20-30 are taken care of by the Peace Laboratory, also located in Hal Far. Other small homes cater for special needs, as already noted above. So far hotels in the Maltese Islands have continued to be used by tourists, as tourism, with manufacturing and services, remains one of the main industries in the country. Thus, so far, no asylum-seekers have ever been accommodated in the hotels. Asylum-seekers sometimes rent and share out apartments, or even houses, on their own steam, the more so when they find jobs; but very few apartments serve as state-funded and/or NGO-run open centers.

- B. The total number of available places in the closed centers is for up to 1,200 persons, but in an emergency, Detention Services have managed to accommodate up to 1,600 last year. More than that would cause problems. The total number of available places in open centers is up to 1,360, to which add at least another 350 places in the near future, more or less as follows:

Hal Far (Appogg): Maximum 174 (registered 150, single persons; and families with children, with a separate room to each family; but the actual estimate, including squatters, is at least 180);

Hal Far (Tents, MFSS/Appogg), still being constructed and developed: Max: 500-600 (registered 148 single males);

Hal Far (Police): Max: 115 (registered 40; but this open centre is being closed down and changed to a closed one to house about as many asylum-seekers currently detained at Police HQ);

Marsa (former school/MFSS): Max: 500 (registered 600 single males; actual estimation 650-700);

Dar il-Qawsalla, B'Kara: Max: 36 (registered 39 families with children, including pregnant women);

Dar is-Sliem (Vincenzo Bugeja Foundation): Max: 30 (registered 14 unaccompanied minors);

Hal Far (Peace Laboratory): Max: 30 (registered: 25 single males).

Emigrants Commission houses in Balzan, Floriana, Gwardamangia, Msida, Valletta houses/flats, Marsa: Max: 320 persons (registered 320 persons, full up).

- C. The number of available places has increased in response to pressure, but currently may be just about sufficient, but if numbers continue to increase steadily, further land might have to be sought somewhere and further centers somehow made available, with corresponding human, spatial, financial and physical resources. A fall-back position would be the few hundred extra spaces being created at Hal Far to house asylum-seekers released from detention, thus making space there for the new arrivals. There is a consultant responsible for drawing up plans in the event of an emergency.
- D. At the Hal Far centre (Detention Services) currently there are three or four empty concrete platforms which could support tents for up to additional 100-150 asylum-seekers, while the two tents currently used exclusively as a mosque and a chapel might have to be used for shelter; or other tents set up in such space as remains available. As some two hundred inmates were released from detention recently and have moved mainly to open centers (with none of them, however, being repatriated), some of the barracks currently would have space for at least as many new residents.
- Q. 25. A. Already answered: some centers respond to special needs; see above.
- B. No. There is no legal or other time limit. In fact, at present, Malta continues to offer reception facilities to asylum-seekers as well as to applicants whose claims have been turned down at all stages of the adjudication process but who have not, of course, been repatriated, unless these opt to leave and take up residence elsewhere on their own account. Each centre tends to have its own internal regulations. At the largest of these, the Marsa ex-school, it is known that the state-paid director has an assistant who is himself an asylum-seeker benefiting from “temporary” humanitarian status, and that consultation meetings with elders are held whenever the need for any decision affecting the residents is felt. Residents are allowed a great degree of freedom, including setting up of their own kitchens and taverns, hairdressing shops, retail outlets and mutual self-arrangement. No formalized or centralized appeal mechanisms in any regimented or bureaucratic fashion are known to exist, other than the supervisory and moderating direction of a skeleton staff. Somalis and Eritreans now have set up “associations” and selected “presidents” to head these.
- C. As noted in article 13, subsection 3, part iii, page B4598, sanctions may be imposed for breaching of the rules or serious misbehaviour. Detention Services are responsible for such sanctions. However, see this rapporteur’s observations and recommendations in para. 4 of the last section of this report.
- D. To some extent yes, indeed; see above. Spontaneous or impromptu enterprise or service largely within the compound and mainly for its residents (cooks,

