

## **Unsafe because of COVID-19? Consequences of crisis measures on migrants in Malta**

In a country which has been considering itself to be in a "migration crisis" for almost twenty years, the health situation related to the COVID-19 virus has been instrumentalised as a windfall effect by the Maltese government, completing a notoriously anti-migration system. With exceptional measures officially due to the coronavirus, which are becoming more and more permanent, Robert Abela's cabinet seems to have broken down the last barriers in the Maltese Search and Rescue zone and on the national territory. As in several European member states, the sanitary situation in Malta highlighted already existing and persisting problems that exiles have been facing for many years, mostly their social, geographic and economic exclusion coupled with systemic xenophobia and discrimination.

On April 9th 2020, Malta officially closed its seaports arguing that, due to COVID-19, the archipelago was an 'unsafe' place for migrants, implying that war-torn Libya where detention, slavery and tortures are migrants' everyday life, would be safest for them. Declare itself as 'unsafe' is a perfect way for Malta to seal the abandonment of its responsibilities as an EU member state, as a border state and as the first EU state after Libya (see factsheet entitled '*Defending national interests at Schengen borders: how has Malta been shaping European migration and asylum policies?*'). Several policies adopted in 2020 tend to reinforce Malta's desire to be an unsafe territory for exiles.

Here is the list of some of these policies and of the fundamental rights that Maltese authorities have been breaching all along 2020.

### **I. Right to life: right to be rescued at sea and disembarked in a safe place**

The 1979 International Convention on Maritime Search and Rescue (SAR Convention) - signed and ratified by Malta - defines rescue at sea as an 'operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety'.<sup>1</sup>

Italian and Maltese governments used this 'place of safety' concept in the context of sanitary crisis in 2020 to justify the closure of their seaports respectively on April 7th and 9th. This closure came along with the absence of rescue operations by European coastguards in their Search and Rescue (SAR) zones, abandoning people crossing the Central Mediterranean from African coasts. The Maltese statement sent to the European Commission mentioned: 'Considering the situation of a public health emergency resultant from the spread of the coronavirus and the current extraordinary burden being faced by the national health services, as well as due to the extraordinary commitments being made by the public sector [...] it is presently not possible to ensure the availability of a 'safe place' on the Maltese territory'<sup>2</sup>. 'Emergency', 'extraordinary', 'burden' is a well-known political lexicon in Malta when talking about migration. It has been setting out dangerous practices at sea and on land. Henceforth, the COVID situation has enshrined non-rescue policies and has justified new levels and forms of violence against migrants.

On the same day that the archipelago declared its seaports closed, the Armed Forces of Malta (AFM) were accused by Alarm Phone of sabotaging the engine of a migrants' boat. After denying rescue and disembarkation 'because of Corona', Malta sent out its military ships at sea. The P52 crew approached the vessel in distress, climbed onboard, cut off the cable of the engine before declaring

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<sup>1</sup> International Convention on maritime search and rescue, 1979 (with Annex) Concluded at Hamburg, 27 April 1979

<https://www.ifrc.org/docs/idrl/I453EN.pdf>

<sup>2</sup> 'Malta shuts its ports to asylum seekers, citing COVID-19 pandemic', *Times of Malta*, 9 April 2020  
<https://timesofmalta.com/articles/view/malta-says-it-cannot-guarantee-migrant-rescues.784571>

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‘nobody comes to Malta’, and people would therefore be ‘left to die in the water’<sup>3</sup>. Not only did Malta abandon its responsibilities as the state in charge of the rescue zone, but its coastguards were instructed to use an act of piracy allegedly justified by the presence of Coronavirus on the island and perhaps among migrants themselves as well. This episode illustrates how Malta has capitalised on a new ‘exceptional’ situation to make itself even more openly hostile to people on the move. The danger linked to COVID-19 was instrumentalised to justify direct assault against civilians fleeing from a war zone.

A few days later, a vessel in distress was abandoned for several days before Malta secretly organised the pushback of 51 survivors to Abu Sitta, Libya. Twelve people died under European and Maltese surveillance of the zone, as the Maltese Rescue Coordination Centre (RCC) was notified of their presence and a Frontex surveillance aircraft was flying over the zone. As analysed in our Maltese RCC strategies factsheet, the ‘Easter pushback’ revealed a new policy lying on the ‘nearest open port’ concept rather than the ‘safest port’ principle. According to Prime Minister Robert Abela’s rhetoric, Libya was a safest place than Malta in April 2020.

Officially, Maltese borders reopened on July 1st, 2020. First disembarkations of migrants occurred on June 6th, when the 425 individuals illegally detained on the Captain Morgan cruise ships (with no legal ground, suffering ill-treatments and impeded from asking for asylum) were ‘allowed’ disembarkation following a staging of false criminality. As explained by several passengers interviewed in Malta, one of the ships’ captain requested them to bring him some knives from the kitchen to his cabin while calling the Armed Forces and claiming to be hostage. Prime Minister Robert Abela officially motivated their final disembarkation as regard to the crew’s safety<sup>4</sup>.

