



Performance Audit

Fulfilling obligations in relation to asylum seekers

Report by the Auditor General
July 2021

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List of Abbreviations

AIDA	Asylum Information Database
AFM	Armed Forces of Malta
AMIF	Asylum, Migration and Integration Fund
APO	Assistant Psychology Officers
AWAS	Agency for the Welfare of Asylum Seekers
CEO	Chief Executive Officer
DIL	Dar il-Liedna
DS	Detention Services
EASO	European Asylum Support Office
ECHR	European Court of Human Rights
EU	European Union
EUROSTAT	Statistical Office of the European Union
GDP	Gross Domestic Product
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
HFO	Hal-Far open centre
HOC	Hangar open centre
HR	Human Resources
HTV	Hal-Far Tent Village
IPA	International Protection Agency
IPAT	International Protection Appeals Tribunal
IRC	Initial Reception Centre
IT	Information Technology
JRS	Jesuit Refugee Services
MEC	Malta Emigrants Commission
MHAS	Ministry for Home Affairs and National Security
MHSE	Ministry for Home Affairs, National Security and Law Enforcement
MOU	Memoranda of Understanding
MS	Member States
NAO	National Audit Office
NASMS	National Asylum Seekers Management System
NGO	Non-Governmental Organisation
NSO	National Statistics Office
OPCAT	Optional Protection to the UN Convention against Torture
PPPN	Per Person Per Night
PIO	Principal Immigration Officer
PL	Peace Lab
RAB	Refugee Appeals Board

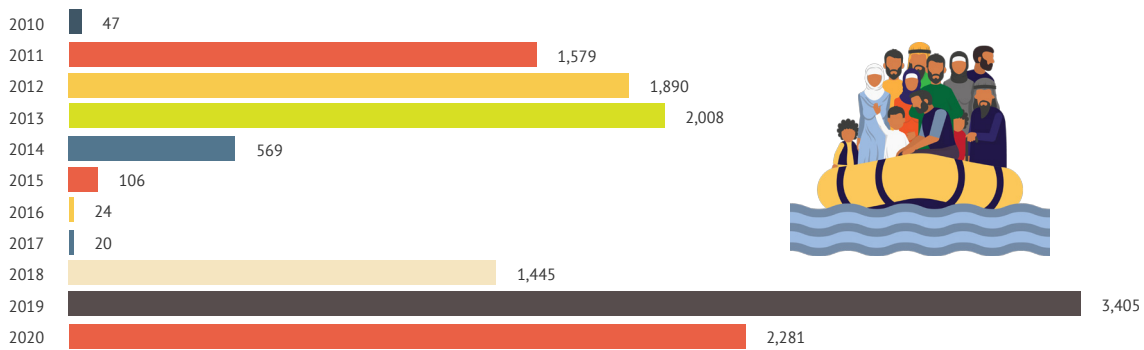
List of Abbreviations *cont..*

RefCom	Office of the Refugee Commissioner
SCSA	Social Care Standards Authority
SOP	Standard Operating Procedure
SPO	Senior Psychology Officer
THP	Temporary Humanitarian Protection
TCN	third country nationals
TCNU	Third Country Nationals Unit
UAM	Unaccompanied Minor(s)
UMAS	Unaccompanied Minor Asylum Seekers
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Key Issues

Increase in irregular migration

Irregular migration and the international protection process have been among the more sensitive issues which Malta had to contend with. Irregular migration brings about complex humanitarian, social, economic, financial and administrative ramifications.



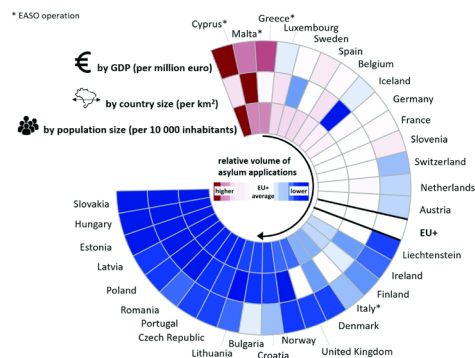
Total number of irregular immigrants arriving by boat



Malta is carrying a disproportionate burden

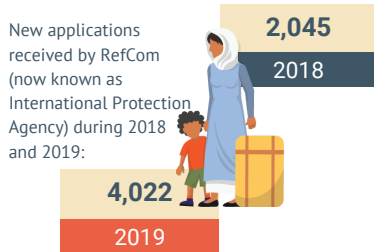
Malta's ratio of international protection seekers in proportion to population and surface area has consistently been among the highest.

In 2019, costs related to the International protection process amounted to around **€26 million**

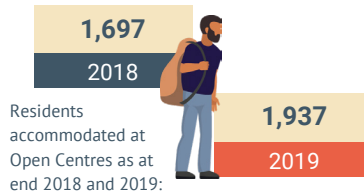
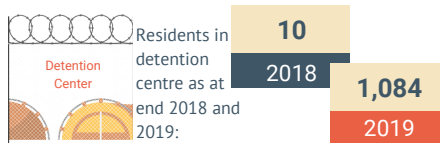


The international protection process

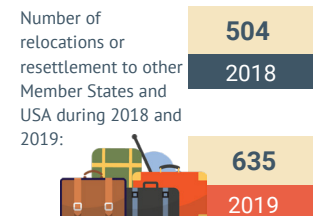
Applications



Accommodation



Relocations or Resettlements



Executive Summary

1. The National Audit Office (NAO) embarked on the performance audit '*Fulfilling obligations in relation to asylum seekers*' to trace the efficacy of all the procedures which any person who submits an application for asylum in Malta goes through. This review followed the performance audit '*Dealing with Asylum Applications*' published in July 2011 but went beyond in scope as it examined the international protection process, specifically the operations and outputs of the reception and detention process, the situation within the open centres, the work carried out by the former Office of the Refugee Commissioner (RefCom¹), now the International Protection Agency, and the Refugee Appeals Board (RAB²) now known as the International Protection Appeals Tribunal. Unless otherwise stated, this report primarily focuses on the period 2018-2019.
2. The audit objectives aimed to establish the degree to which:
 - a. the strategies, policies and plans in place are comprehensive and updated in relation to all aspects of the international protection process;
 - b. the main processes, such as reception, detention, accommodation at open centres, as well as processes within the remit of the former Commissioner for Refugees and the Refugee Appeals Board were executed without delay, fairly and effectively; and
 - c. resources and mechanisms in place enable effective operations and monitoring of the services provided by the entities involved in the asylum process.
3. This report has emphasised the complex humanitarian, social, economic, financial and administrative ramifications/repercussions brought about by irregular migration – a phenomenon that Malta has been increasingly facing since 2002. Since then, Maltese authorities have invested heavily to establish an operational framework and set up various entities and units to accommodate and integrate asylum seekers, process international protection applications, or return unsuccessful applicants.
4. The international protection process comprises various interdependent stages. Different government entities are responsible for and influence the stay of the asylum seekers and irregular migrants from their arrival in Malta until their integration or their departure from Malta. Delays in one phase of the process invariably, and with immediate effect, impacts the

¹ The Office of the Commissioner for Refugees has been changed to the International Protection Agency in the third quarter of 2020.

² The Refugee Appeals Board became the International Protection Appeals Tribunal in 2020.

legal, administrative, and operational aspects of the others. This in turn leads to humanitarian and socio-economic effects and places further stress on national resources and the applicant.

5. Over the years, subsequent administrations have substantially increased resources to address the irregular migration phenomenon but progress has not been within reach for all the entities even in view of the extremely high numbers of arrivals of irregular migrants on Maltese shores in certain years. Moreover, areas of inefficiencies within some of the entities responsible for the implementation of the international protection process prevail. Entities involved in this process are fully aware of these situations and are continuously seeking to mitigate these circumstances through process reengineering involving the recent setting up of International Protection Agency (formerly RefCom) and the International Protection Appeals Tribunal (formerly the RAB), upgraded medical facilities and improvement in the availability of psycho-social services.
6. Whilst acknowledging the complexities and uncertainty involved, the audit determined the following major inefficiencies within the entities and their operations:
 - a. The strategic framework in relation to the reception, detention and accommodation of international protection seekers and irregular migrants is not deemed comprehensive and detailed enough to determine resources required.
 - b. The detention period of asylum seekers was rendered more taxing as the detention centre was overcrowded and poorly maintained as well as subject to significant staff shortages, lack of Information Technology (IT) systems and record-keeping weaknesses.
 - c. Open centres run by the Agency for the Welfare of Asylum Seekers (AWAS) were operating at, or close to, capacity. These were generally characterised by over-crowding and require more administrative and professional staff to provide the desired level of service to the asylum seekers.
 - d. 2019 proved to be a difficult year for RefCom as it had to deal with an abnormal number of applications despite shortage of staff to process applications from 2019 and previous years, resulting in 3,574 applications outstanding at end of 2019.
 - e. Most of the Refugee Appeals Board's members lacked adequate legal background and experience in asylum matters.
7. Due to current restrictions brought about by the Covid-19 pandemic, this performance audit was largely constrained to rely on secondary information rather than in-depth self-observation of the conditions within detention and open centres. As far as possible, the observations/findings were mainly confirmed by the management of the entities concerned.

8. This performance audit cannot but acknowledge the extensive practical difficulties faced by the entities concerned. In most instances, they encounter situations where asylum applicants do not have any personal documentation which can confirm their identity or nationality. Issues of public health and security also remain a top priority for these entities. Moreover, matters pertaining to returns are severely hampered through the absence of national diplomatic missions in Third Countries or the non-cooperation of these states – where in cases this stretches to the point that despite the conclusive evidence, they are not willing to repatriate the persons involved. At the same time, this Office acknowledges the recent significant breakthroughs that the national authorities have made in the returns of those irregular migrants whose application for asylum has been rejected at the first and second instances. This is considered as a very big step in the right direction.

Overall conclusions

9. Irregular migration is one of the most complicated issues that societies, the world over, always have had to face. Nonetheless, this audit clearly shows that Malta, as the smallest European Union (EU) Member State, is carrying a disproportionate burden due to the relatively high number of irregular migrants arriving on our shores. Malta's national entities will continue to struggle to cope without the tangible and material support of other EU Member States. It is high time that international solidarity, through a fair and practical process of burden-sharing, moves from words and declarations to action.

Recommendations

10. In view of the findings and conclusions emanating from this performance audit, the NAO is proposing the following recommendations:

General Processes

- i. The Ministry for Home Affairs, National Security and Law Enforcement (MHSE) is encouraged to establish a working group or committee that oversees the whole asylum process managed by the different entities in order to make the asylum processes as seamless and efficient as possible, minimising unnecessary delays. Towards this aim, periodical review and enhancements of business processes employed towards increased outcomes and output levels should be resorted to by MHSE.
- ii. Each entity should ensure that its operations are governed by clear Standard Operating Procedures (SOPs) and written procedures.
- iii. MHSE is to embark on a robust monitoring set-up for all services to ensure that delays are kept to a minimum and interventions or services are delivered in a timely and efficient manner. Monitoring is to consider full traceability of interventions or services provided.

- iv. The National Asylum Seekers Management System (NASMS) information system should be more comprehensive and facilitate tracking of information related to the asylum seekers and irregular migrants' stay in Malta. Any unnecessary steps through the Third Country National Unit (TCNU) should be avoided and onus put on entities to control information from their end.

Strategic framework

- v. MHSE is encouraged to draft and adhere to a revised and comprehensive expanded national strategy that is supported by detailed action plans that are updated periodically and according to need.

Relocation and Repatriation

- vi. Recent efforts with EU Member States and Third Countries, which led to positive outcomes, are to be continued. To this end, consideration is to be given to further broaden discussions to ensure that Malta's case, as the smallest EU Member State, and the disproportionate effect of irregular migration on its socio-economic fabric, is better understood by stakeholders and contributes to deliberations and action leading to a fair and practical burden-sharing agreement.

Detention process

- vii. The Detention Services (DS) and the concerned entities involved in the detention process need to ensure that the provisions set within the legislation and the strategic framework are indeed achievable and are acted upon through the required funding and support from MHSE.
- viii. DS should not be reactive in their involvement during the stay of the asylum seekers within their care. Hence, this Office recommends better coordination with the other entities involved to ensure that they are actively aware of the history of the asylum seekers within their care and facilitate the services, care and contact with relatives, acquaintances or legal aid required.
- ix. DS should ensure that living quarters and conditions provide the required levels and that deficiencies identified by the Monitoring Board, the Non-Governmental Organisations (NGOs) and by European and international stakeholders are, as far as possible, rectified.
- x. The DS is to ascertain that any provisions for life after detention are made available through appropriate educational activities and coordination with AWAS and other entities.

Agency for the Welfare of Asylum Seekers (AWAS)

- xi. MHSE is encouraged to, as far as possible, continue supporting AWAS with its human resources (HR) requirements.
- xii. Measures related to mental health and psycho-social needs as well as integration are to be coordinated with all other concerned entities.

International Protection Agency (IPA)

- xiii. As far as possible, MHSE is to consider expediting the reengineering process envisaged through the changeover from RefCom to IPA, such as better working conditions and more attractive salary packages which could attract the required quantity and quality of human resources.
- xiv. IPA is to revisit its processes and identify and rectify any inefficiencies to ensure that the process is not prolonged unnecessarily.

International Protection Appeals Tribunal (IPAT)

- xv. The Tribunal is to establish clear procedures that lead to fair and well-deliberated decisions without unnecessary delay.
- xvi. The recruitment of competent, ancillary staff is to be given its due prominence and priority.

Chapter 1 | Introduction

1.1 Introduction

1.1.1 Irregular migration and the international protection process have been among the more sensitive and challenging issues which Malta had to contend with since 2002, when over 1,600 persons reached Malta's shores through unregistered boats. In the years that followed, the problem of irregular migration persisted with regular frequency. Statistics show that during the period 2018 to 2019, 4,850 persons reached Malta irregularly by 59 boats landings.³ The vast majority of these persons applied for international protection.

1.1.2 While considerable work was carried out since Malta's accession to the European Union (EU) in 2004 to reinforce the international protection system administratively through the Office of the Refugee Commissioner (RefCom⁴) and the Refugee Appeals Boards (RAB⁵) as well as through reception, detention and accommodation in open centres, this Office noted that the fulfilment of Government's vision and strategies could not always be supported by the appropriate level of resources dedicated to this ongoing situation. The situation in closed and open centres was not optimal as they were overwhelmed by demand with the end result being that these centres were not fulfilling their role completely. The process to determine international protection status was significantly prolonged mainly due to the resources allocated and the number of cases the RefCom and RAB have had to deal with. Moreover, this audit could not underestimate how the return, resettlement and relocation processes remain heavily dependent on the willingness of and cooperation with EU Member States and Third Countries.

1.1.3 The resources, human and financial, that Malta has had to invest in to deal with these matters were and still are considerable. Furthermore, one cannot underscore enough two other concerns stemming from irregular migration and the international protection process. The first one is that, international protection seekers are not just the third country nationals (TCNs) who arrive through boats or are rescued by the Armed Forces of Malta (AFM) at sea

³ Source: The National Statistics Office (NSO), News Release 101/2020, page 2, 19 June 2020.

⁴ The Office of the Commissioner for Refugees has been changed to the International Protection Agency (IPA) in the third quarter of 2020. As this review was concerned with events up to 2019, for practical reasons this report will refer to RefCom rather than to the newly established Agency the IPA.