barbers, etc), while communally attractive and almost cosily ghetto-like, is not known to be regulated by the Employment and Training Corporation. These odd jobs are not considered to be a contribution, let alone a mandatory one, to the management of the centres, and would not be generally subject to the same rules as normal access to the labour market would imply, with any income tax provision or so. Until now, asylum-seekers, mostly those benefiting from “temporary” humanitarian status whose refugee applications have been turned down, and including several other cases rejected at all stages, continue to benefit from state-funded free board and lodging, free medical care and services, education, etc., without having to pay bills for water, electricity or telephone, whether or not they have found jobs, even on the labour market, unless they voluntarily move out. Residents are not thrown out of open centers if they find a job, nor are they required to pay a rent. This is an area which may be better regulated in future, especially in view of occasional complaints of discrimination from tax-paying Maltese citizens, who may be either unemployed and seeking work, or who face difficulty in coping with the electricity surcharge and rising prices, including fuel, etc.

- Q. 26. A. Asylum-seekers communicate with legal advisors who work for NGOs, as the J.R.S., who counsel them and provide them with forms to fill in, which they then personally deliver for them to the relevant authority. State-provided legal aid lawyers personally visit the centers to meet and interview appellants who have asked for legal aid, and to help them in their submissions. In open hearings, such lawyers plead cases in the presence of the appellant and any witnesses who may have been summoned.
- B. Legal advisors, UNHCR and NGOs have access to closed and open centers.
- C. Exceptionally, for example if there is a riot, access to UNHCR or NGOs may be temporarily limited but, if past experience is anything to go by, that would not have been the case prior to the outbreak of disturbances, break-outs and disobeying orders to return to base.
- Q. 27. A. Medical screening is mandatory and is organized under state aegis by the personnel responsible for search and rescue or meeting illegal immigrants as they disembark, or otherwise. This screening is carried out for Tuberculosis, HIV, etc., and is also employed before release from detention to the open centers or wherever.
- B. Asylum seekers receive all treatment for any illness, not only emergency care, either from doctors who visit closed centers (at Safi, three times a week), or are escorted to hospital or clinics for free treatment and any medicines they may require at any time, whether they are in closed or open centres. In the latter case, they could go to hospitals or clinics themselves, unaccompanied, once their papers are in order; and even if not, they still would be attended to, like any citizen or tourist who needs help.

- C. Overlaps with B; see above.
- Q. 28. A. The maximum for asylum-seekers is one year. All those who are granted status or temporary protection before then may work (one year for an asylum seeker in detention is the absolute maximum).
- B. Asylum-seekers, i.e. those who are still awaiting an appeal decision, as well as all those benefiting from temporary humanitarian status, which is renewable, may obtain a work permit from the Employment and Training Corporation, which may also help them find a job or offer to place them in a job. At most, such cases could wait for up to a year (in detention) before they would be able to seek jobs in Malta. Those whose claims have been rejected at all stages of the adjudication process, and who of course have not been repatriated, may not normally benefit from such an employment provision, so far. Not being asylum-seekers, Convention refugees can work automatically without needing any special work permit to do so.
- C. In principle, normal laws would apply, any violation of which could be actionable at law. There are no legal restrictions whatsoever as to what type of job they could perform, if they have the necessary qualifications for it; not are special working hours set for asylum-seekers rather than citizens. No seasonal working limits exist.
- D. The official unemployment rate of Maltese nationals stands at some 8% to 9%, but if one loses his/her job after a period of time, s/he would be entitled to unemployment benefit on the strength of social security payments over a period, and if no other possible employment is available. EU citizens can work in Malta, but a restrictive derogation with regard to employment by such citizens was negotiated at the time of Malta's entry into the EU, with a view to protecting local employment. If asylum-seekers have work permits they can work in any job that is offered to them, but they can have no permanent or indefinite rights unless and until their status is ascertained, in the first place as refugees.
- E. Some vocational training, as well as language training, is starting to be offered, or even sought, by asylum-seekers, particularly when not in detention. Detention Services have always welcomed initiatives by a number of NGOs to provide education (linguistic and/or vocational) within the closed centres, but it seems that invariably these fell through due to lack of interest or resources.
- F. Yes, because normally an illegal immigrant would not have had access to a legal residence at all, let alone any legal access to the labour market; it is only by virtue of the fact that there is a standing asylum application, or a degree of protection status has been conferred, that such an employability has become possible in Malta in the past few years.