“The policy of Malta because of Corona is that nothing can leave Malta and nothing can enter Malta and this includes migrants” declared RCC Malta to Alarm Phone on April 9th. Yet according to IOM Malta<sup>5</sup>, a group of migrants were relocated to another European member state upon ‘humanitarian grounds’ in May 2020. Therefore, the COVID situation allows Malta to go further in its political position: the government does not want to see new people on the move disembark, but to organise the departure of a maximum number of migrants to the European continent.

## II. Right to have access to a fair asylum procedure compliant with EU standards *acquis*

Compliance with the European asylum law in Malta is only relative. The transposition of EU directives and regulations into national law is partial and many political practices tend to use this law as a tool for migration management, making the Maltese asylum system a system in crisis long before the proliferation of COVID-19 (see Malta country factsheet). Abela's government COVID measures have led to the closure of the asylum office and Law Courts, including the appeal courts, lengthening delays and making hundreds of situations more precarious.

The Refugee Commissioner (RefCom), Refugee Appeals Board (RAB) and Immigration Appeals Board (IAB) were undeniably closed for several weeks in the first half of 2020. Despite our presence in one of the most important NGOs of the island and many interviews held with association workers, asylum-seekers and official representatives, no detailed information regarding the date and length of this closure was available. This illustrates the chaotic situation for migrants and their supports resulting from COVID measures. The consequences were undoubtedly delays in applications, as all applications made before the closure of RefCom were kept pending<sup>6</sup>. While the

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<sup>3</sup> ‘Sabotage, Delays and Non-Assistance: Another day in Malta’s SAR zone’, Alarm Phone, 3 May 2020 <https://alarmphone.org/en/2020/05/03/sabotage-delays-and-non-assistance/>

<sup>4</sup> Migrants allowed to disembark from tourist boats amid takeover fears, *Times of Malta*, 6 June 2020 <https://timesofmalta.com/articles/view/all-captain-morgan-migrant-boats-to-be-brought-in-to-malta.796974>

<sup>5</sup> Interview with IOM Malta, 19/02/2021

<sup>6</sup> Aditus foundation, ‘How are coronavirus measures affecting refugees?’, 7 April 2020 <https://aditus.org.mt/how-are-coronavirus-measures-affecting-refugees/#.YH1P3e8zb-Y>

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Maltese asylum system was already overwhelmed, the closure of RefCom emphasised the crisis. Many asylum-seekers met in Malta by the end of 2020 and the beginning of 2021 launched their asylum applications in 2018, and were still waiting for the first decision. The asylum office is now severely backlogged, resulting in indefinite delays. The longest are the delays, the more precarious and numerous are the situations, resulting in limited access to public support. Therefore, the exiles rightly seek this help from associations, which are also weakened by the health situation, in addition to a particularly difficult and uncertain field. For newly disembarked people, new asylum applications could be submitted only via email, which required tools and access to the internet that many of them did not have. No interviews were held. As appeal courts were closed, migrants couldn't appeal decisions within the allotted time, whether for a rejection from RefCom (within two weeks), to appeal a detention order, a return decision or a removal order before the Immigration Appeals Board (within three working days) or to file a subsequent application (within two weeks).

### III. Basic rights: food, accommodation, healthcare

Exiles' ability to meet their most basic needs was an already persisting issue in Malta, which COVID and COVID-related measures exacerbated. In 2020, new policies have been adopted despite the outbreak, emphasising undocumented migrants and asylum-seekers' vulnerabilities.

Many migrant workers (legally or illegally working mostly on construction sites) lost their jobs due to COVID-19, which has plunged them into extreme precariousness. With no income, many families couldn't manage to pay rent and homelessness greatly increased. At the beginning of April 2020, some NGOs released a joint press statement requiring 'urgent and immediate assistance' especially for individuals not eligible for the government's support package. Aditus, JRS Malta, Integra Foundation and others called on the government to organise food stock-piling, emergency food distribution and shelter initiatives for the most precarious individuals, especially undocumented migrants<sup>7</sup>. Not only was this call largely unheard by the Prime Minister, but the Ministry of Home Affairs (MHAS) adopted a restrictive policy during that same period. The Agency for the Welfare of Asylum-Seekers (AWAS) - falling under the MHAS - announced the shortening of contracts for asylum-seekers accommodated in reception facilities. These 'open centres', mostly settled in Hal Far, used to work on a one-year binding contract that each individual had to sign with AWAS. As from 2020, it turned into a six-month contract. When asked why these contracts were shortened during the COVID outbreak, a representative for the Ministry of Home Affairs stated that, due to an increase in arrivals, Malta was looking for a 'better use of the resources'<sup>8</sup>. So-called vulnerable people (women and/or families with children, unaccompanied minors, people with disabilities) were not affected by this measure. Nonetheless, testimonies gathered by NGOs such as Integra Foundation highlight the great vulnerability of each person who has been denied accommodation, especially during the COVID-19 crisis. As a lot of them were out of jobs and received no social support, starvation and severe mental health issues became widespread.