⁵ The Refugee Appeals Board (RAB) became the International Protection Appeals Tribunal in 2020. As this review was concerned with events up to 2019, for practical reasons this report will refer to RAB rather than to the newly established Agency the International Protection Appeals Tribunal (IPAT).

but also include TCNs who would have entered regularly or irregularly through other ways than by sea. Hence, the international protection applications that the Office of the Refugee Commissioner (RefCom) had to process go beyond those persons arriving irregularly by boat. Between 2018 and 2019, from the total of 6,067 who applied for international protection with RefCom, only 3,231 were persons who arrived irregularly by boat. Considering the size of Malta (316 square kilometres) and a population of over 514,564 persons, availability and allocation of resources are not only the concerns. Accommodation and logistical concerns as well as integration or lasting resolution to the international protection seekers' status are also high on the national agenda, be it at government and citizen level. This all the more so since Malta's ratio of international protection seekers in proportion to population has consistently been among the highest, and very often the highest, among all EU Member States. Furthermore, sufficient evidence showed that a number of international protection seekers continued to reside in Malta following the negative outcome of their appeal. This is mainly due as for many years it was extremely difficult, if not practically impossible, to return such persons to their country of origin or transit.

1.1.4 The National Audit Office (NAO) embarked on a performance audit to trace the efficacy of the procedure an international protection seeker goes through, from reception to integration within the community or their return, resettlement or relocation. This audit followed another performance audit '*Dealing with Asylum Applications*' published in July 2011 and went beyond in scope as it examined the international protection process in its entirety rather than focusing only on the Office of the Refugee Commissioner and the Refugee Appeals Board.

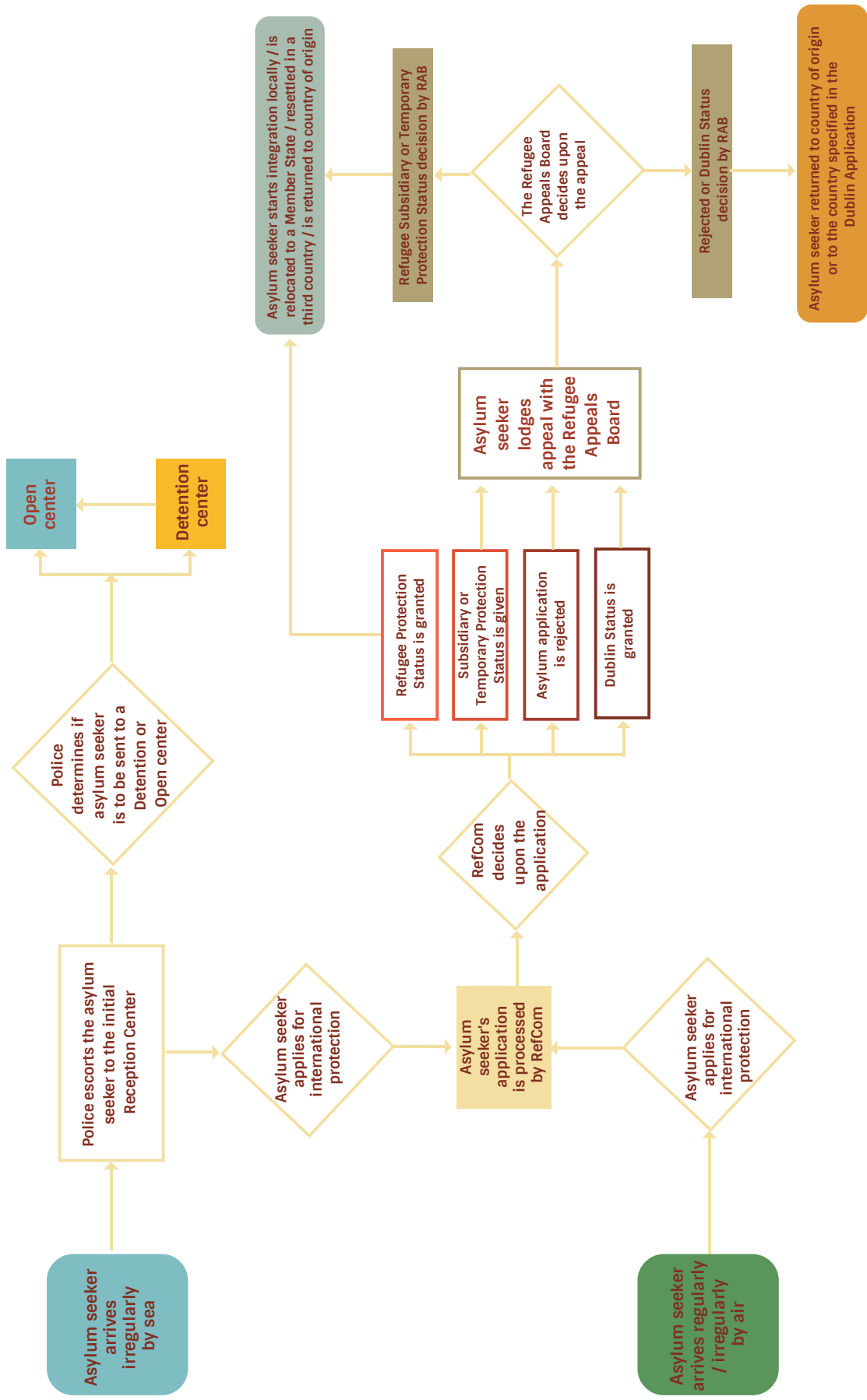
1.1.5 This introductory Chapter discusses the following:

- a. the background and context of the international protection processes and procedures in Malta,
- b. audit focus and methodology, and
- c. report structure.

1.2 The international protection process relies on the operation of several entities and the execution of different procedures

1.2.1 Figure 1 shows the processes and possible outcomes from each process. The flowchart refers to the remit of the different entities involved in the international protection process.

Figure 1 - Flowchart depicting the stages and scenarios related to the international protection process (2018 - 2019)



1.2.2 The main stages within the Maltese international protection process include the following:

- a. **Reception:** When international protection seekers are rescued within Maltese waters by AFM, they are taken to the Initial Reception Centre (IRC) where they receive medical attention and undergo health checks. Moreover, the Police perform identification procedures. Regular and irregular migrants who do not arrive by boat, do not usually start their international protection procedure within the IRC as they usually would already have a place of residence within the community.
- b. **Detention:** All international protection seekers, except, vulnerable ones such as minors and families with children, who enter Malta irregularly are detained at Safi or Lyster Barracks until they are transferred to open centres or within the community. On the lapse of nine months⁶, any person detained should be released from detention if application is still pending. On the other hand, detention in terms of the return procedure is of six months, which may be extended by a further 12 months.⁷

Over the course of 2019 and 2020, as Malta experienced a surge in the number of arrivals, a contingency/emergency measure had to be put in place whereby sections of the detention centre had to be used as IRC.

- c. **Accommodation within open centres:** Open centres host international protection seekers for several months depending on availability and their family and personal situation (e.g. if they are single or have family members). Within the open centres, international protection seekers receive allowances, food, accommodation as well as psycho-social services.
- d. **Receiving and processing applications related to international protection:** Until the third quarter 2020, the Office of the Refugee Commissioner was responsible for this part of the process.⁸
- e. **Appeals related to international protection status:** Until 2020, the Refugee Appeals Board⁹ considered appeals that international protection seekers would have entered claiming wrongful rejections, a lesser status or due to their transfer to another EU Member State against their will.
- f. **Return:** This refers to the return to the country of origin, of TCNs who are irregularly present in Malta, including former applicants for international protection. This is pursuant to subsidiary legislation under the *Immigration Act (Cap. 217)*. Return may

⁶ Source: Reception of Asylum Seekers Regulations, Subsidiary Legislation 420.06, paragraph 6 (7).

⁷ Source: Strategy for the Reception of Asylum Seekers and Irregular Migrants, pages 10 and 11.

⁸ This performance audit will mostly refer to the RefCom in view of the 2018-2019 period covered.

⁹ The RAB was replaced by the International Protection Appeals Tribunal.

also be voluntary and may include Assisted Voluntary Return programmes whereby the prospective returnee is offered incentives to return voluntarily. Malta has had such a programme in place since 2007.

- g. **Relocation:** A possible final stage of the process could include the settlement of an international protection seeker in another Member State.
- h. **Resettlement:** Alternatively, an international protection seeker could be transferred to a Third Country so that he or she may be integrated in that country.
- i. **Integration:** Upon being granted protection status, the international protection seeker can start benefitting from measures such as access to social benefits and employment to help him/her adjust and adapt to life in Malta.

1.3 The increase in influx of asylum seekers

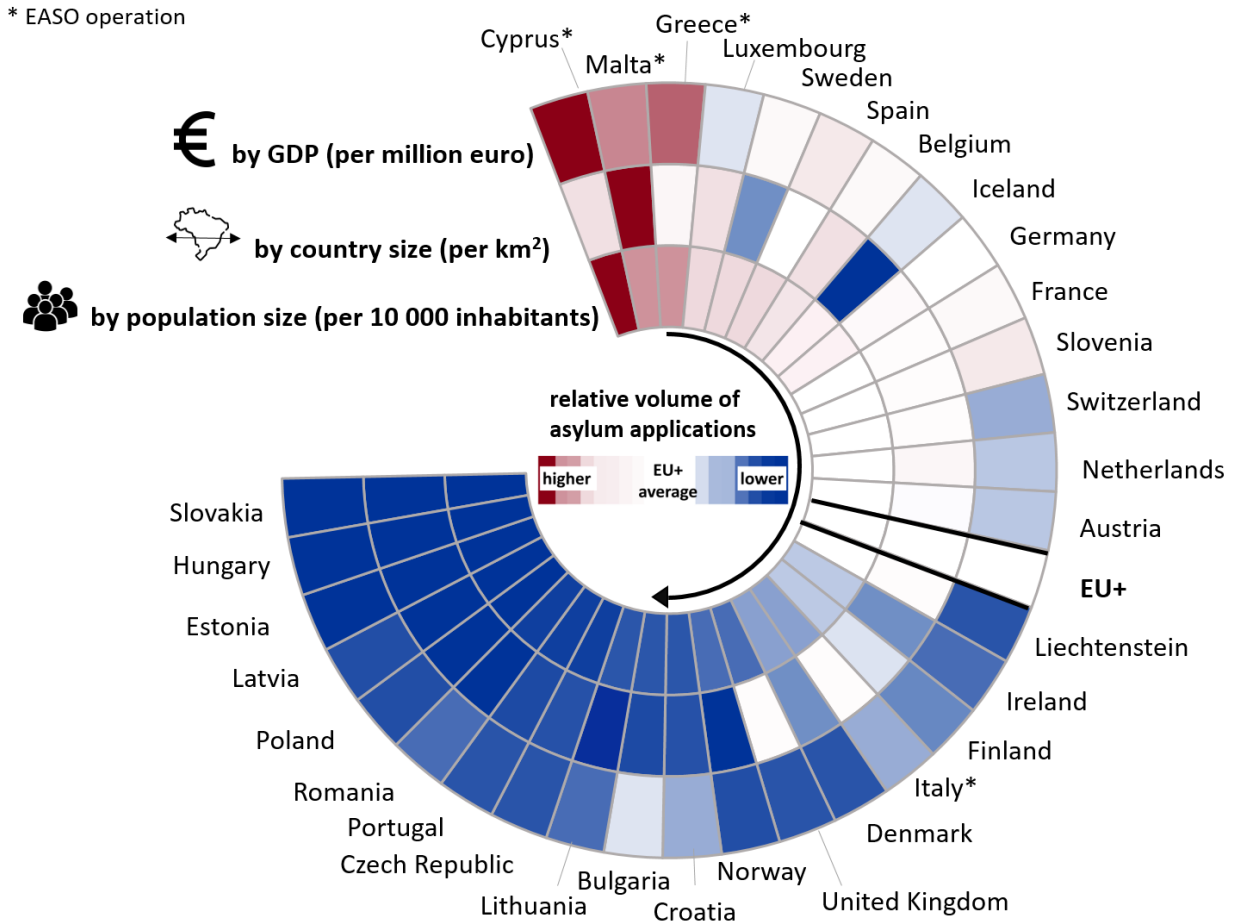
1.3.1 European Union (EU) statistics show that Malta's ratio of international protection seekers in proportion to population and surface area has consistently been among the highest. According to the European Asylum Support Office (EASO) 2020 Asylum report, Malta received the most applications relative to its area (85 times higher than the EU+ baseline, which represents the total number of applications relative to a variable), despite receiving just 0.5 per cent of all applications lodged in EU Member States.

1.3.2 The EASO report also specifies that *"while one country may receive fewer applications than another overall, its capacity to absorb more applicants may not be comparable. This perspective gives a more proportional interpretation of the current situation of international protection seekers and reinforces the essential role of solidarity and sharing responsibility within the context of asylum in Europe"*.

1.3.3 Figure 2 portrays three socio-economic indicators, which rank the number of applications for international protection relative to population size, the area of a country and the national Gross Domestic Product (GDP). The population and country area can provide a perspective on the capacity to absorb applications, while the GDP can indicate a country's capacity to integrate international protection seekers.

1.3.4 The Member States shaded in blue received a relative volume of applications lower than the EU+ baseline and yet in absolute numbers, several of these countries registered many more applications in 2019 than in 2018. It is noteworthy that the figure clearly shows that Malta's particular circumstances, particularly its area, indeed as the EU's smallest Member State, together with an extremely high population density, precludes it from hosting a large number of asylum seekers.

Figure 2 - Applications for international protection in 2019 relative to population size (2019), country size (2015) and GDP (2018)

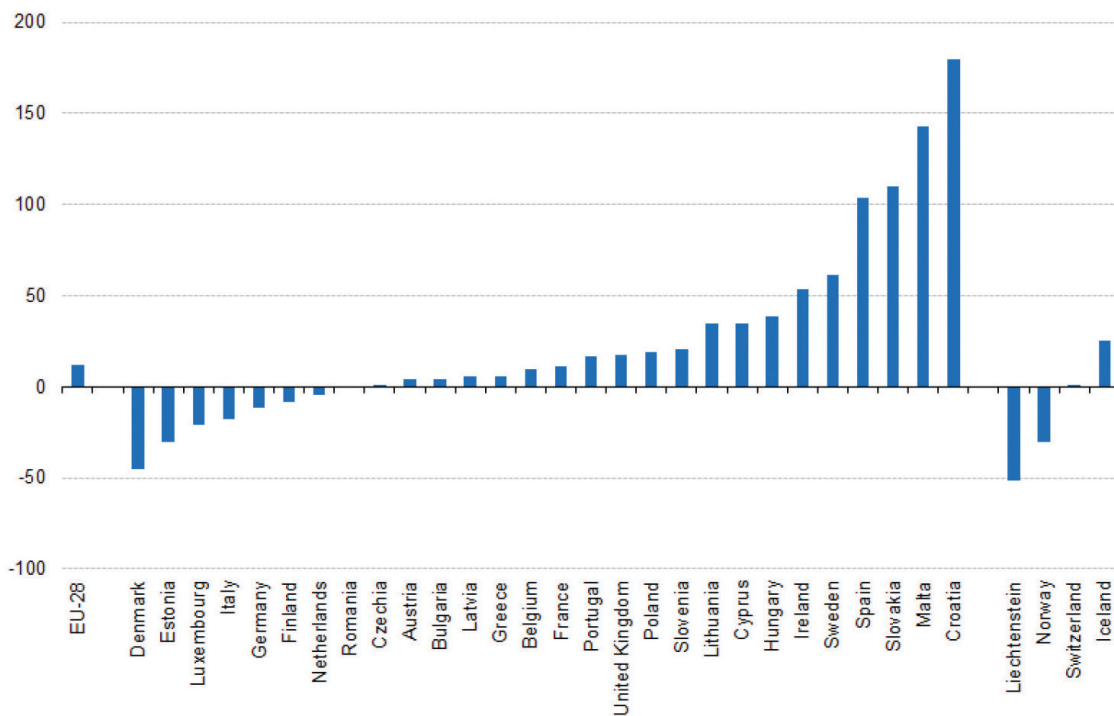


Source: EASO Asylum Report 2020, page 84, 2020.