Q. 29. It seems to be the Government's intention in due course to expect those benefiting from reception conditions in the open centers to pay something for their upkeep if they have an income. Modalities have not been worked out yet. In the closed centers, no such expectation would apply.

6. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q. 30. A. Yes (see transposition doc.). Other than the Refugee Act, as amended, there is a specific legislation called the Children and Young Persons Care Order Act.

B. Already explained, see above. The five categories are unaccompanied minors, families with children, persons with special needs, pregnant women, and the elderly. Special departments from the Ministry for Family and Social Solidarity cater for these, as already indicated above.

The Ministry for the Family and Social Solidarity has drawn a policy for persons with special needs. This policy follows certain procedures which are set out with a view to safeguarding the social welfare of vulnerable adult irregular immigrants. The key principle underpinning these procedures is that all cases of vulnerable persons should be fast tracked to ensure their departure from closed centres within the month.

C. Soon after arrival, with the help of the centres' directors, medical staff, NGOs and the Refugee Commission.

At the point of arrival of an irregular immigrant on national territory or in any of the closed centres, the Police Immigration Branch or Detention Services may note or be informed (by the persons concerned themselves or by others) of:

- (i) pregnant women,
- (ii) persons with a disability, and family groups where one/or both members has a disability,
- (iii) elderly persons (defined as persons aged 60 and over),
- (iv) families with children.

(b) As soon as possible, this information is to be forwarded by the Police Immigration Branch or Detention Service (depending on who becomes aware of the case first) to:

- (i) the Refugee Service Area at *Social Services National Agency*
- (ii) the Public Health Department to fast track the medical clearance procedure.
- (iii) the Refugee Accommodation Officer at Ministry for the Family and Social Solidarity.

Once this information is made available to all parties concerned, within a week the following process will be set in motion:

- (i) the Refugee Service Area at *the Social Services National Agency* will interview the person/s concerned so that a care plan can be formulated, and information about the asylum seeking process distributed;
- (ii) the Detention Service ensures that the person/s concerned receives the Preliminary Questionnaire;
- (iii) the Refugee Service Area at *Social Services National Agency* requests the Refugee Commissioner to fast track the request for asylum;
- (iv) the Public Health Department liaises with the Detention Service for the necessary appointments for medical clearance;
- (v) the Refugee Accommodation Officer at MFSS identifies the most appropriate open centre accommodation.

The release of a vulnerable person from a closed centre is the first important step. Another important step concerns moving the person concerned to the appropriate open centre. The Refugee Service Area at *Agenzija Appogg*, the Refugee Accommodation Officer at MFSS, and the managements of the open centres will closely collaborate to find, as much as possible, the best solution in every instance.

- D. Yes. This has sometimes included psychiatric care and counseling. All asylum seekers can access the necessary Health services depending on their individual needs.

Q. 31. ABOUT MINORS

- A. 18 years (now determined scientifically by bone testing, because of many fraudulent claims)
- B. Places are found for children in public or private schools, in the latter case without paying like the Maltese children.
- C. Yes. Every minor benefits from all the educational services. This is offered to them as soon as they are released from detention (which is usual within three weeks from referral, depending on the medical clearance required by the Maltese health authorities).
- D. Some provision is starting to be made for this, but it has been found that school children pick up the Maltese language in class and with school mates within a few months, especially if they come from countries speaking Semitic languages, as most of them do.

Part of the program within the residence for the minors is education. Various services are offered depending on the needs and demands of the individual. English and other language classes are offered for different level, from basic to advanced. When the minor achieves a good command of English he/she is also offered the possibility to integrate with a school.

- E. With their parents, if they have parents. The minors accompanied by their parents are accommodated in the same residence.
- F. Yes all minors can access the appropriate mental health care and the services of qualified counsellors.
- G. As mentioned earlier, this is regulated by law and there is a special department and a specific centre dedicated to such representation by appointed guardians for unaccompanied minors.
- H. In a special accommodation centre; care orders for guardians are issued as appropriate.
- I. This task is undertaken by the Emigrants Commission in association with the ICRC on an ongoing basis, in full confidence as necessary.

7. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

- Q. 32 A. Medical screening takes place immediately upon arrival, so a medical condition is confirmed within days, if not hours. Those on expired visas who are detained, and not repatriated because they apply for asylum, are also medically screened, but these would be adults who have travelled usually on valid tourist visas.
 - B. N/A.
 - C. N/A.
 - D. N/A.
 - E. N/A.
- Q. 33 A. For all these reasons. The legal basis is the law covering illegal immigration, which has been in existence well before illegal immigrants started applying for asylum in Malta, something they could not even do before 2001/2002, as Malta was only a party to the 1951 Convention, not to its 1967 protocol. Malta does not hold in detention an applicant for asylum “for the sole reason that he/she is an applicant for asylum” (18.1 of the directive of 1.12.2005). Illegal immigrants are detained by Virtue of the Immigration Act 1970, art.9. All such are served with a removal order upon arrival. This however was amended in 2002 and more recently by Legal

Notice 2048 of 2004 to exempt asylum-seekers from any such removal orders unless and until their cases have been adjudicated (including the appellate stage). Asylum-seekers who enter Malta with valid visas are not detained.

- B. See above, A. Art. 7 (3) is not only transposed but practiced as standard government policy with the unanimous consent of Parliament, i.e. detention until status is conferred, one way or the other. The Malta Refugees Act (CAP. 420), Act XX of 2001, para. 6 (1) refers.
- C. Normally, not until there has been a decision on status, or a year has passed without it.
- D. The Principal Immigration Officer who, in Malta's case, happens to be the Police Commissioner.
- E. Detention for illegal immigrants used to be indefinite until 2003, up to two years until 2004, and up to 18 months from then onwards. The maximum of 18 months is only applied when the rejection of refugee status in the first instance is confirmed at the appellate stage. If no final adjudication decision has been reached within a year applicants/appellants are released and may move to the open centres. In other cases, where temporary humanitarian protection is granted, or special needs apply, release from detention is much faster, in some cases almost immediate, pending medical examinations, etc. In the case of Malta, there is no indefinite detention.

What is “reasonable” or indeed “as short as possible” depends on a variety of givens and perceptions - not least size, space, density, resources, security, tourism, and public feeling at large, given that Malta since 2002 has had a record high number of asylum applications as well as a record high rate of some kind or other of protection being afforded to these (that is, most of them). On one hand, detention may be an expensive, self-defeating option; on the other hand, it may give time for a thorough review of the case. But what sense does this make when, with few and rare exceptions mainly Egypt and some Maghreb countries, no repatriation policy with any sense of dispatch seems to exist or to be possible. That includes arrivals from relatively safe countries, for example in West Africa, and the Near East, including several from a would-be EU accession state. It could be seen to act as a deterrent, stemming the would-be flow. Resources are fully stretched as it is, with a shortage of interpreters, translators, counselors, police officers, army personnel, finances. So far there is no agreement with Libya, from where 99% of the immigrants set sail, often after having lived and worked there for years. Moreover, tiny Malta has a huge search and rescue area. Nor have there been any joint repatriation flights, or successful *démarches* for recourse to the Euro passport, given that most asylum-seekers would have destroyed, hidden or otherwise disposed of their passports and

identity documents before or upon reaching Maltese shores. Such flights back, without documents, and a lack of cooperation on the part of the persons and the embassies concerned, is no easy task. In principle, detention gives more time to the authorities to put their act together. In practice, most persons arriving or extending their residence illegally are ending up staying on the island, unless they make their way out somehow or other. Dublin II works wonders against small frontier states, which may be former colonies themselves; it is hardly a manifestation of the solidarity principle. Most EU states all too readily return to Malta asylum-seekers venturing further north after, by accident or design, having first set foot in Malta.

Throughout the detention period, basic needs are provided for but there is no comparison to, for example, the multi-million reception centre at Oakington in Cambridgeshire, UK, with its lush greens and state-of-the art kindergarten, although this itself is hardly very representative of situations elsewhere in Britain or mainland Europe. In Malta, that would hardly *fit* anywhere, which is no justification for overcrowding, except perhaps in emergencies. Within limits, there seems to have been some improvement in the closed centers, and more space is being made available; at the same time resources, including physical, human and financial remain lacking. All applicants have to be interviewed, examined, adjudicated and cared for while in detention; once released, unless they become regulars at an open centre, their whereabouts are often unknown, even when appeals are still pending.