Migrant population in open centres was particularly struck by COVID measures. On April 5th, 2020, the government officially announced a two-week mandatory quarantine for more than 1,000 people accommodated in Hal Far Tent Village (HTV) after eight of them got tested positive<sup>9</sup>.

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<sup>7</sup> Aditus foundation, 'An immediate food and shelter initiative is urgently needed! - Joint NGO Press Statement', 3 April 2020

<https://aditus.org.mt/an-immediate-food-and-shelter-initiative-is-urgently-needed-joint-ngo-press-statement/#.YH15I-8zb-Z>

<sup>8</sup> Extract from an interview with an official from the Ministry of Home Affairs, National Security and Law Enforcement, March 4th, 2021

<sup>9</sup> 'Watch: Hal Far open centre residents places under mandatory quarantine', *Times of Malta*, 5 April 2020

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As no one was allowed in or out, HTV turned into a *de facto* detention facility for two weeks, where migrants' health vulnerability has increased tenfold. According to members of NGOs interviewed in Malta, only private security contractors were allowed inside. Their mandate and role inside reception centres remain unexplained. Doctors and NGOs couldn't have access. Masks had been given out by association MOAS (Migrant Offshore Aid Station) in insufficient quantity, as some people claimed to have received only one mask. Others said that they only received one bottle of hand soap for each cabin (counting at least eight people) for the whole quarantine. Some never received any soap<sup>10</sup>. This mandatory quarantine was qualified as a 'public health risk' by Aditus foundation, as the virus could be circulating among quarantined residents without any medical supervision. If the eight positive individuals were in the same cabin, they also had to move around the centre to get food and use the bathroom and showers, where hygiene was deficient.

## IV. Right to work and regularisation

In addition to the direct impact on their housing, the loss of employment has also prevented hundreds of people from having their status renewed.

People benefitting from the Specific Residence Authorisation (SRA) were deeply affected by the pandemic and the resulting loss of their jobs. The SRA is a policy adopted in 2018, replacing the Temporary Humanitarian Protection. The purpose is to issue a residence permit (valid for two years) for failed asylum-seekers who have been staying and working in Malta for five years. The SRA provides similar rights to those of beneficiaries of subsidiary protection (employment licence, State education and training, medical care, travel document). In order to have access to this residence permit, applicants must demonstrate an employment of a minimum of 9 months per year during the five years preceding. The renewal of the status also falls under this criteria. Many beneficiaries of the SRA who had been working, paying taxes and living in Malta with their family for at least five years fell back into administrative limbo, deprived from their basic rights. As of 31 December 2020, Identity Malta declared that no new applications for SRA were allowed. The Ministry of Home Affairs explained the decision by arguing that the government had 'no obligation to keep it going forever, especially because this policy fulfilled what it had to fulfill'<sup>11</sup>.

At a time when undocumented migrants are most in need of papers in order to protect themselves from COVID and its consequences, the Maltese government has deliberately chosen to hinder and diminish the prospects of regularisation. This regularisation is essential as removals of failed asylum-seekers from Malta are scarce.

## V. Right to be detained in compliance with European standards

Arbitrary and illegal detention in Malta accelerated and took on new forms during the COVID crisis. At sea, illegal detention officially motivated by the spread of the virus became a pattern for several months, especially between May and August 2020. The Captain Morgan cruise ships, used to detain more than 400 individuals for more than a month, were officially introduced as quarantine facilities to ease the pressure from detention and open centres on land. Amnesty International denied

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<https://timesofmalta.com/articles/view/live-another-3-patients-recovered-from-covid-19.783623?fbclid=IwAR2JUOk4Nw2ceWqrVjnjx1Ei5iTLZiG-RkBcs0I0ADiXo0hzWushnUo1fvg>

<sup>10</sup> Abela Kristina, Carabott Sarah, 'Lack of sanitation still a big issue at Hal Far open centre', *Times of Malta*, 10 April 2020

<https://timesofmalta.com/articles/view/lack-of-sanitation-still-a-big-issue-at-hal-far-open-centre.784577>