1.3.5 According to the Statistical Office of the European Union (EUROSTAT), when compared with the third quarter of 2018, Malta recorded a relative increase of 143 per cent of first-time international protection seekers in the same quarter of 2019. In 2019, in terms of applications, this meant that more than 4,000 applications were received.¹⁰ Relative to its population size, Malta received the most applications for international protection relative to its area. Chart 1 refers.

¹⁰ Source: EASO Asylum Report 2020, page 59, 2020.

Chart 1 - First-time asylum applications, relative change between Q3 2018 and Q3 2019



Source: EUROSTAT, Asylum quarterly report, page 6, March 2020.

1.4 The international protection process cost 26 million euros during 2019

1.4.1 Government expenditure relating to the international protection process amounted to €23,855,961 in 2019. Furthermore, government expended a further €1,907,458¹¹ (highlighted in grey in Table 1 and as indicated in Footnotes 13, 14 and 15) through EU funds (Asylum, Migration and Integration Fund [AMIF]). The expenditure mostly related to the international protection application process as managed by RefCom and the subsequent appeals process under the responsibility of the RAB, accommodation within the closed and open centres, and procedures related to returns, relocation or resettlement as indicated in Table 1. It is to be pointed out that, overall, Malta was approximately allocated €20.8 million, through the AMIF Fund which was set up for the period 2014-20, of which till October 2020, €11.5 million were paid.

¹¹ This value paid by treasury during year 2019 is the 100 per cent of the EU Funds, meaning that 75 per cent are EU funds and 25 per cent are national funds.

Table 1 - Asylum costs during 2019

Description of cost	Cost €
The Office of the Refugee Commissioner:	
Costs incurred by RefCom to process applications (2019)	1,365,535
Improving and strengthening the asylum determination procedure through the training and funds for interpreters at RefCom	166,967
The setting up of a unit at RefCom	49,475 ¹²
Refugee Appeals Board:	
Cost for processing appeals by the RAB	144,486
Detention centres:	
Accommodation and related costs in detention centre	5,490,684 ¹³
Open centres:	
Accommodation and related costs in open centres	12,156,680 ¹⁴
Other Costs:	
Educational Costs	857,716
Primary Health Care	100,590
Social Assistance paid by the Department of Social Security	4,506,421
Renovation of the Hangar open centre and Hal-Far Family Centre	100,445
New open centre in Hal-Far	66,956
Third Country Nationals Unit	92,117
Forced Return	170,632 ¹⁵
Restart VI Project	118,439
Voluntary Relocation of Migrants	224,995
Per Diem (for people living in the Community)	151,281
Total cost incurred during 2019	25,763,419

1.4.2 The biggest costs in 2019 were at over €17.6 million. As expected these related to accommodation at open centres and detention centres and social benefits for international protection seekers. These amounts related to the 3,405 international protection seekers arriving by boat and their accommodation at the centres. Moreover, 1,355 international protection seekers with protection status, benefited from €4.5 million in social benefits.

¹² The €49,475 refers to the setting up of a unit that deals with requests related to establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national or stateless person funded through the AMIF project.

¹³ The total of €5,490,684 includes an amount of €228,150 from EU funds. These EU funds relate to the provision of material aid and support services to assist asylum. This project involves the provision of material aid such as food (breakfast, lunch, dinner) and medical services and also support services such as social workers and support workers.

¹⁴ The total of €12,156,680 includes an amount of €1,070,655 from EU funds. These EU funds relate to the provision of material aid and support services to assist asylum. This project involves the provision of material aid such as food (breakfast, lunch, dinner) and medical services and also support services such as social workers and support workers.

¹⁵ The total of €170,632 includes €106,371 through EU funds.

1.5 Return to country of origin of failed asylum seekers remains a considerable challenge

1.5.1 The scope of this performance audit did not extend to the return to country of origin of failed asylum seekers. It is felt that the complexities involved merit that the subject matter is addressed in an ad hoc audit in due course. Nonetheless, the critical importance of the return challenges merits, at the very least, that this report outlines the main issues and recent developments related thereto. Despite enquiries, NAO was not furnished with statistics relating to the rate of failed asylum applications (including the appeals process) during the period under review.

1.5.2 Persons with a pending removal order may be detained in custody as noted in Paragraph 1.2.2b, until removal from Malta takes place thus avoiding possible absconding. These Regulations apply as long as due diligence on the person in question is being pursued. Persons who are not returned following their detention may be transferred to open centres and eventually they may also seek alternative accommodation. This is however, without prejudice to the possibility of the Immigration Police to return the third country nationals in question to country of origin. In such circumstances, these persons are allowed to seek employment until such time as their return is possible but would not entitle them to welfare benefits except for emergency healthcare.

1.5.3 Under Maltese migration law, a return decision is issued by the Principal Immigration Officer (PIO). The return decision is usually accompanied by a removal order. Once a return decision has been issued by the PIO, the person in question has the right to appeal, as per Malta's Immigration Act.

1.5.4 National entities face various challenges to effect a return to a failed asylum seeker's country of origin such as refusal by the receiving state's authorities to positively identify those co-nationals, even when a TCN wishes to go back but lacks required documentation. Matters are further exacerbated by the lack of consular representation in many Third Countries and the lack of direct flights to most of the Third Countries concerned. Table 2 illustrates statistics related to the relocation or resettlement of asylum seekers.

Table 2 - Relocation to other Member States and USA by type of status (2018 and 2019)

Country	2018					2019						
	Asylum Seekers	Refugee	Subsidiary	THP	Rejected	TOTAL	Asylum Seekers	Refugee	Subsidiary	THP	Rejected	TOTAL
Belgium	6	0	0	0	0	6	0	0	0	0	0	0
Finland	0	0	0	0	0	0	5	0	0	0	0	5
France	128	0	0	0	0	128	256	0	0	0	0	256
Germany	66	0	0	0	0	66	261	0	0	0	0	261
Ireland	26	0	0	0	0	26	11	0	0	0	0	11
Lithuania	0	0	0	0	0	0	3	0	0	0	0	3
Luxembourg	20	0	0	0	0	20	19	0	0	0	0	19
Netherlands	20	0	0	0	0	20	6	0	0	0	0	6
Norway	7	0	0	0	0	7	0	0	0	0	0	0
Portugal	67	0	0	0	0	67	51	0	0	0	0	51
Romania	0	0	0	0	0	0	3	0	0	0	0	3
Slovenia	0	0	0	0	0	0	2	0	0	0	0	2
Spain	83	0	0	0	0	83	2	0	0	0	0	2
USA	0	1	77	1	2	81	0	0	16	0	0	16
TOTAL	423	1	77	1	2	504	619	0	16	0	0	635

Source: TCNU.

1.5.5 As evidenced by Table 2, the vast majority of relocations during 2018 and 2019 concerned persons who applied for asylum. Relocations generally necessitate the voluntary willingness, usually on an ad hoc basis, of EU Member States to be effected. These relocation statistics are clearly indicative of the urgent need for an effective burden-sharing policy with EU Member States. This Office acknowledges the recent efforts by national entities to relocate asylum seekers. Despite the recent positive results attained through agreements with the EU and Third Countries, the issue of returns of unsuccessful applicants remain a major challenge not only from an administrative and logistical point of view but also from a humanitarian aspect. Currently, the system for returns tend to be biased in favour of the last in, which implies that the process to return asylum seekers whose application was not positively considered in previous years becomes even more complicated.

1.6 Audit Focus

1.6.1 This audit sought to determine the extent to which Malta is fulfilling its obligations related to international protection seekers to safeguard their rights during the different stages of international protection. To this end, the audit objectives aimed to establish the degree to which:

- a. the strategies, policies and plans in place are comprehensive and updated in relation to all aspects of the asylum seekers;
- b. the main processes, such as reception, detention, accommodation at open centres, as well as processes within the remit of the former Commissioner for Refugees and the Refugee Appeals Board were executed without delay, fairly and effectively; and
- c. resources and mechanisms in place enable effective operations and monitoring of the services provided by the entities involved in the asylum process.

1.6.2 The cut-off date for this performance audit was end 2019 since the most complete data available when drafting of this Report commenced was that of 2019. Events and measures post 2019 were not subject to this performance audit. However, for fairness' sake, where possible this Report provides an outline of new initiatives undertaken by government.

1.7 Methodology

1.7.1 The attainment of the above objectives entailed a number of methodological approaches. These included the following:

- a. **Data analysis:** This review analysed data maintained by the different entities responsible for the international protection procedures. This data included integrated information concerning international protection seekers maintained by the Third Country Nationals Unit (TCNU) within the Ministry for Home Affairs, National Security and Law Enforcement (MHSE).

- b. **Documentation review:** Documentation reviewed included policies, reports, Standards Operating Procedures (SOPs), statistics and strategies concerning international protection seekers.
- c. **Financial analysis:** These evaluations enabled the determination of costs relating to procedures undertaken by different entities concerning international protection seekers. The scope of this exercise was limited to the processes involved leading to the international protection seekers being granted protection status or alternatively being resettled or returned.
- d. **Semi-structured interviews:** Interviews were undertaken with key officials involved in the international protection process. To this end, various meetings and interviews were conducted with officials from Immigration Police, the Third Country Nationals Unit (TCNU), the Office of the Refugee Commissioner (RefCom), the Refugee Appeals Board (RAB), the Agency for the Welfare of Asylum Seekers (AWAS) and the Detention Services. Furthermore, the NAO also interviewed other stakeholders namely, and the United Nations High Commissioner for Refugees (UNHCR) and Migration Co-Ordinator.
- e. **Tracer Study:** A tracer study was undertaken on a sample of 120 international protection seekers who applied with RefCom during 2018 and 2019. The aim of this study was to track the international protection process and determine its outputs and outcomes.

1.8 Report Structure

1.8.1 Following this introductory Chapter, the Report proceeds to discuss the international protection procedures and outcomes through a process-oriented ordering principle. The following refers:

- a. **Chapter 2** – This Chapter discusses the extent to which policies, strategies and plans concerning the asylum process cover international protection seekers’ and government’s rights and obligations.
- b. **Chapter 3** – This Chapter focuses on the Initial Reception and detention centres and seeks to determine the extent to which services provided to international protection seekers and the legal obligations were fulfilled.
- c. **Chapter 4** – This Chapter looks into the operations within the open centres, which fall under AWAS’ responsibility. The Chapter presents the complexities of procedures in place in both the government as well as Church-run open centres.
- d. **Chapter 5** – This Chapter examines the effectiveness of mechanisms employed by RefCom in determining the protection status of international protection seekers.

e. **Chapter 6** – This Chapter discusses whether the appeals process administered by the Refugee Appeals Board was timely and employed in a consistent manner.

1.8.2 The overall conclusions and recommendations emanating from this audit are included in this Report’s Executive Summary on pages 10 to 14.

Chapter 2 | Policies

2.1 Introduction

2.1.1 The journey the asylum seekers and irregular migrants go through from their arrival in Malta until their protection status has been positively decided or their departure from Malta is set in motion by different government entities involved in this process. The Maltese international protection system is quite complex to navigate especially since it allocates responsibilities to a number of government entities. This notwithstanding, there are no noticeable overlaps in remits and duties between them. The asylum-related operations of these entities are governed by three main policy documents, namely, the *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, the *National Integrated Border Management Strategy* and the *Integration = Belonging, Migrant Integration Strategy and Action Plan*. The audit findings related mostly to the implementation of the *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, since the reception, detention and accommodation processes covered are outlined therein.

2.1.2 In line with the objectives and scope of this performance audit, this Chapter first gives an overview of the national budget measures for the 2018-2020. The Chapter then discusses the extent to which the national strategic framework comprises initiatives aimed at fulfilling Malta's obligations towards international protection seekers and at improving conditions for international protection seekers and irregular migrants.

2.2 National budgets 2018 – 2020 focused on considerable budget increases for operations and services related to international protection processes area

2.2.1 Although, the government budgets of 2018, 2019, 2020 did not refer to new initiatives specific to migration or international protection issues, considerable budget increases were devoted to the Detention Services and the Agency for the Welfare of Asylum Seekers (AWAS) who run the detention, Initial Reception Centre (IRC) and open centres.

2.2.2 Various stakeholders are involved in the international protection and immigration process and the required recruitment and acquisition of other resources. To this effect, in 2020, significant changes were undertaken within the Office of the Refugee Commissioner (RefCom) thereafter becoming the International Protection Agency. There are ongoing plans to similarly, turn the Detention Services into an Agency. Despite enquiries with both stakeholders, the National Audit Office (NAO) was not made privy to the changes required to sustain the budgeting and resource requirements of the two agencies which will recruit additional staff.

2.3 *The Strategy for the Reception of Asylum Seekers and Irregular Migrants is not fully supported by comprehensive plans*

- 2.3.1 The Strategy was published in early 2016, along with amendments to the Immigration Act (Cap. 217) and the Reception of Asylum Seekers Regulations (SL 420.06). Through the Strategy, the Ministry for Home Affairs and National Security (MHAS) aimed to strike a balance between the need for a humane approach on the one hand and the safeguarding of national security on the other, while ensuring Malta's compliance with the reception and detention provisions outlined in the European Union's (EU's) recast Reception Conditions Directive¹⁶ and the Returns Directive¹⁷.
- 2.3.2 The Strategy gives an overview of the legal background and Malta's obligations. This includes information on the physical premises within the reception, detention facilities and open centres as well as information relating to when international protection seekers and irregular migrants may be accommodated in each of these facilities. The Strategy outlines the grounds upon which services are to be provided on the premises. This Strategy also portrays the relevant procedural landscape which constitute the initial stages international protection seekers and irregular migrants encounter, namely, reception, detention and accommodation within the open centres. Information relative to other stages such as the application for international protection status and beyond are not within the scope of this Strategy.
- 2.3.3 One of the main aims of the Strategy was to take into account the European Court of Human Rights (ECHR) rulings against Malta. Within this context, subsequent legislative measures were introduced to address these rulings against automatic detention and in favour of rights of detainees such as the introduction of the concept of alternatives to detention, the right to know one's reason for detention and possibility to challenge such reasons. Chapter 3, which focuses on detention discusses in detail the difficulties that national authorities are encountering to fully embrace these provisions.
- 2.3.4 The Strategy does not provide possible solutions to recurrent issues prevalent in reception and detention centres as well as living conditions within open centres. The Strategy is rather an explanatory document of legislative measures. Furthermore, the Strategy does not cater for different scenarios such as heavy arrivals through boats or through other means; although this has been partly mitigated by the contingency plan drafted by the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) in 2021.
- 2.3.5 This performance audit adopted a number of criteria to assess how deeply the national strategic framework covers the obligations that Malta has to adhere to in terms of international protection seekers' rights. The relevance of this assessment is that a strategy

¹⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection.

¹⁷ Directive 2008/115/EC of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals.

is key to marshalling resources in the most efficient and effective manner to attain policy objectives. The discussion within this Section does not focus in any way on the technical content of the national strategic framework but seeks to determine the extent to which the compilation of the strategy feature elements which adhere to generally-accepted practices. Table 3 refers.