- F. As already mentioned the places where asylum-seekers are currently detained are Safi, Hal Far, Ta' Kandja and Floriana, the first three areas reserved for army barracks in the open countryside, the last, so far, at Police HQ, in a residential just outside Valletta. These are now managed autonomously by the Detention Service, which depends mainly on army funding for any extras. This too is in charge of reception conditions.
- G. Yes.
- H. There is an Immigration Appeals Board, but most of the cases appearing before this refer to removal orders. Appellants are entitled to legal assistance. If there are points of law, such as for example mistaken identity, there is the First Hall, Civil Court, which would mean the filing of a constitutional suit.
- I. Yes. They receive relevant information, have access to TV and newspapers, NGOs, UNHCR, lawyers, medical care as necessary in or out of the centre, and can exercise in the open; what they obviously don't have is freedom of movement.

- J. Art. 13 (2) is observed. See the booklet ‘Your Entitlements, Responsibilities and Obligations while in Detention’, copy attached (English, French and Arabic). Apart from freedom of movement, there is no freedom to work. Some inmates knit or create artifacts, which they occasionally sell, but the few soldiers guarding the compound, who are all unarmed, say that they tend to make a tool or rather a weapon out of anything they are allowed to lay their hands on. As several residents in all the closed centers acquired mobile phones, they could coordinate riots with the other centers at the same time, as has happened. This further scares the soldiers, who are heavily outnumbered.
- K. Yes. The detention of such cases is avoided in practice, and according to law.
- L. The detention of such cases is avoided.
- M. N/A
- N. As of 8th June 2006, it was 832. (By 31 July 2006 it was 1,300). In November 2005, however, the number was over 1,600. A minority, because most applicants are granted some form of protection. Due to delays in the provision of legal aid or lack of cooperation, many asylum-seekers get released after a year. See the tables and charts attached to this report.

8. ORGANIZATION OF THE SYSTEM OF RECEPTION CONDITIONS

- Q. 34. There is one command, Detention Services, but separate coordinators in each centre.
- Q. 35. Some open centers are managed by NGOs, especially the Emigrants Commission (see above), mainly with state and church help.
- Q. 36. As shown and listed above, there are four closed centers. See above for the list of ‘private’ centers and those responsible for them. By far the most important managing NGO is The Emigrants Commission.
- Q. 37. We are talking of an archipelago comprising in all 246 sq. km. (122 sq.miles), with one of the islands, Comino, practically uninhabited. They are mostly in the south, but they include the capital, Valletta. The north is more sparsely inhabited and more touristic by the seaside. Regional and local authorities do not have sufficient funding to take care of this; there are no local taxes.
- Q. 38. Yes. There is a Task Force under the auspices of Justice and Home Affairs (JHA), which includes NGO representation. Detention Services are not represented on it; nor are the Refugee Appeals or the Immigration Appeals boards. There is also a

Committee of Managers of the Open Centres, meeting under the aegis of the Ministry for Family and Social Solidarity (MFSS). Both are consultative.

- Q. 39. A. The two main ministries responsible to guide, monitor and control the reception system are the JHA and the MFSS, the former for closed centers, the latter for open ones. This is done administratively, mainly by subsidiary bodies or agencies. There is no specific instrument formalizing the mechanisms and praxis as such.
- B. No such specific rules are laid down, but as a rule of thumb such facilities tend to be mainly available.
- C. See A above.
- D. There are internal reports and memoranda. Detention Services produce a comprehensive annual report. The Office of the Prime Minister also helps to coordinate policy and implementation.
- Q. 40. A. In 2005, 1,822 arrived by boat alone, while since January this year over 1,000 as of July 2006 have disembarked independently, or been rescued on the high seas by the Armed Forces of Malta. Arrivals are continuing very regularly, normally until the Autumn.
- B. The total budget has been calculated by JHA to have been in the region of Lm5,000,000 (x 2.3 in euros) for the past year, but infrastructural works to improve and extend reception areas are in progress. Repair to damages caused, the detailing of personnel on land, at sea and in the air, fuel, wear-and-tear, including police and army services, medical attention and hospital care, teachers and school, counsellors and coordinators, food and drink, transport, telephone cards which are given to inmates every two months, transport allowance, repatriations, upkeep, etc., all cost money, in a country where there has not been a rise in government-related salaries for years, in spite of a spiralling cost of living and unemployment above the EU average.
- C. That would be approximately Lm5 million divided by the numbers in open and closed centres, which are not static, but would be at least about 2,000 (some 800 staying at the Marsa open centre alone).
- D. Central government funds; everything out of public revenue. EU help has been minimal on all counts. UNHCR stopped financing and coordinating its previous third country resettlement service once Malta joined the EU.
- E. Yes, so far as possible; finances have been tight these last few years with salaries practically frozen, and notable price and tax increases, presumably with a view to reducing the deficit and adopting the Euro.