<sup>11</sup> Interview at the Ministry of Home affairs

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this argument, stating that no end date was set for the detention of migrants on the ferry boats<sup>12</sup>. Individuals reported ill-treatments - like sleeping on the boat's floor, being constantly wet by the swell as the vessels are not hermetically protected, afraid of capsizing - misinformation, the impossibility to ask for asylum or the impossibility to be examined by a doctor. The first persons rescued were transferred onboard the Captain Morgan vessels on April 30th. They were all allowed disembarkation on June 6th, which would make a 38-day quarantine. However, it was clear that this illegal detention would continue as long as the European Commission and the member states did not agree on pledges for the relocation of migrants. Robert Abela has on several occasions openly blackmailed their disembarkation. As illegal detention of several groups of migrants in need of a disembarkation in a safe port has turned into a pattern in the Maltese SAR zone, Robert Abela has agreed to charter a Cypriot vessel and use it as an offshore detention facility<sup>13</sup>. The private vessel MV Galaxy, which was supposed to be rented for over €1 million a month, was to become the Maltese version for the Italian quarantine ships docked in seaports of Lampedusa and Sicily.<sup>14</sup> The 127-metre-long vessel was supposed to be co-financed with EU funds, as Malta undertook negotiations with the Commission. This project has not seen the light of day for now, but this does not mean that the Maltese government is not keeping this option open for the coming months of 2021, especially when crossings from Libya resume with better weather.

The detention/quarantine strategy was also imposed on land for those rescued and disembarked in Malta. The Initial Reception Centre in Marsa and detention facility named 'China House' were used as quarantine facilities. They have been offering living conditions constituting inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights according to the last country report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). During the CPT delegation's visit in September 2020, at least 25 people tested positive for COVID-19 were detained with non-positive persons on Floors 1 and 2 in Marsa<sup>15</sup>. When asked what kind of protection for undocumented migrants from COVID was given by the Maltese government, a representative from MHAS answered that all disembarked migrants were submitted to quarantine in China House.

As no Dublin transfers nor removals were organised during the national ban on all sea and air travel - officially between March 11 and July 1st - all detention cases on these grounds became unnecessary and not proportional. Therefore, they turned into illegal detention regarding EU laws. No pre-return detainees were released<sup>16</sup> and challenging or reviewing the legality of their detention was impossible as the Immigration Appeals Board (IAB) was temporarily closed. Moreover, lawyers from aditus foundation or JRS Malta were denied access to detention facilities for several months, emphasising their beneficiaries' mental distress, anxiety and misunderstanding of their situation in

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<sup>12</sup> Amnesty International 'Malta: waves of impunity, Malta's human rights violations and Europe's responsibilities in the central Mediterranean', 2020, p. 12

<sup>13</sup> 'EXCLUSIVE: Prime Minister to spend €1m a month to detain migrants on ship', *The Shift News*, 31 August 2020

<https://theshiftnews.com/2020/08/31/exclusive-prime-minister-to-spend-e1m-a-month-to-detain-migrants-on-ship/>

<sup>14</sup> ECRE, 'Italy: Foreigners Holding Resident Permit Transferred to Quarantine Ships, Reluctance to Rescue and Crackdown on NGOs Cost Lives at Sea, Commander of so-called Libyan Coastguard Arrested', 23 October 2020

<https://www.ecre.org/italy-foreigners-holding-resident-permit-transferred-to-quarantine-ships-reluctance-to-rescue-and-crackdown-on-ngos-costs-lives-at-sea-commander-of-so-called-libyan-coastguard-arrested/>

<sup>15</sup> Council of Europe, Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 22 September 2020, Strasbourg, May 10th, 2021, p. 11

<https://rm.coe.int/1680a1b877>

<sup>16</sup> Global Immigration Detention Observatory, 'Malta Immigration Detention Data Profile', 2020, p. 7

<https://www.globaldetentionproject.org/wp-content/uploads/2020/11/Malta-Detention-Data-Profile-2020.pdf>

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Malta. Visits resumed gradually at the beginning of summer, initially allowing UNHCR access to detention centres and then human rights organisations such as Aditus Foundation and JRS Malta.

As stated by the CPT, detention conditions in Malta are far from suitable. A sanitary crisis has therefore exacerbated the vulnerability of detainees. In Safi Barracks, Lyster Barracks or China House, no masks have been given out inside and detention guards tend not to wear masks either, even when they are in close contacts with detainees. One mask is given for visits from authorities, NGOs or for court hearings. This mask is not saved for the use of one person, but tends to be shared among detainees.

## **VI. Right to information**

The lack of information given to migrants by public authorities has aggravated an already very difficult health, administrative and economic situation. Whether for people already on the street before COVID or people who have been evicted from open centres or people held in detention, the lack of clear communication about the pandemic and the risks associated with it is in itself a significant violation of their fundamental rights. Dates for the closure of the asylum office and the appeal courts, the lifting of NGO visits to the centres of Safi, Lyster and Marsa were announced in an abrupt manner. Exacerbated by remote assistance from associations and rights defenders, newly arrived or already asylum-seekers were left to their own devices.