Table 3 - Elements featuring within the national strategic framework

Criteria	Yes	No
Strategy compiled by experts and specialists	Yes	
Outlines vision, mission and relative objectives	Yes	
Development of a supporting business plan		No
Assigns responsibilities	Yes	
Includes milestones and timeframes		No
Refers to outcomes and measurable outputs		No
Relates impact to Key Performance Indicators		No
Determines the demand and supply for services over time		No
Economic feasibility of specific initiatives		No
Incorporates side strategies relating to the implementation of specific measures		No

2.3.6 The strategy does not comprehensively refer to aspects relating to implementation responsibility, demand and supply for services as well as outcomes and impacts of strategic initiatives. Moreover, this document does not make additional policy recommendations for the adoption or development of strategies related to other aspects of the international protection process.

The strategic plan does not delve in detail into the supply and demand for the services under review

2.3.7 The *Strategy for the Reception of Asylum Seekers and Irregular Migrants* does not discuss comprehensively the anticipated demand in relation to adequate service provisions for international protection seekers and irregular migrants. Understandably statistical projections or extrapolations as a clear basis for planning offer a number of limitations as arrivals depend on many changing variables. Nonetheless, the Strategy does not refer to actions and the demand for various services required, depending on the number of arrivals in a given period. Another complexity in this regard is that any such references would need to consider the rate at which asylum seekers are returning to country of origin. As outlined in Paragraph 2.3.4, the recently drafted contingency plan would alleviate some of these issues as this document seeks to guide national entities to address fluctuations in arrivals and the ensuing logistical issues.

2.3.8 In turn, such an information gap within the strategic framework prohibits the national competent authorities from estimating the resources required to address the level of supply. In practice, this is leading to disequilibrium between demand and supply in services within IRC, detention and open centres as well as processing of the protection status and possible appeal.

The implementation of the strategy on reception is not based on concrete timeframes and milestones

2.3.9 Timeframes and milestones are a key feature in a strategy since they provide implementation guidelines. Such a broad implementation timeline does not appropriately guide national authorities to plan effectively therein, nor to measure how appropriately they are intervening and how they can improve their operations in a targeted manner. Nonetheless, the setting of timeframes and milestones still needs to consider an environment governed by the unpredictability of arrival of a number of asylum seekers.

The Reception Strategy does not base its initiatives on projected outputs and outcomes

2.3.10 The strategic plan on reception does not link the policy recommendations outlined therein to outputs and outcomes. In the absence of timelines and supply estimates, the strategy would be consequently unable to phase outputs over predetermined periods. Such a situation leads to national authorities being reactive rather than pro-active in their operations.

2.3.11 Similarly, the Strategy omits references to quantifiable outcomes. While the plan's main objective is for international protection seekers and irregular migrants to be accommodated in an appropriate manner, such outcomes are not supported by key performance indicators.

2.3.12 **Recent Developments** – This Office acknowledges that in part the issues discussed in this section have been addressed by the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) through the recent compilation of a national contingency plan. The plan discusses a number of scenarios based on the number of persons involved.

2.3.13 Another strategy that impacts asylum seekers peripherally is *The National Integrated Border Management Strategy*. This strategy is aimed at covering issues related to border control rather than the international protection process. It outlines the main stakeholders' duties involved in border controls and the legislative obligations. This strategy was deemed peripheral to the audit's scope.

- 2.3.14 The *Integration = Belonging, Migrant Integration Strategy and Action Plan* is a strategic framework focusing on legislative instruments, on-going and planned measures as well as initiatives that are supportive or conducive to integration. This strategy plan is split into two parts, with the first part providing general information. The rest of the framework is an actual action plan specifying what the measure is, the timelines during which the measure will be carried out, and which entities are expected to own and implement the measures. A key element of the Strategy and the Action Plan is that it has clear timelines and designates clear responsibilities on the implementation of measures and initiatives.
- 2.3.15 However, the action plan does not provide details of the measures or portray information about the expected reach, output and the outcomes of such measures but refers to periodic reports on progress made on the measures.

2.4 Conclusion

- 2.4.1 Whilst acknowledging the complexities and uncertainty involved, over which the authorities have no control, the strategic framework in relation to the international protection seekers and irregular migrants falling within the scope of this audit is not deemed sufficiently comprehensive. Statements and policy recommendations therein are not supported by in-depth details about the approach to be adopted as well as detailed presentations of the measures to be implemented. This state of affairs constrains the determination of resources required. The foregoing raises the risks that policy recommendations will remain on paper but somewhat lacking at the implementation stage.
- 2.4.2 The opportunity exists for a future and comprehensive expanded national strategy that delves into issues affecting international protection seekers which so far have not been discussed thoroughly within the strategies. Moreover, it is critical that the national strategies are, as far as possible, supported by a comprehensive roadmap which would enable it to better attain its objectives.
- 2.4.3 The forthcoming Chapter discusses the extent to which the provisions of the Reception Strategy were embraced by the national entity involved. To this end, the next Chapter will delve deeper into the practical aspect of the implementation of this Strategy.

Chapter 3 | The Detention Process

3.1 Introduction

3.1.1 Following a negative outcome of an assessment by either the national health authorities or immigration police, upon their arrival in Malta, third country nationals (TCNs) arriving irregularly are subject to a maximum of nine months in detention provided that they would have submitted an application for international protection. The length of stay in detention also varies between TCNs. Some of the releases are prolonged because of delay from medical clearance from health authorities in terms of reception regulations which refer to health legislation. This involves migrants with infectious diseases such as tuberculosis. On the other hand, asylum seekers who are deemed vulnerable or are confirmed as minors following an age assessment are also released to an open facility.

3.1.2 Detention is regulated by Reception of Asylum Seekers Regulations, Subsidiary Legislation 420.06 and the national *Strategy for the Reception of Asylum Seekers and Irregular Migrants*. Also, according to the provisions of Subsidiary Legislation 217.12, the following circumstances relating to detention prevail:

- a. (12) Detention shall be maintained until the conditions laid down in sub-regulation (6) are fulfilled and it is necessary for removal to be carried out: Provided, however, the period of detention may not exceed six months.
- b. (13) The period of six months referred to in the preceding proviso may be extendable by a further twelve months where:
 - i. there is lack of cooperation by the third-country national; or
 - ii. there are delays in obtaining the necessary documents from the third country in question.
- c. (14) Where it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in sub-regulation (6) no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

3.1.3 During detention, national authorities are obliged to provide for irregular migrants' basic needs, including food that is culturally-appropriate as well as clothing. Moreover, national authorities are to respect ethnic and cultural diversity and provide educational, recreational and pastime activities.

3.1.4 This performance audit has revealed that the situation in 2019 was far from ideal within the detention centres. Overall, efforts and investment in making the detention process smooth and well-organised were not deemed sufficient. The lack of staff, inadequate buildings, poor record-keeping and Information Technology (IT) systems have highlighted the obvious lack of an audit trail from the Detention Services as well as appropriate monitoring of the detainees' stay within the centres. These shortcomings potentially made the whole stay more challenging than necessary especially since needs of asylum-seekers within their premises could not be immediately addressed.

3.1.5 Against this background, this Chapter discusses:

- a. the length of stay of the detention period;
- b. the costs of detention;
- c. standards within detention centres;
- d. the conditions within the detention centres;
- e. lack of accommodation in detention centres;
- f. access by asylum seekers to Non-Governmental Organisations (NGOs), family members and legal advisors;
- g. shortage of interpreters and cultural mediators;
- h. coordination between detention centres and stakeholders;
- i. monitoring and follow-up on needs of asylum seekers, within the detention centres premises; and
- j. staffing at detention centres.

3.2 The Detention Services were not aware of the length of stay of the asylum-seekers within its premises

3.2.1 The Reception of Asylum Seekers Regulations (Subsidiary Legislation 420.06) stipulates clearly the six reasons which could be used to detain asylum seekers, namely,

- a. in order to determine or verify his/her identity or nationality;
- b. in order to determine elements on which the application is based which could not be obtained in the absence of detention;
- c. in order to decide on the applicant's right to enter Maltese territory in terms of the immigration act;
- d. when the applicant is subject to return procedure and is delaying or frustrating the enforcement of the return decision;
- e. for reasons of national security or public order; and
- f. when an asylum seeker is to be returned to another Member State to determine his/her asylum application as there is a risk of absconding.

3.2.2 The above imply that the issue of detention orders are within the remit of the Immigration Police. To this end, the *Strategy for the Reception of Asylum Seekers and Irregular Migrants*

also provides an Annex with guidelines for police officers, detailing how these six clauses should be interpreted. The strategy also states that asylum seekers shall not be detained for more than nine months unless their application would have been rejected and would be undergoing a returns procedure making these former asylum-seekers liable to six months in detention, with a possible 12-month extension.

- 3.2.3** The Ministry for Home Affairs, National Security and Law Enforcement (MHSE) contends that, the Detention Services (DS) does not decide who is detained or for how long. That decision is taken by the Police in terms of the Reception Conditions Regulations or the Return Regulations. The Detention Services has no influence and consequently a lack of visibility as to when detainees are to be released. Within this context, the DS are wholly dependent on information and documentation from the Immigration Police to prompt further action which would result in the asylum seekers being released from detention. The potential problem brought about by the lack of information on the duration of detention at the DS' disposal arises when asylum seekers remain within detention despite their being cleared by the Health authorities and the Immigration Police. In the event that such situations materialise, this breach of legislation would not only be prolonging access to the free movement and possible integration of the asylum seekers but might result in redress being sought by the asylum seekers through legal action. To this effect, a number of cases have already ruled against such shortcomings.

3.3 Detention costs in 2019 totalled an estimated €5.5 million or €58 per bed night

- 3.3.1** In 2019, the period with which the audit was concerned, only Safi Block B was in use due to the relatively lower number of arrivals during that year.¹⁸ Table 4 shows the number of residents in the main detention centre in 2018 and 2019.

Table 4 - Residents in detention centre¹⁹ (2018 and 2019)

Description	2018	2019
New residents during the year	152	2,362
Residents who left during the year	147	1,278
Residents as at end of year	10	1,084

- 3.3.2** The figures presented in Table 4 were sourced from the Detention Services within the Ministry for Home Affairs, National Security and Law Enforcement. This approach was deemed to be the most reliable despite some minor variances noted by this Office.

¹⁸ In 2020, detainees were also accommodated within China House in Hal Far, the House Compound within B Block as well as the new C Block at Hal Safi, Lyster Barracks (also known as Hermes) until December 2020. Due to COVID-19 protocols, all new arrivals are currently housed at HIRC for quarantine. Then they are transferred to Safi.

¹⁹ During the years 2018 and 2019 only the Safi Barracks was hosting residents in the detention centre.

3.3.3 On the other hand, 2019 statistics derived from the report of the Monitoring Board for Detained Persons quote that 242 persons spent time at the Safi detention centre. In view of these variances, for the purpose of this report, the National Audit Office (NAO) based its calculations upon the figures provided by the Detention Services.

3.3.4 In total, during 2019, national authorities incurred an expenditure of around €5.5 million. This translates to €58 per person per bed night. Table 5 refers.

Table 5 - Detention costs - Safi Barracks (2019)

Description	Total Actual Cost €	Percentage of total cost €
Salaries and National Contributions	3,993,942	72.7
Operational and Management (Contr Serv - Others)	1,077,421	19.7
Operational and Management (Others)	305,072	5.6
Operational and Management (Prof Serv - Medical Services)	108,926	1.9
Operational and Management (Waste Disposal & Cleaning Service)	5,323	0.1
Total costs	5,490,684²⁰	100.0
Total asylum seekers days	93,490	
Cost per asylum seeker per day	€58.73	

3.3.5 Table 5 indicates that the salaries and national contributions amounted to 73 per cent of the total detention costs. These costs mostly relate to 137 security officers as well as two administrative staff employed by the Detention Services.

3.3.6 The Detention Services did not make available internal policies stipulating security staffing requirements in each of the blocks used for detention. Nonetheless, the DS lamented that it had encountered security officer shortages and submitted a request to the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) to strengthen its security staff complement. Consequently, staff costs increased further during 2020-2021 since DS embarked on a heavy recruitment programme which seeks to increase staff members by a further 220 officers. The Ministry contends that 90 officers have been recruited and trained.

3.3.7 For safety reasons and structural limitations, DS contends that the practice to date has been that security officers and maintenance staff intervene in detention areas minimally. Consequently, security and maintenance within the detention centres is limited and restricted only to certain areas. To this end, the recruitment of security officers remains an urgent necessity in the light of the number of persons currently in detention. This will enable security and maintenance to be effected throughout all areas of the detention centres.

²⁰ The total of €5,490,684 includes an amount of €228,150 as European Union (EU) funds. These EU funds relate to the provision of material aid and support services to assist asylum. This project involves the provision of material aid such as food (breakfast, lunch, dinner) and medical services and also support services such as social workers and support workers.

3.4 National authorities and NGOs recognise the need for better standards within detention

3.4.1 The services provided by the Detention Services are accommodation and provision of basic needs such as clothing, bedding, ration items and medical attention mainly for single males, who are asylum seekers and third country nationals and / or who would have overstayed their visa. The expenditure in relation to these services are all catered for by central MHSE funds as the Detention Services has no direct budget.

3.4.2 On the other hand, the Detention Services contend that it is not within their remit:

- a. to inform the asylum applicants of their rights – DS claim that they facilitate assistance by legal professionals and Non-Governmental Organisations (NGOs) such as the United Nations High Commissioner for Refugees (UNHCR);
- b. to guarantee accommodation to TCNs under the protection of DS according to the socio-political needs; and
- c. to be informed when detainees are to be relocated to another Member State (MS) or released from detention to facilitate DS's planning process.

3.4.3 Due to the Covid-19 pandemic, this Office could not conduct on-site visits at detention centres to gather first-hand evidence through the observation of conditions therein. This limitation was mitigated through the review of reports drafted by the Non-Governmental Organisations (NGOs) and other interested parties, such as the government appointed Monitoring Board for Detained Persons. Moreover, information collated was to a great degree corroborated with interviews held with DS management, entities within the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) and the United Nations High Commissioner for Refugees (UNHCR).

3.4.4 The Asylum Information Database (AIDA) maintained by the European Council on Refugees and Exiles reported on the conditions of reception and detention facilities. In the 2018 and 2019 reports, AIDA reported that conditions in detention were below the expected standard, which rendered the asylum seekers' stay more challenging.

3.5 Stakeholders acknowledge that conditions within detention centres render accommodation problematic

3.5.1 Government is obliged to safeguard detainees' welfare while in detention. Detention guidelines issued by UNHCR in 2012 stipulate that, as a minimum, detention centres should provide appropriate living conditions, which take into consideration cultural diversity, detainees' dignity and human rights as well as access to family and community. These

principles are replicated in the national document: *The Strategy for the Reception of Asylum Seekers and Irregular Migrants*. This document specifies that detention centres “are secure facilities which are administered by the Detention Services which:

- a. respect the personal safety and confidentiality of all detained persons;
- b. provide for the basic needs, including food that is culturally appropriate, as well as clothing;
- c. respect ethnic and cultural diversity; and
- d. provide educational, recreational and pastime activities”.

3.5.2 Moreover, as a signatory to the Optional Protocol to the United Nations (UN) Convention against Torture, the Maltese authorities have also appointed a Monitoring Board for Detained Persons. Stakeholders who have had first-hand access to the detention process have raised various issues of concern regarding the physical conditions as well as the basic rights and requirements of detainees. These stakeholders include the afore-mentioned Monitoring Board for Detained Persons, UNHCR and other NGOs. Table 6 refers.