- Q. 41. A. In the closed centers, the total number of professional full-time staff is 22, but this is being increased, as noted earlier. In the open centers it is about the same, including NGOs, but there are more volunteers than there are paid full-time or even part-time staff. It would be difficult to service these centers and their needs without volunteers.
- B. UNHCR have conducted some training sessions, but otherwise stopped all resettlement or other operational assistance. Specific needs are taken into account.
- C. There is a Data Protection Act and there are UNHCR training sessions, but no formally written-down rules about psycho-social or ethical norms to be observed. There is also increasingly an involvement with the ARGO programme, and monthly training sessions with the assistance of Dutch professionals.

9. IMPACT OF THE DIRECTIVE

Q. 42 N/A

Q. 43. No, the directive helped both focus and delivery. However, this is a very recent phenomenon for Malta, as maybe seen from an Emigrants Commission list showing arrivals and departures of asylum-seekers before 2002 – the jump was more than tenfold within a few months. Between 1983 and the end of 2001, over nearly two decades, the asylum-seekers arriving in Malta totalled 3,153, but of these as many as 2,271 are known to have left.

Q. 44. Yes, indeed.

Q. 45. It was important to fine-tune concepts and perceptions and to structure both policy and operation in an organic way, with reference to a particular multi-faceted phenomenon, which was hitting both state and society, with many ensuing consequences.

Q. 46 No, there was hardly any debate. The essential humanitarian notions are not unknown in a predominantly Catholic country where charity has a long pedigree, but attitudes are changing.

Q. 47. Generally more generous. No more favourable provisions were abolished. Yes, some of Malta's rules are more favourable so far than the directive's provisions - most notably the continued offer of free board and lodging plus health care, medicines and schooling, and some allowances, to asylum-seekers whose claim to refugee status has been rejected, and including those who are employed. Only some 4% or 5% of applicants over the past few years have been determined to be Convention refugees, which means that Malta has no problem with refugees as such. Of the rest, most were granted a temporary humanitarian status only out of

deference to UNHCR recommendations because of the current state of their respective countries of origin. Applications and acceptances have been record high by European standards. Hardly anyone's temporary humanitarian status has been withdrawn, not even when conditions in the country of origin changed for the better and the original cause of feared persecution has ceased to exist. For various reasons, however, the repatriations have been very limited, even in manifestly unfounded cases from relatively safe countries of origin, although these would have been duly processed, adjudicated, reported upon to the competent authorities, and released (and further provided for) by them - be that after one year, after 18 months, or sooner. Naturally the dilemma of size, space, papers, travel, and what to do persists, partly until Dublin II is modified or revoked.

ANY OTHER INTERESTING ELEMENT

Q. 48-Q. 50:-

In the opinion of this *rapporteur*:

1. An effort should be made to separate asylum seekers who are awaiting their first reply from those who have been rejected once and have appealed, from those who have been rejected again at the appellate stage.
2. There is little point in prolonging detention if, upon release, twice rejected cases are not repatriated, or resettled in third countries, forthwith. Such cases would not normally be from unsafe countries as otherwise they would have been granted a temporary humanitarian status and released earlier; in other cases the situation back home may have actually improved since they had first arrived (e.g. Liberia).
3. If there is to be no ongoing repatriation policy for those released, and let out into the community, after 18 months, some *modus operandi* has to be found to facilitate their continued stay, unless they can somehow make their way out of their own accord. For a start, they would need to work. This would further increase job pressures on a country now having one of the highest EU unemployment rates.
4. An arbiter or an arbitration board should be appointed to examine any complaints regarding reception conditions, particularly detention conditions including disciplinary measures, in full consultation with the respective authorities who have a difficult, unenviable task to perform with scant resources. For example, detention centres lack facilities for solitary confinement or other punishment measures to deter wrong-doers, but this should not mean that minimum standards be not respected (you cannot have a number of detainees placed in one room without a window and/or a toilet, as

happened at least once; the Director promised me it would not happen again). At the same time, security should be improved to prevent the repeated breakouts and riots, even in the vicinity of such a nerve-centre as Malta's international airport, interrupting the schedules of travellers in a country where the tourist industry is of the utmost importance. Equally, those who break the law should be brought to book: clearly that was not the case at all in the most recent mass break-out and subsequent violent acts, including physical injuries and damage to property (and the centres), as well as breaking into the house of a Maltese family where the terrified mother was with her children. Detention of up to 18 months without any eventual repatriation (but possible free board and lodging at open centres instead) as well as disciplinarian measures against wrong-doers in detention without any action being taken against rioters who commit violent deeds, convey conflicting messages. Security forces cannot be seen either to abuse or indeed to fear those entrusted to their care, possibly because of political indecision or an inhibiting sense of intimidation due to pressures from certain quarters.

5. EU funding is required in many spheres, such as the provision of geo-political data bases and country information updates, interpreters and translators in many different languages, counselors and case workers, as well as adequate offices respecting privacy and security, not to mention remuneration for adjudicating bodies, including the Refugee Commission, the Refugee Appeals Board and the Immigration Appeals Board.
6. Dublin II must be revised as a matter of urgency, if the EU wishes to demonstrate respect for the principle of solidarity towards frontier member states. In addition, the question of joint repatriations and of travel on a Euro passport are two areas in which urgent action would need to be taken. Difficult as it may be, rogue states whose citizens first transport Africans to their own country, where they help them find work; then after some time, they put them to sea in return for a charge; cannot be allowed to continue doing this, causing tragedies, injustices and pressures of all kinds. Border patrols could also help.
7. Burden sharing can increase considerably, but should not consist of mainland European member states picking the *bona fide* refugees, leaving the over-populated frontier country with the rest. UNHCR should assist in every way in facilitating family reunions not just to European countries but also to the U.S.A. and even Australia, where asylum-seekers in Malta may have relatives and/or contacts. Displaced persons or asylum-seekers in mass exodus situations who are in camps bordering their countries of origin should not, probably even in their own best interest, be given precedence in resettlement policy, over those who have already made it to far-off countries on Europe's southern or eastern borders.

8. Conditionality in overseas assistance must be stepped up to prevent 'push factors' from denuding Africa of its man-power and its brain-power, which is what is happening. Measures at population control should also be encouraged and assisted.
9. The police forces badly needs greater expertise and resources carefully to monitor and action migrant-related matters vis-à-vis the adjudication of manifestly unfounded cases, sometimes including dangerous elements, who then continue to reside indefinitely or even 'set up shop' in Malta. Without effective action and information, public reactions can go haywire.
10. Work practices, language and other skills may be introduced in detention centers. This will require more resources, assistance and security, but it could be a relief for young people whiling away the time playing table-tennis, drying their clothes on the line or just chatting; it could also be, to some extent, a contribution to public needs, such as the upkeep of public roads or gardens, but again this would have to be considered in a context of security assurance and/or good conduct track records. Profiles of such persons could be a key to their trustworthiness or otherwise.
11. NGOs should take care not to encourage asylum-seekers whose cases have been deemed to be manifestly unfounded and/or who come from relatively safe countries, such as Ghana, or Turkey to submit appeals and demand legal aid provision regardless. Equally, Justice and Home Affairs and the Police Corps should find the resources necessary to take note in a structured categorized format of motivated judgments which give profiles of the persons concerned; the more so in the case of certain rejected cases who still continue to reside in Malta regardless.