Table 6 - Deficiencies in detention centres identified by stakeholders

Deficiencies	Monitoring Board (2018)	Monitoring Board (2019)	Other NGOs (2019 – 2020)
Access to family and community	*	*	*
Access to interpreters, psycho-social staff	*	*	*
Access to legal advice			*
Accommodation appropriateness	*	*	*
Dignity			*
Issues concerning food	*	*	
Lack of staff	*	*	
Length of stay	*	*	*
Lack of warm clothes and adequate bedding	*	*	*

Clothes, privacy and adequate living conditions are not guaranteed at the detention centres

3.5.3 The DS management confirmed reports by NGOs that there is over-crowding and living quarters are crammed with the result that neither privacy nor storage space for personal possessions are possible. Whilst detainees are provided with a bed each, there is little room between beds or places where they may store their personal possessions.

3.5.4 The premises require upgrading for comfort and security reasons especially when it is housing more numbers than it was planned to. Stakeholders’ reports also note that there is poor heating and ventilation, exposing detainees to weather conditions without proper protection. Limited and run-down sanitation and hygiene facilities also allow no privacy or proper personal care of the detainees. Most importantly, it is also difficult for proper or frequent cleaning and maintenance services to be carried out. The 2019 AIDA report claims that detainees are provided with cleaning materials and are expected to take care of the

cleaning of the centre. DS management confirmed that the premises do not lend themselves to proper cleaning and monitoring in view of the way they are structured and the number of detainees within them.

3.5.5 The 2019 AIDA report, based on issues witnessed by NGOs, also claimed that most of the clothing was donated on a charitable basis to the Detention Services management and then distributed accordingly. The Detention Services contended that donations of clothing only amounted to a small portion of the total amount needed to supply the residents in the detention centres since clothes and supplies are given to migrants as needed. Before the start of the cold and hot months, residents are also supplied with new sets of the relevant attire together with shoes. Expenditure from public funds on clothing amounted to €20,924 and €66,689 on bedding.

3.5.6 The Detention Service are not directly responsible for providing the mental health and psychological support for the detained asylum-seekers within their premises as social and psycho-social services are provided by the AWAS staff pool. Such issues are not routinely screened for but only addressed if the Detention Services staff or the doctors alert AWAS and the relevant authorities or if AWAS case workers are aware of certain issues from the Initial Reception Centre (IRC) stage. During 2019, AWAS' Assistant Psychologists visited Safi on average once a week to conduct assessments there. This Office deems that such a number of assessments needs to be increased when one considers the hardships the asylum seekers would have been put through before arrival to Malta and also whilst in detention. This situation has been partly resolved as discussed in paragraph 3.5.8.

3.5.7 The AIDA 2019 report claims that the vast majority of applicants were detained in application of Health Regulations and underwent medical examination which only consisted of X-rays checks for tuberculosis. There was no systematic screening for other medical or mental health issues. Migrants and asylum seekers requiring more specialised care were referred to the general hospital. In cases of emergencies, the detainees were usually taken to the nearest health centre. Communication with the health professionals was not always possible, in view of language issues especially since the services of a translator or cultural mediator were not available. These points were all confirmed by the DS management who stated that the situation was ongoing throughout 2020. They recognised the need for improved and increased availability of health services and were working on increasing availability of medical professionals throughout the detention centres at the time of the audit.

3.5.8 **Recent Developments:** In 2020, the DS engaged:

- a. A Coordinator for Welfare and Medical Services tasked with facilitating and coordinating assessments and interventions when needed. Furthermore, in 2020, AWAS increased its services within the detention centres.
- b. Another senior general practitioner was loaned from the Primary Health Department. Together with the Coordinator for Welfare and Medical Services, during 2020, the

foundations for a new migrant health service were put in place, a new clinic was built and furnished to make the new migrant health service fully operational as an in-house health centre. This is intended to improve the efficiency and improve the service which is offered to residents including through specialised clinics such as tuberculosis clinic, ophthalmic, genitourinary and dermatology which will be carried out in the detention centres by visiting specialists. The recruitment of a charge nurse, responsible for this migrant health service together with the medical team has also been initiated.

Limited educational, recreational and past time activities are delaying integration opportunities

- 3.5.9 The Detention Services also confirmed AIDA contentions that the educational, recreational and pastime activities were not allocated their due importance. DS contended that this was mainly due to two reasons. Firstly, the expected brevity of the stay of the detainees was deemed not worth the while to organise such events. Secondly, the uncooperative or disinterested attitude shown by certain detainees made investment in such activities unfeasible. Nonetheless, DS claimed that it strives to make available books to migrants in its facilities through donations and educational materials from the Malta Libraries.
- 3.5.10 DS noted that whatever was provided to the detainees in terms of recreational material or activities seems to have been based on the management’s own discretion. The management insisted that whatever recreational objects, such as televisions, were provided were either destroyed or misused and that even basic objects like beds and shoes were either dismantled, unused or used as weapons in certain cases. DS has documented evidence relating to some of these incidents.
- 3.5.11 The national strategy stipulates that detainees shall have *“access to open air for at least once every day and for not less than one hour”*. DS and other stakeholders contend that such access was unavailable to all in a consistent manner for space and security reasons.
- 3.5.12 **Recent Developments:** DS contends that by end 2020, all detainees within the detention centres were allowed a minimum of one-hour recreational time. In this regard, around 70 per cent of residents within detention centres were allowed access to open spaces from dawn till dusk. The DS also permits religious activities which are carried out by spiritual directors of various religious denominations.
- 3.5.13 Additionally, DS confirmed stakeholders’ concerns that Government entities are not providing educational material or activities of any kind in accordance with the provision of the national strategy on detention. The provision of these services are totally dependent on NGOs and other outside visitors, when permitted by the DS. This entity also confirmed that internet and computer access are not available to detainees. This situation prevails despite the Strategy specifying that the detention facilities should comprise or have access to *“facilities for leisure and the delivery of education programmes”* including language training.

3.6 Lack of accommodation within the open centres resulted in prolonged stays in the detention centres²¹

3.6.1 Length of stays was influenced by the shortage of accommodation within the open centres since detention centres were being used to replace such accommodation. The prolonged stay within the detention centre would have affected severely the freedom of movement, job opportunities, contact with the outside world, social interactions in general, as well as mental health of the detainees, especially if they would have been held without clear communication regarding reason for and information about length of stay.

3.6.2 MHSE contend that during 2019, the Detention Services released 1,287 third country nationals. From these 1,287 releases, 264 were released within a month, 895 within four months, 125 within nine months, two within twelve months and one within sixteen months. It is pertinent to note that during 2020, the Courts of Justice have ruled against excessive length of stay within detention without justifiable legal reasons and criticised the non-adherence to the Strategy, in more than one case. Statistics forwarded to this Office did not differentiate between the status of the persons involved.

3.6.3 In such situations, it is difficult to assign responsibility for the excessive length of stay on the Police Commissioner or the Health Department (the former having the ultimate authority to issue release documentation following medical clearance by the Health Department). This assertion considers the Government emergency policy of accommodating within detention centres when there are no vacancies at the open centres.

3.7 Access to NGO, family members, and legal advisors is sporadic and subjectively decided by the Detention Services

3.7.1 The audit found no evidence of formalised procedures or habitual practices through which detainees could be visited by their family members and acquaintances while in detention. Visits depend on the discretion of the DS management. This implies that detainees cannot anticipate or be cognisant of their rights to such visits and their frequency.

3.7.2 The situation was slightly better when detainees needed to reach NGOs, UNHCR and legal advisors. However, DS did not maintain records as to the number of times detainees accessed the Office of the Refugee Commissioner (RefCom), UNHCR, the European Asylum Support Office (EASO), NGO's and legal professional services and whether meetings between the two sides were always held when requested.

²¹ Paragraph 5.3.12 of the NAO Report "A review of implementation of Sustainable Development Goal 1: Malta's efforts at alleviating poverty" issued in December 2020 also refers to stays within detention despite the Reception and Detention Strategy.

3.7.3 Moreover, regularity of access depended on DS Management discretion and was not outlined in formalised procedures or communicated. Detainees' lack of clear understanding regarding their situation and means of communication rendered detention more challenging.

3.7.4 **Recent Developments:** In 2020, visits had to be restricted due to COVID-19. In the last two months of 2020, visits increased in frequency with UNHCR and other NGOs holding a total of 39 visits, 21 visits by lawyers whilst the Agency for the Welfare of Asylum Seekers (AWAS) held around three assessments per week. At the same time, EASO held daily interviews from Monday to Friday.

3.8 A shortage of interpreters and cultural mediators hinders communication within detention centres

3.8.1 Communication within the detention centre was and remains problematic since there is a chronic lack of interpreters and cultural mediators²². Mitigating such circumstances entailed that another detained person with the necessary language skills was usually requested to act as an interpreter. Such practices do not lend themselves fully to the safeguarding of personal and confidential information. While such practices are acceptable in emergency situations, in routine situations the risk also exists that miscommunication may occur in the absence of professional interpreters and cultural mediators.

3.8.2 The lack of communication arising from the absence of professional interpreters becomes more evident when detainees are unable to comprehend DS' notices in relation to their detention. This is particularly problematic since such circumstances usually occur during the early days of detention and when the detainees' movements are restricted by order of the Chief Medical Officer for public health reasons. Moreover, asylum seekers are informed of such conditions through a document which is often reproduced in a language that the asylum seeker does not understand. The detainees are generally also not informed whether they can challenge such detention conditions by the authorities.²³

3.9 Coordination between the Detention Services and stakeholders was not optimised

3.9.1 The Health Department, the Police, the Agency for the Welfare of Asylum Seekers (AWAS), the International Protection Agency (formerly known as the Office of the Refugee Commissioner (RefCom)), the United Nations High Commissioner for Refugees (UNHCR), the Non-Governmental Organisations (NGOs) such as the Jesuit Refugee Services (JRS) and Aditus, and the European Asylum Support Office (EASO) also provide their services within the centres

²² Source: Strategy for the reception of Asylum seekers and irregular Migrants, page 22.

²³ This practice of detaining asylum seekers in application of Health Regulations persisted even throughout 2020 when asylum seekers figures were higher than 2019. Since detention on health grounds is not a formal detention regime, where asylum seekers are issued with a detention order, they are not entitled to appeal against the decision, in contravention of the Reception Conditions Directive.

including facilitating meetings with lawyers and the carrying out of interviews, and necessary assessments. The audit found no evidence of Memoranda of Understandings (MOUs) for entities that are not DS to carry out duties within or provide services DS-run grounds. Due to the complexity of coordination involved in the management of detention services, MoUs would have provided a framework were such entities could embark on concerted efforts, which translates into increased efficiency and cost-effectiveness.

3.9.2 This audit elicited a number of cases where coordination between stakeholders involved in the management and operations of the detention centre was lacking. The following refers:

- a. The Detention Services did not have access to the National Asylum Seekers Management Systems (NASMS) database maintained by the Third Country National Unit (TCNU) within the Ministry for Home Affairs and National Security; such access was granted in 2020. This database has traceability details concerning the asylum seekers, even when in detention. The lack of access weakens the position of Detention Services since it did not contribute information to this database.
- b. Weak coordination between the Detention Services and the stakeholders mentioned in paragraph 3.8.1. prevailed. This was apparent as the former is not involved in the provision of services that detainees may require from the other entities except for logistical coordination.
- c. There is scope for the Detention Services to be more proactive and participative through cooperation and coordination with AWAS, UNHCR, EASO and NGOs. The lack of coordination between the entities increase the risks that detention is rendered more challenging for detainees. A problematic detention ultimately deviates from the 2015 Reception and Detention Strategy.

3.9.3 Recent Developments: Work has been carried out in this regard and the coordination between AWAS and DS has facilitated a large number of releases at the end of 2020 and beginning of 2021.

3.10 The Detention Services are not systematically monitoring or following up on the needs of asylum-seekers within their premises

3.10.1 Immigration detention operations are monitored by both official and non-governmental entities. In 2007, Malta designated two entities as National Preventive Mechanisms, in accordance with the Optional Protocol to the UN Convention against Torture (OPCAT), which Malta ratified in 2003. These are the Prison Board and the Monitoring Board for Detained Persons.

3.10.2 The operations of the Detention Services and whether the detained asylum-seekers are being awarded their rights, should be monitored by the Board of Visitors for Detained Persons

pursuant to the Board of Visitors for Detained Persons Regulations, Subsidiary Legislation 217.08. In 2019, the Monitoring Board met 13 times and visited Safi detention centre 35 times. The most common complaints raised by detainees related to length of stay, inadequate clothing in winter, and the quality of food and its lack of variety. The Board noted food wastage and recommended that standards in relation to food are observed. Most significantly, the Board commented upon the overcrowding, dilapidated and unsanitary conditions within rooms and bathrooms and lack of proper dining facilities with the detained being forced to eat in a corridor subject to rain, winds and weather conditions as well as lack of furniture and space for personal belongings.

3.10.3 Further to the Monitoring Board inspections, it is evident that the situations outlined in the Board’s report prevail. Moreover, the Detention Service did not carry out monitoring of its own. Hence, no deficiencies could be identified, budgeted for, and rectified in a timely and efficient manner.

3.11 The Detention Services are heavily understaffed and under-resourced

3.11.1 The NAO noted that there was a lack of management and administrative staff which prevented appropriate operational planning and execution within the Detention Services. The afore-mentioned Strategy for the Reception of Asylum Seekers and Irregular Migrants clearly outlines that “[a]ll members of the Detention Service are subject to the terms, standards, disciplinary procedures and conditions laid down in the “standing Instructions for the Detention Services: Detention Centre Rules” which have been issued to all officers in the Detention Service by the Head of the Detention Service”.

3.11.2 However, the acute staff shortages within this entity prevented it from routinely operating in terms of any Standing Instructions or Standard Operating Procedures (SOPs). Such a scenario additionally implied that in 2019, reviews of DS staff performance, training and operational resources such as appropriate equipment and IT systems were also not allocated the proper priority to the detriment of staff and detainees. This was confirmed by DS management who were working on upgrading their operational tools at the time of the audit.

3.11.3 Within this context, the management estimated a lack of staff of circa 220 persons including a range of professionals and staff required to run the centres including key persons such as detention service officers, managerial and administrative grades, interpreters, maintenance staff, electricians, security experts, health and safety officers, logistics officers, store personnel and drivers. Information as to whether and when these will be recruited remained unavailable.

3.11.4 The substantial recruitment deemed necessary indicates that human resources were stretched to the limit and that the services being provided were far from optimal and could have exposed staff and detainees to unwarranted safety and security risks, such as those related to breakouts. The lack of recruitment directly also prevented the DS from fulfilling its legal obligations in relation to the detainees’ needs.

3.11.5 The DS management emphasised that restructuring and recruitment are in the pipeline. This will enable the Detention Services to perform its duties in a more efficient and effective way.

3.12 Conclusion

3.12.1 This Chapter determined that the detention period of asylum seekers is being rendered more taxing as the detention centre is overcrowded and subject to significant staff shortages, which raise security and health risks to both detainees and employees. This situation materialises despite the provisions of national legislation and the *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, which stipulate Government's obligations towards detainees.

3.12.2 In addition, the detention phase is severely hampered by lack of adequate standards. Moreover, within the detention centres, poor conditions essentially due to lack of adequate space and over-crowding made the situation even more problematic. In part, this situation has been compounded by the lack of key human resources, IT systems as well as record-keeping weaknesses.

3.12.3 The DS management contended that the detainees have immediate access to meals, health services and basic needs but also confirmed most concerns reported by the NGOs and the Monitoring Board as well as UNHCR. The situation is rendered most difficult in view of lengthy recruitment processes and budgetary constraints.

3.12.4 The COVID-19 pandemic restricted the NAO's access to detainees and the detention centre. Nonetheless, the issues raised by various stakeholders regarding the conditions within the centre as well as the extent to which detainees' rights were being safeguarded were generally accepted by Detention Services management. On its part, the entity is planning a reengineering of its structure and operations. However, no timeline for these changes was provided.

3.12.5 This Chapter did not seek to discuss the pros and cons of the detention of asylum seekers since this is tantamount to Government policy, and thus such discussion falls outside NAO's remit. Nonetheless, it is evident that Malta, the EU's smallest Member State, is finding the accommodation of such a disproportionate number of asylum seekers extremely problematic. The challenges brought about by irregular migration are extremely complex and multi-faceted and thus, to be duly addressed, these require a focused and concerted international effort, including the solidarity of all EU Member States. Without such international solidarity, addressing such challenges will remain immensely taxing for Malta.

Chapter 4 | Open centres

4.1 Introduction

- 4.1.1 Asylum seekers who require accommodation after their release from the initial reception or detention centres are accommodated within open centres for a period until they are deemed independent. Residents in open centres may seek employment after a period of nine months following the lodging of an asylum application and are also issued with a per diem allowance. These centres act as a reference point for the asylum seekers seeking information and access to basic services such as education and health.
- 4.1.2 The service provided by the Agency for the Welfare of Asylum Seekers (AWAS) was offered for a maximum period of 12 months in 2019, unless there were humanitarian reasons requiring a lengthier stay. However, the large number of asylum seekers requiring such a service led to circumstances where accommodation could not be offered for such a period. To this end, Government sought to mitigate this situation through the allocation of allowances to asylum seekers who were not residing within open centres.
- 4.1.3 An increased staff complement brought about a more robust administrative capacity, putting AWAS in a better position to cater for asylum seekers' needs and to prepare them for independent living. Moreover, over time, AWAS managed to develop good working relationships with established Non-Governmental Organisations (NGOs) and other stakeholders. Nonetheless, a number of factors still contribute to a challenging stay by asylum seekers at open centres. This mainly relates to an overcrowded environment and consequently, the impossibility of the facilities to cope with high volumes of residents within the various open centres. Within this context, this Chapter discusses the following main points:
- a. the open centres are characterised by over-crowding;
 - b. preparation for asylum seekers' integration within society is mostly dependent on NGOs' intervention;
 - c. cooperation and synergy need to be enhanced between AWAS, Detention Services (DS) and the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) entities;
 - d. despite improvements in recruitment, key vacancies prevail;
 - e. asylum seekers entitlements while residing at open centres;

- f. costs per resident incurred by Government are mainly influenced by resident cohort; and
- g. occupancy rates and partnership agreements with NGOs.

4.2 At end 2019, residents at open centres administered by AWAS increased by 34.6 per cent over 2018, putting a further strain on conditions within these centres

4.2.1 There are three models of open centres which could be administered by the Agency for the Welfare of Asylum Seekers (AWAS) or NGOs. These are:

- a. those run directly by Government;
- b. open centres owned by Government but whose day-to-day running is sub-contracted to third-parties, and
- c. NGO-run open centres, receiving financial assistance from Government²⁴.

4.2.2 Open centres are planned to accommodate specific groups, whenever possible, such as single males or females, families, and Unaccompanied Minor Asylum Seekers (UMAS). Table 7 shows in more detail the residents within the different open centres, which are in use at the time of publishing of this report.

Table 7 - Type of residents as per open centres

Type of open centre	Open centre	Type of Residents
Run directly by Government	Hal-Far Tent Village (HTV)	Single Males/Minors Male 16+
Run directly by Government	Dar il-Liedna (DIL)	Female and Male Minors and Vulnerable Minors (under 16)
Run directly by Government	Hal-Far open centre (HFO)	Family Units/Single Mothers/Single Fathers
Run directly by Government	Hangar open centre (HOC)	Section A: Family Units and Single Mothers Section B: Single males
Privately-run open centres, receiving financial assistance from Government	Malta Emigrants Commission (MEC) – Balzan	Families and Single Females/Mothers
Privately-run open centres, receiving financial assistance from Government	Malta Emigrants Commission (MEC) – Houses	Mixed client groups
Run directly by Government	Initial Reception Centre (IRC)	Mixed client groups particularly Vulnerable Categories
Privately-run open centres, receiving financial assistance from Government	Peace Lab (PL)	Males including Vulnerable Males

Source: AWAS.

²⁴ There are currently no centres sub-contracted in this manner but in 2020, the Red Cross opened a temporary centre to accommodate COVID-19 residents.

4.2.3 As at end 2019, there were 1,937 asylum seekers within the Initial Reception Centre (IRC) and the seven open centres. The Hangar open centre (HOC) was not in use in 2019. This constitutes an increase of over 14.1 per cent over the 1,697 residents as at end of 2018. The majority of this increase was absorbed by AWAS open centres (HTV, DIL, HFO). As at end 2019, there were 1,262 residents within these three centres, which is an increase of 325 (34.6 per cent) over the previous year. This state of affairs stems from the fact that the increase in demand for accommodation related to unaccompanied males, who are generally accommodated at AWAS-run centres. Such an increase in occupancy rates further stretched resources at these centres and negatively impacted the quality of accommodation due to the resultant overcrowding. Table 8 refers.

Table 8 - Residents accommodated at open centres as at end 2019

Year	Hal-Far Tent Village (HTV)	Dar Il-Liedna (DIL)	Hal-Far open centre (HFO)	Malta Emigrants Commission (MEC) – Balzan	Malta Emigrants Commission (MEC) - Houses	Initial Reception Centre (IRC)	Peace Lab (PL)	Totals
2018	772	45	120	64	155	515	26	1,697
2019	1,091	50	121	49	164	436	26	1,937

Source: AWAS.

4.2.4 Given that occupancy rates increased in the three AWAS-run open centres in 2019 over 2018, and that there were no major infrastructural improvements, the remarks portrayed in the Asylum Information Database (AIDA) 2018 report remained valid for 2019. The report states that the living conditions in the open centres, specifically those in Hal Far are “extremely challenging” characterised by over-crowding, inadequate structure (specifically the pre-fabricated container housing units with poor ventilation and high temperatures in the summer months and inadequate insulation from cold temperature in the winter) and poor hygiene. AWAS contends that in 2019, the number of cleaners and that of available skips increased; full pest control coverage was also introduced. In 2020, a new purchasing exercise resulted in the acquisition of new cabins with better insulation properties.

4.2.5 A risk assessment report in each centre was carried out and recommendations were taken on board. Moreover, in 2019, a refurbishment process was started to clean up areas and, as far as possible, transform them into recreational ones. Table 9 shows the occupancy rates, in terms of bed nights at the various open centres.

4.2.6 During 2019, occupancy rates within the HTV, DIL and HFO varied between 77 to 89 per cent. On the other hand, during the same period, the other open centres had occupancy rates ranging from 63 and 89 per cent. Although, still marginally averaging below full occupancy rates, overcrowding in these centres prevails. The physical structure of these centres at times prohibit the full utilisation of rooms therein. A case in point relates to larger rooms, which cannot be utilised fully as they are used to accommodate family members together to safeguard their privacy. Hence the occupancy rates depicted in Table 9 do not reflect the real situation where in reality, given Malta’s limited resources and space, it is very difficult to increase beds.

Table 9 - Bed Nights capacity at open centres for 2019

Description	Hal-Far Tent Village (HTV)	Dar Il-Liedna (DIL)	Hal-Far Open centre (HFO)	Malta Emigrants Commission (MEC) – Balzan	Malta Emigrants Commission (MEC) - Houses	Initial Reception Centre (IRC)	Peace Lab (PL)	Totals
Total number of beds during the year (average capacity)	1,044	58	128	132	160	531	40	2,093
Total number of persons accommodated at the centres between Jan.- Dec. 2019	2,424	127	245	140	148	4,162	32	7,278
Average of bed nights per person	127	129	169	217	350	42	331	87
Bed nights occupancy rates	80.6	77.3	88.5	63.0	88.8	89.3	72.5	82.5

Source: AWAS.

4.2.7 The statistics also show that the longest stays were within the centres not run by AWAS. The reason for this situation relates to the higher turnover of residents at AWAS centres. On the other hand, the longer stays at the other open centres arises since these centres accommodate the more vulnerable persons, such as families, single parents and minors.

4.3 At end 2019, well-being and preparation for asylum seekers' integration within society were not appropriately prioritised

4.3.1 It is considered important that AWAS contributes considerably more to the well-being and preparation for asylum seekers' integration within the Maltese community. This comment applies even though specific processes related to facilitating integration fall within the remit of Ministry for Justice, Equality and Governance. The need for a more direct contribution regarding the well-being and preparation for integration, stems from the practical reality that most asylum seekers will remain in Malta for a considerable period – irrespective of their protection status. Discussions with national entities as well as literature reviews and NGO documentation enabled the National Audit Office (NAO) to elicit the key elements affecting the well-being of asylum seekers within open centres. The following refers:

- a. **Lack of interpretation** – A significant barrier faced by asylum seekers in open centres relates to the limited availability of professional interpreters. Insufficient interpretation hampers asylum seekers’ ability to communicate particularly with public authorities, NGOs and locals. The GREVIO 2020²⁵ Report which was produced under the auspices of the Council of Europe, highlight that interpretation limitations are evident at Mater Dei Hospital, particularly following the cessation of the previously available hospital’s migrant unit, which was resourced with trained medical interpreters.
- b. **Psycho-social Services** - Following the experiences encountered by asylum seekers in their homeland and within their new environment, the demand for psycho-social services becomes more pronounced. The AIDA 2019 Report laments the non-identification of the asylum seekers requiring intervention as well as the lack of full-time mental health professionals.

4.3.2 A step in the right direction resulted when AWAS initiated the provision of therapeutic services in mid-2019. The Unit comprised six Assistant Psychology Officers (APOs), one Senior Psychology Officer (SPO), two counsellors, one psychologist and four interpreters (French, Somali, Tigrinya and Arabic). The Assistant Psychology Officers conducted assessments in the following centres in 2019, in IRC, HTV, HFO, DIL as well as Safi detention centre.

4.3.3 The role of APOs is to conduct psychological assessments which are compiled of the following:

- a. Socio-demographic questionnaire aimed at gathering information about the clients’ psycho-social wellbeing prior to migration, during their migration journey and post-migration.
- b. Hopkins Symptoms Checklist which is a psychological tool that assesses for signs of anxiety and depression.
- c. PCL-5 which is a psychological tool that assessed for signs of post-traumatic-stress disorder.

4.3.4 In 2019, 543 psychological assessments were conducted whilst 115 interventions were carried out by staff from the therapeutic services unit. An APO was present in IRC and HTV daily (Mon-Fri) and in HFO and DIL on average three-four times a week. APOs visited Safi on average once a week to conduct assessments there.

4.3.5 Despite these activities, AWAS still consider that the number of professionals employed within this Unit requires to be augmented, at least by three senior officers. This recruitment should alleviate problems concerning waiting time to access this service and ameliorate the reach and quality of services.

²⁵ Source: The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), GREVIO November 2020 Report “Baseline Evaluation Report Malta”, page 15, paragraph 20.

- 4.3.6 Two APOs were assigned to work in HTV, two in IRC, one in DIL and one in HFO. The psychologist worked with clients who displayed serious psychological difficulties and had a history of hospitalisation. Counsellors were assigned to work in the different centres and with specific cohorts – one working with minors and women, and one working with adult males. In 2019, 64 clients were referred to the Unit’s psychologist, and counsellors had 61 and 57 referrals respectively.
- 4.3.7 Since this service was in its initial stages in mid-2019, this Office believes that the figures achieved were on the whole satisfactory. This Office anticipates a higher rate based on the Unit becoming better manned and the staff becoming more familiar with their clients.
- 4.3.8 **Activities** - The majority of centres do not offer any form of organised activities for residents, yet asylum seekers are able to freely leave the centre.²⁶ Nonetheless, AWAS facilitates a number of vocational training courses which are considered as useful for asylum seekers. Such courses include Maltese and English language training. Eligibility conditions vary between courses and generally reflect eligibility criteria for Maltese nationals.²⁷ These courses are not specifically organised for residents of open centres or within open centres unless NGOs take it upon themselves to organise such courses. AWAS made it clear that while the entity is disposed to facilitate and inform, the onus to attend courses and participate in activities remains fully on asylum seekers.
- 4.3.9 **Educational assessments and access to formal education** – Article 13(2) of the Refugees Act (Cap.420) states that asylum seekers shall have access to state-funded education and training. The Reception Regulations also states that asylum-seeking children are entitled to access the primary and secondary education system in the same manner as Maltese nationals, and this may only be postponed for up to three months from the date of submission of the asylum application. This three-month period may be extended to one year “*where specific education is provided in order to facilitate access to the education system.*” AWAS is entrusted to facilitate children’s assessment and placement within the national educational system.
- 4.3.10 The 2018 and 2019²⁸ AIDA reports lament the delay in access to education due to difficulties with the registration of asylum applications as well as the practical difficulties faced by asylum-seeking children in the absence of a formal assessment process to determine the most appropriate educational entry level for children. Moreover, the absence of preparatory classes; possible limited or no educational background and language difficulties is further conducive to increased hardships for children, with possible implications on their long-term development.
- 4.3.11 This Section highlighted weaknesses in crucial elements which contribute to the well-being of asylum seekers. These elements constitute the building steps towards an effective

²⁶ Source: AIDA, Country Report : Malta, page 51, 31 December 2018.

²⁷ Source: AIDA, Country Report : Malta, page 52, 31 December 2018.

²⁸ Source: AIDA, Country Report : Malta, page 60, 31 December 2019.

integration. The foregoing implies that public authorities and stakeholders need to, as far as possible, allocate more resources to enable the appropriate prioritisation of such issues, which in turn ensures that Malta is in a position to fulfil its obligations in accordance with the national and international legal framework.

4.4 Further co-operation and synergy are required between AWAS, Detention Services and MHSE entities

4.4.1 Pursuant to Legal Notice 205 of 2009 '*Agency for the Welfare of Asylum Seekers Regulations, 2009*', the Agency for the Welfare of Asylum Seekers (AWAS) should be the implementing entity in relation to national legislation and policy concerning the welfare of persons enjoying international protection and asylum seekers. In practice, AWAS manages reception facilities and open centres. More importantly, AWAS facilitates the delivery of services to asylum seekers and beneficiaries of international protection through referrals, information and training programmes and general access to service providers and practical assistance in the area of employment, housing, health, welfare and education.

4.4.2 Much of AWAS' work is contingent on policies taken at national government and the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) and on other entities such as the Detention Services for the time asylum seekers are within detention, awaiting for international protection status or to be returned. AWAS have no say in the processes and delays by the International Protection Agency in deciding cases of asylum seekers within the Initial Reception Centre (IRC) or open centres. Also AWAS' work is enhanced by Non-Governmental Organisations' (NGOs) and international and European bodies' contribution to the whole asylum process since these entities are integral in aiding asylum seekers with their legal rights, interpretation services and providing them with information and programmes related to their stay in Malta.

4.5 During 2019, AWAS increased its staff by 67 personnel over the previous year, but requires further recruitment, especially at managerial level

4.5.1 The current AWAS Chief Executive Officer (CEO) took over his role at the beginning of 2019. Faced with the new challenge of the resurgent boat arrivals, AWAS embarked on an evaluation exercise to address the staffing situation. There was dire need of recruitment to beef up already-existing sections and populate new ones which were deemed necessary. Table 10 refers.

Table 10 - Staff at AWAS (2018 to 2020)

Position	Staff as at end 2018	Staff as at end 2019	Staff as at March 2020	Additional Staff requested for 2020
CEO	1	1	1	0
Service Manager	1	2	2	3
Senior Psychology Officer (EU Project)	0	1	1	0
Clinical Psychologist (EU Project)	0	1	1	0
Assistant Psychology Officers (EU Project)	0	7	7	0
Counsellors (EU Project)	0	2	2	0
Welfare Officers (EU Project)	0	4	5 ²⁹	14
Unit Leaders	5	6	5	3
Project Executives	2	3	3	0
Executive	1	3	3	0
Coordinators	8	9	9	
Senior Administrator	0	0	0	5
Senior Technical Officer	0	0	0	
Social Workers	4	8	9	20
Administrators	5	10 ³⁰	12 ³¹	10
Senior Support Workers	0	14	13	0
Support Workers	63	74	72	0
Reception Facilities Officers	0	12	55	0
Handyman (Multi-Skilled Fitters)	4	4	4	0
Totals	94	161	204	55

Source: AWAS.

4.5.2 Table 10 shows the number and designation of the staff in 2019. As per Table 10, during 2019, AWAS increased its staff by 67 personnel over the previous year. There were considerable increases in middle management posts and reception facilities officers. It is worth noting that staff recruitment in relation to mental health issues was also dependant heavily on EU funds.

4.5.3 As shown in the Table 10, up to March 2020, AWAS increased its staff with a further 43 personnel over the previous year. However, AWAS recognises the need for further recruitment especially of social workers who play a pivotal role in the reception services.

²⁹ Includes four European Union (EU) funded personnel.

³⁰ Includes one EU funded personnel.

³¹ Includes two EU funded personnel.

4.6 The Quality Assurance Unit is in the process of being set-up at AWAS

4.6.1 A Quality Assurance Unit to monitor and enhance the performance of AWAS staff and their reception services was set up at the end of 2020.

4.6.2 The Quality Assurance Unit is mainly responsible for:

- a. evaluation of Reception Services to be in line with the European Asylum Support Office (EASO) reception guidelines and service indicators;
- b. internal monitoring of residences in accordance with the Social Care Standards Authority (SCSA) standards;
- c. handling of client complaints and other complaints related to services and operations; and
- d. the formulation of plans and recommendations for Reception Services.

4.7 Accommodation costs at open centres administered by AWAS varied from €14 to €52 per person per night

4.7.1 During 2019, the accommodation-related costs incurred in all open centres amounted to over €12 million. Various factors influence the costs per person per night (pppn), including the specific needs of residents accommodated at the centres. Economies of scale brought about by the number of residents or occupancy rates in centres also influence pppn costs. Another variable relates to whether the centre is operated by AWAS or by NGOs. With respect to the latter, this performance audit could only evaluate costs incurred by NGOs based on the allocation of public funds to these organisations. Table 11 refers.

4.7.2 The government accounts and the AWAS audited accounts served as the main sources of information for this Office to work out the costings related to operations, salaries, meals and per diem amongst the main categories. Other data was supplied by MHSE. Furthermore, since the information was compiled specifically for this exercise, certain costs had to be based on estimates.

Table 11 - Open centres costs (2019)

Description	Total Bed Nights	Meals Costs €	Other Costs €	Total Costs €	Meals average cost pppn €	Other average cost pppn €	Total average cost pppn €
Open centres:							
Initial Reception Centre (IRC)	173,038	695,618	4,036,632	4,732,250	4.02	23.33	27.35
Hal-Far Tent Village (HTV)	307,097	934,048	3,303,649	4,237,697	3.04	10.76	13.80
Hal-Far open centre (HFO)	41,368	100,981	869,472	970,453	2.44	21.02	23.46
Dar Il-Liedna (DIL)	16,355	104,031	745,966	849,997	6.36	45.61	51.97
Total	537,858	1,834,678	8,955,719	10,790,397	3.41	16.65	20.06
Non-AWAS open centres³²:							
Emigrants Commission	51,836	n/a	320,420	320,420	n/a	6.18	6.18
Balzan Home	30,345	n/a	106,489	106,489	n/a	3.51	3.51
Peace Laboratory	10,582	n/a	20,000	20,000	n/a	1.89	1.89
Total:	92,763	n/a	446,909	446,909	n/a	4.82	4.82
Total AWAS and non-AWAS open centres costs:	630,621	1,834,678	9,402,628³³	11,237,306	2.91	14.91	17.82
Other Costs:							
Per Diem (IRC, HTV, HFO, DIL)		n/a		850,890		n/a	
Per Diem (Non-AWAS open centres)		n/a		68,484		n/a	
Total overall costs:		n/a		12,156,680		n/a	

Source: AWAS and MHSE.

Note that 'pppn' refers to per person per night.

4.7.3 Table 11 highlights the range of costs incurred by Government to accommodate asylum seekers in open centres. At the outset, Table 11 distinguishes between costs incurred by Government in hosting and managing AWAS premises directly and expenditure incurred by the Government in term of grants to NGOs.

4.7.4 Government grants to NGOs - Government incurred an average expenditure of €4.82 pppn for operational costs, amounting to €446,909 in 2019 in funds to NGOs accommodating asylum seekers. The variance between this amount and the estimated average of €20.06 pppn incurred by Government-run open centres clearly highlights the financial burden assumed by NGOs to accommodate asylum seekers. During 2019, NGOs accommodated asylum seekers for 92,763 bed nights, which amount to 14.7 per cent of total bed nights spent in local open centres throughout this year.

³² These centres accommodate third country nationals (TCNs) who have either left IRC or were within the community.

³³ The total of €9,402,628 includes an amount of €1,070,655 as EU funds to be reimbursed. These EU funds relate to the provision of material aid and support services to assist asylum. This project involves the provision of material aid such as food (breakfast, lunch, dinner) and medical services and also support services such as social workers and support workers.

- 4.7.5 Value for money of AWAS-run open centres** – The NAO sought to assess the extent to which the cost incurred to run the four AWAS open centres fulfil value-for-money considerations. To this end, this performance audit compared the pppn costs of these centres with the bed-only rates (without meals, security and professional services) charged by local hostels, as advertised in the Malta Tourism Authority’s portal. The bed-only rate at an AWAS centre cost an average of €10.68 while that at a hostel or a two-star hotel was an average of €12. Although not a perfect comparison, the rate of €20.06 incurred by AWAS pppn which includes meals, security and professional services, compares favourably to the €12 rate charged per night on bed-only basis at local hostels and two-star hotels. This consideration is based upon the fact that AWAS provides meals, security, professional services including access to health, educational and psycho-social support for the length of their stay in the open centres. Furthermore, although not included within the €20.06, staying at an AWAS open centre implies the receipt of a per diem, unless the asylum seeker would be in employment, as well as easier access to family members and asylum seekers sharing the same background.
- 4.7.6** In total, the four Government-run open centres incurred an expenditure of over €10.7 million in 2019. The operational costs incurred within AWAS run open centres reflect the overheads associated with these residences. Table 11 shows that Hal-Far Tent Village incurs the lowest operational costs pppn. This phenomenon is in part attributed to the physical composition of the residences, namely mobile homes, which are not as demanding on maintenance costs as the other Government-run open centres. Overhead costs are also significantly affected through administrative and other support staff. The relatively high costs pppn incurred at Dar il-Liedna is mainly associated with the special requirements of the vulnerable people this residence accommodates, where in cases, this also includes children and young persons.
- 4.7.7** Another level of analysis of the financial information presented in Table 11 relates to the range of pppn costs within Government open centres. The number of bed nights accumulated by the respective Government-run open centres also influence the pppn costs. Economies of scale also influence pppn costs in each of the open centres. This mainly occurs as respective centres’ fixed costs are divided by a higher number of bed nights, which in turn bring down unit costs.
- 4.7.8** Table 11 also provides information on the costs incurred with respect to meals supplied to asylum seekers residing in AWAS run open centres. The rate for breakfast is €1.25 excl. vat, Lunch €1.55 excl. vat, Dinner €2.45 excl. vat. This does not mean that every asylum seeker consumes all three meals daily as this is done through a daily booking system – hence the disparity projected by Table 11 in the pppn costs relating to meals. This audit was not aware of serious complaints relating to the provision of meals, and consequently it can be concluded that the costs incurred by Government regarding the supply of these meals constitute value for money as even when the three daily meals are considered collectively, their cost still amounts to around a modest take-away meal.

4.7.9 Table 12 also portrays information about daily allowances received by asylum seekers residing in open centres. Asylum seekers who are in employment are not entitled to the per diem allowances. The daily allowance system operates round a three times registration per week process, at set times of the day; these vary slightly depending on the centre. Registration has three purposes: qualification for the daily allowance; security of the bed allocated; to prevent those working from receiving the daily allowance.

4.7.10 The payments within the system are based on the resident's status and any dependent children, where payments are reviewed on a weekly basis. At the end of each registration or on a weekly basis, the database is updated from the physical signing sheets and at the end of the four-week cycle payment lists are produced. Table 12 shows the different rates of the per diem allowances.

Table 12 - Daily Allowances

Payment Status	Daily Rate	Payment at 28 Days
	€	€
Asylum Applicant	4.66	130.48
Child Only	2.33	65.24
Temporary Humanitarian Protection	4.66	130.48
Refugee receiving no social security benefits	4.08	114.24
Rejected Asylum-seeker (granted only in exceptional circumstances to vulnerable individuals)	3.49	97.72
Returned Asylum-seeker (granted to asylum seekers sent back to Malta from other Member States (Dublin transfers)	2.91	81.48
Single Parent	4.66	130.48

Source: AWAS.

4.8 Conclusion

4.8.1 This Chapter has shown that the cost of running open centres as accommodation for asylum seekers amounts to over €12 million. Part of this amount relates to grants provided by Government to NGOs who also accommodate asylum seekers in their own residents. Although only catering for 14.7 per cent of the bed nights spent in open centres in 2019, the foregoing underlines the financial and social commitment of NGOs in providing support to this issue of national importance.

4.8.2 This performance audit concluded that the costs incurred by Government to host an asylum-seeker amount to around €20 per night. While this amount is considered reasonable, the AWAS-run centres are characterised by over-crowding, which in turn affect the environment and conditions therein. To a large extent, this situation is brought about by the sporadic influx of asylum seekers which, on many occasions, stretch available resources to the limit. Moreover, open centres are operating at or close to capacity. In cases, this gives rise to situations whereby asylum seekers are detained for longer periods than necessary as there is no room for them within open centres.

- 4.8.3 Despite the relatively significant staffing costs incurred by Government, the administrative and other professional services are still not at the required level. This influences the level and quality of services that can be offered to asylum seekers. This state of affairs may reduce opportunities for asylum seekers to expedite their integration process. Given that asylum seekers may be granted protection status and that return is a significantly long and often problematic process the opportunity clearly exists for open centres to offer more services aimed at further facilitating the integration of asylum seekers within Maltese society.

Chapter 5 | The Office of the Refugee Commissioner (RefCom) (*now known as the International Protection Agency*)

5.1 Introduction

5.1.1 Up to August 2020, asylum seekers, third country nationals (TCNs) or stateless persons who wished to seek protection status could do so through the Office of the Refugee Commissioner (RefCom). Since, the 7 August 2020, this role no longer exists in the law. The International Protection Act now refers to the International Protection Agency (IPA). This performance audit focused on the period up to 2019; consequently, for practical reasons, this Report will continue to refer to the Office of the Refugee Commissioner as the entity, which at the time was responsible to receive, process and determine applications for international protection in Malta and bound by the obligations assumed by Malta under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, as well as its obligations under European law.

5.1.2 The Office of the Refugee Commissioner provided information about the asylum procedure to persons who expressed their intention to make an application for international protection in Malta. Following the lodging of the application for international protection, the Office of the Refugee Commissioner conducted a check pursuant to Dublin regulations to verify whether Malta is indeed the Member State responsible for examining the application pursuant to the Dublin Regulation. The Refugee Commissioner was bound by the Procedural Regulations (SL 420.07)³⁴ to conclude the examination procedure within six months of the lodging of the application. This period could be extended to nine months when complex issues were involved, when a large number of third-country nationals simultaneously applied for international protection or when the delay could clearly be attributed to the failure of the applicant to comply with his obligations. This time limit could be extended by a further three months to ensure an adequate and complete examination of the application for international protection. However, the examination procedure could not exceed the maximum time limit of twenty-one months from the lodging of the application.

³⁴ Subsidiary Legislation 420.07, procedural standards for granting and withdrawing international protection regulations.

5.1.3 As this Chapter will discuss further on, most of the decisions taken by the Office of the Refugee Commissioner (RefCom) were, in practice, not taken before the lapse of six months. As will be outlined within this Chapter such state of affairs was inevitable.

5.2 EASO was essential in assisting RefCom especially due to the heavy, pending workload

5.2.1 The year under review, 2019, was characterised by a considerable increase in numbers of TCNs applying for international protection with the Office of the Refugee Commissioner. The reason for such a marked increase was mainly due to the 3,405 irregular immigrants arriving by boats, which was more than double the 1,445 boat arrivals in 2018. One must also bear in mind that the RefCom did not process only applications from such arrivals but also those of other persons who would have arrived in Malta regularly or via other means (i.e. arrived in Malta irregularly but not following a search and rescue operation). Such a sharp increase meant that, in view of lack of recruitment, the RefCom's staff ended up with a backlog in applications. The RefCom stymied the backlog, improved operational deficiencies and circumvented the lengthy public service recruitment procedures through the temporary deployment of the European Asylum Support Office (EASO) interim staff and Member State experts. The NAO positively notes that this was a result of the Malta Operational Plan signed between the Ministry for Home Affairs and National Security (MHAS) and EASO for the period June till December 2019.

5.2.2 **Recent Developments:** Administrative capacity concerns within the new Agency prevailed up to the time of writing this report. While, the new Agency contends that the operational plan referred to in the preceding paragraph was renewed for 2020 and 2021, the Agency remained reliant on these same operational agreements, which necessitated EASO support in the area of processing of applications for international protection, during the registration and lodging of the application, the Dublin procedure, interviews and the decision-making process through the drafting of Evaluation Reports on individual applications submitted to IPA.³⁵

5.3 In 2020, the RefCoM became an Agency to facilitate recruitment and improve working conditions

5.3.1 During interviews with RefCom management, the proposed structure of the new International Protection Agency as well as recruitment was discussed. The Agency was planned to move to new premises since it was still operating from its previous premises, which was structurally unsuitable to host a large number of members of staff and applicants. Such a move took place in the first week of March 2021.

³⁵ Source: 2019 Operational & Technical Assistance Plan agreed by EASO and Malta, page 3, 24 June 2019.

5.3.2 The Agency was planned to have a staff complement of around 66 persons in order to execute the duties efficiently and reduce the pending backlog. Up till end 2020, there were 43 posts which were yet to be filled. Interim personnel recruited by the European Asylum Support Office (EASO) and Member State experts deployed within the framework of the aforesaid Malta operational plan signed by MHAS and EASO, were also planned to fill in posts for 2020 and 2021, until recruitment was to be completed. It bears pointing out that a human resources (HR) plan whilst technically approved by the Ministry for Home Affairs, National Security and Law Enforcements (MHSE), does not necessarily translate into filled positions for a number of reasons including essentially;

- a. the lack of suitable applicants;
- b. budgetary constraints;
- c. low salary scales that are not commensurate with the particular duties and responsibilities; and
- d. the lack of public interface making the RefCom relatively unknown to the general public.

5.3.3 **Recent Developments:** The IPA is currently in discussion with unions regarding the adoption of a collective agreement. Whilst authorisation to engage new staff as per public administration recruitment directives has been granted, there are still impediments to such recruitment. In this regard, discussions are ongoing between MHSE, the Office of the Prime Minister, and the Ministry for Finance and Employment.

5.4 During 2019, RefCom received twice as many new asylum applications as in 2018

5.4.1 In 2018, RefCom received 2,045 new applications for processing. It is significant to note that 1,474 applications (72.1 per cent) originated from TCNs who would have entered Malta via the Schengen system, or arrived in an otherwise irregular manner, while 571 applications (27.9 per cent) were from asylum seekers who came to Malta irregularly by boat.

5.4.2 During 2019, the situation was different since there were numerous boat arrivals. Applications lodged by non-boat asylum seekers amounted to 1,362 (33.9 per cent of the new applications lodged in 2019, while 2,660 applications (66.1 per cent) were submitted by asylum seekers arriving by boat. It is important to specify that the year of application does not necessarily mean the year of arrival in Malta. Furthermore, when one compares the 2018 and 2019 figures, the workload of the RefCom doubled, thus prolonging the processing of applications as well. Table 13 provides the relevant figures for 2018 and 2019.

Table 13 - New applications received by RefCom during 2018 and 2019

Total/Percentages	New applications during 2018			New applications during 2019		
	Non-Boat	Boat	Total	Non-Boat	Boat	Total
Total	1,474	571	2,045	1,362	2,660	4,022
Percentages	72.1	27.9	100.0	33.9	66.1	100.0

Source: RefCom.

5.5 At the end of 2019, there were 3,574 pending applications to be processed by RefCom

5.5.1 Table 14 highlights all the applications at RefCom pending as at end 2018 and 2019 and the year they were lodged.

Table 14 - Pending applications at RefCom as at end 2018 and 2019

Year application lodged with RefCom	Pending applications as at end 2018			Pending applications as at end 2019		
	Regular & Irregular (Non-Boat)	(Boat)	Total	Regular & Irregular (Non-Boat)	(Boat)	Total
2013	1	0	1	1	0	1
2014	0	0	0	0	0	0
2015	0	1	1	0	0	0
2016	0	63	63	0	13	13
2017	4	297	301	0	117	117
2018	435	725	1,160	287	384	671
2019	not applicable	not applicable	not applicable	2,032	740	2,772
Total	440	1,086	1,526	2,320	1,254	3,574
Percentages	28.8	71.2	100.0	64.9	35.1	100.0

Source: RefCom.

5.5.2 At end 2018, pending applications consisted of 440 (28.8 per cent) from non-boat asylum seekers, while 1,086 (71.2 per cent) were from people arriving in boats. In 2019, there was a shift in the type of TCNs seeking asylum, since there was a substantial increase in asylum seekers arriving by boat (66 per cent of the new applications) in contrast to 2018. By way of policy, RefCom dealt with the applications by boat arrivals first. Hence, the pending applications, were mostly from non-boat arrivals, amounting to 2,320 (64.9 per cent) of the total pending ones. The remaining 35.1 per cent, 1,254, were from boat arrivals. It bears pointing out that boat arrivals usually require more government intervention in terms of basic needs than the non-boat arrivals; also, the boat arrivals usually arrive in Malta in larger numbers than the non-boat ones. Hence, RefCom prioritised the applications that were most urgent and needed immediate further action rather than acting on applications based on a chronological order.

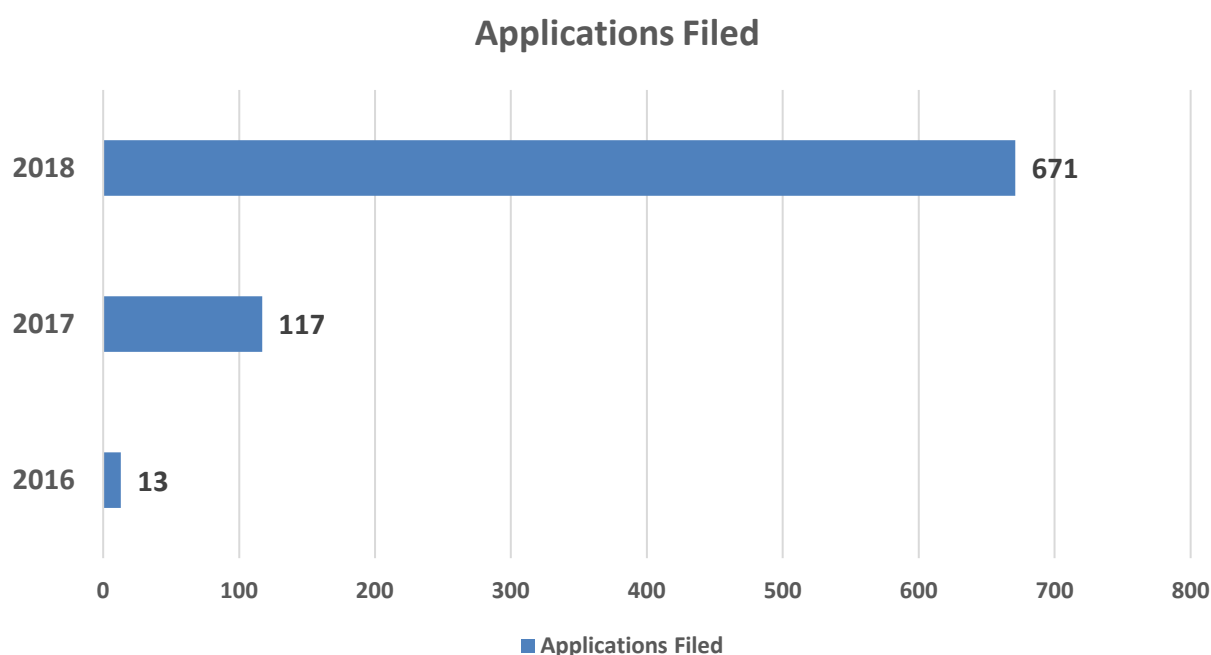
5.5.3 During 2019, RefCom received 4,022 new applications to process, double the amount of the previous year. RefCom staff, despite being aided by EASO interim staff and Member State-deployed experts, were not in a position to finalise their processing. This necessarily meant that there was a significant number of applications which remained pending until end 2019, namely 3,574 applications. This result illustrates that pending applications at RefCom more than doubled (increased by 2,048) over a period of 12 months since by end 2018 there had been 1,526 applications pending. This Office acknowledges that even in the event that a full complement is employed to process protection applications, a high number of applications

would still result in operational delays. This implies that to date, the recently established IPA faces a constant challenge to balance out three critical interrelated variables namely, staffing levels, process efficiency and rates of applications.

5.6 As at end 2019, there were over 800 applications pending from previous years

5.6.1 According to Eurostat data, the volume of cases awaiting a final decision increased by over 300 per cent between January 2016 and March 2019, that is, from 715 to 2,195. Until 2019, RefCom had not established the status of over 800 applications as represented in Chart 2:

Chart 2 - Cases filed between 2016 and 2018 and awaiting a final decision at end 2019



Source: RefCom.

5.6.2 The reasons for such delays were various and mainly related to complications with the individual cases such as lack of documentation from the applicants' side or necessary examination of further documentation that would have been produced by the applicants. Such delays point towards certain considerations:

- a. RefCom human resources were frequently stretched to the limit.
- b. While acknowledging that the asylum process is very tightly regulated, the opportunity exists to re-evaluate the efficiency of some of the processes requiring management endorsement.
- c. Delays and undecided outcomes make the asylum seekers' personal and family situation more challenging since they would not have been in a position to initiate, plan or even benefit from any steps towards integration.

5.6.3 Further to the last point, this Office tried to establish whether RefCom acted upon complaints received by asylum seekers concerning such delays. The RefCom contended that while most of the complaints related to delays and were received via emails, these were not recorded as they were considered a routine part of the process. RefCom noted that it was not uncommon to receive several emails from the same applicant asking about the expected timeframe for a decision. RefCom further noted that, most complaints regarding delays were submitted by applicants whose procedure is still within the legal timeframes established by law. Complaints which were not related to delays were investigated and addressed.

5.7 Delay in RefCoM decisions was detrimental to both applicants and government expenditure

5.7.1 While the Refugee Commissioner was required to conclude cases and issue decisions within six months of the lodging of the application, the maximum time limit allocated through the amended Procedural Regulations is in fact 21 months. The time limit is affected by complex issues of facts or law, a large number of TCNs applying for international protection simultaneously, failure of the applicant to comply with his obligations, and when the examination procedure cannot be concluded due to an uncertain situation in the country of origin. While the specific legislation cites ten specific reasons as to why extensions can be resorted to, including in circumstances where heavy workloads at International Protection Agency (IPA) prevail, this Office believes that, the six months should have been adhered to in most cases rather than the exception, as the current situation shows. While this Office acknowledges the efforts by RefCom, and subsequently the IPA, to strengthen its administrative capacity, the difficulties and challenges related to staff recruitment, referred to above, and the ensuing operational matters is resulting in such extensions being repeatedly resorted to. The data collated by the National Audit Office (NAO) with reference to the time taken to issue a decision by the RefCom will be discussed further on within this Chapter.

5.7.2 NAO is concerned that the longer it takes to determine an asylum application carries various consequences and has a detrimental effect on the applicants and all the public entities involved in the provision of services to the asylum seekers.

5.7.3 Such consequences involve primarily the psychological effects on the applicants due to his/her inability to plan his/her future, the effects on family dynamics, possible delays in accessing educational and social resources as well as effects on job acquisition and stability.

5.7.4 Furthermore, it heavily affects the applicant's next steps within the asylum process, which generally involves other Maltese public entities such as the former Refugee Appeals Board (RAB), now known as the International Protection Appeals Board and Social Security Department. Moreover, delays at the application review stage implies that integration efforts are also extended.

5.7.5 From a government point of view, the time taken to review international protection applications affects public expenditure not only due to the possibility of asylum seekers staying longer within detention and open centres when, in theory at least, they should have been returned to their country of origin, but also in terms of general operational planning and ensuing implementation. Moreover, there exists the possibility that resettlement and relocation prospects of applicants could also end up being jeopardised as such possibilities would not be available until such persons are registered as asylum applicants or are granted international protection. The Immigration Police and the Foreign Ministry would not be in a position to take the required action as an asylum seeker seeking international protection cannot be refused adequate consideration and closure of his /her case. Furthermore, there exists the risk that such asylum seekers, who would have been awaiting a decision for several months or years, would be more difficult to trace. Table 15 present a brief definition by type of decision taken.

Table 15 - Definitions of decisions by RefCom

Type of Decision	Definition
Administrative Closure	A closure which is not based on international protection grounds as established by law. For instance, in cases where the applicant dies before a decision on his/her case is reached OR the applicant shows his/her intent to apply for international protection as per law but he/she does not lodge the application or the applicant lodges the application but is relocated to another European Union (EU) Member State before a decision is reached on his case.
Dublin Closure	The applicant is the responsibility of another Member State and that he/she is to be transferred there in accordance with the Dublin Regulation.
Explicitly Withdrawn	A decision which is issued after an applicant explicitly declares that he/she is no longer interested in pursuing his/her application for international protection.
Implicitly Withdrawn	A decision which is issued after an applicant fails to adhere to his/her legal obligations (e.g. does not comply with reporting obligations, does not appear for a personal interview without a valid reason, and/or absconds) thus implicitly indicating that he/she is no longer interested in pursuing his/her application for international protection.
Inadmissible	A decision indicating that the application lodged by the applicant was not admissible in accordance with Article 24(1)(a) of the International Protection Act (e.g. when the applicant already had international protection from another Member State).
Refugee	The applicant is recognised as a refugee according to the grounds at law.
Rejection	The applicant does not meet the criteria to be granted international protection.
Subsidiary	The applicant is a beneficiary of subsidiary protection according to the grounds at law.
Temporary Humanitarian Protection	A local form of protection granted in accordance with Article 17A of the International Protection Act.
Withdrawal Refugee	Removal of protection.
Withdrawal Subsidiary	Removal of protection.
Withdrawn Temporary Humanitarian Protection	Removal of protection.

Source: RefCom.

5.8 Although RefCom managed to increase its decisions throughput by 11 per cent, new applications increased by 96 per cent in 2019

- 5.8.1 During 2019, new applications increased by 96.7 per cent over 2018, an increase of 1,977 applications. This increase was not mirrored in the number of concluded applications since RefCom concluded 2,215 asylum applications, or rather, 220³⁶ (11 per cent) more applications than the previous year of 2018. Table 16 shows the decisions taken by RefCom during 2019 in accordance with year that the applications were lodged.
- 5.8.2 The prolonging of the granting of international protection, due to whatever reason, hinders asylum seekers from moving on with one's life and planning their next steps. Such prolonging also shows that there could be:
- a. lengthy procedures which need to be rectified especially when the influx of boat arrivals is onerous;
 - b. possible information gaps along the processing stage leading to the former RefCom and, now, the recently established IPA requiring more time to conclude the examination and take a decision on an application; and
 - c. the need to invest in competent staff that is specifically trained in asylum procedures.
- 5.8.3 The recently-established IPA contend that, while the Agency is revisiting procedures to ensure that process efficiency, limitation at law exist as each application must be fully subjected to its due process.

³⁶ During 2018 RefCom registered a total of 1,995 decisions.

Table 16 - Decisions taken by RefCom during 2019 by year when application was lodged

Year application lodged with RefCom	All RefComs decisions (January to December 2019)											Total	
	Administrative Closure	Dublin Closure ³⁷	Explicitly Withdrawn	Implicitly Withdrawn	Inadmissible	Refugee	Rejection	Subsidiary	Temporary Humanitarian	Withdrawal Refugee	Withdrawal Subsidiary		Withdrawal Temporary Humanitarian Protection
Year of lodging an application not available	50	4	5	12	18	13	3	11	5	1	9	13	144
2015	-	-	-	-	-	-	-	1	-	-	-	-	1
2016	-	-	1	3	41	-	5	-	-	-	-	-	50
2017	-	-	-	2	82	11	21	70	1	-	-	-	187
2018	2	103	10	116	34	13	58	153	7	-	-	-	496
2019	127	610	26	64	213	19	160	117	1	-	-	-	1,337
Total	179	717	42	197	388	56	247	352	14	1	9	13	2,215
Percentages of totals	8.1	32.4	1.9	8.9	17.5	2.5	11.2	15.9	0.6	0.0	0.4	0.6	100

Source: RefCom.

³⁷ These cases are the responsibility of another Member State.

5.9 Dublin Closures, Inadmissible cases, and pre-2018 cases constituted substantial percentages related to the 2019 decisions

5.9.1 As noted in Table 16, in 2019, RefCom concluded 2,215 cases. Approximately 50 per cent of the decisions taken during 2019 related to Inadmissible and Dublin Closures. The figures in Table 16 show that a high percentage (32.4 per cent) of these cases, 717 cases, were Dublin cases. The cases falling within this category are usually quite straightforward to decide since data on such applicants is already available within the European Union (EU) databases. Another significant portion of the cases, 388 cases (17.5 per cent) were deemed inadmissible. The large number of inadmissible cases confirmed RefCom’s claim that there were numerous cases whereby third country nationals try to seek international protection in Malta despite the fact that they would already have been granted international protection in another Member State.

5.9.2 Pre-2018 cases constituted 382 decisions (17 per cent of the decisions which were decided in 2019) indicating that some cases are indeed complex and may depend on third parties for documentation to be provided. The 17 per cent is referring to those cases for which no date of lodging was made available and to those lodged between 2015 and end 2017. Such a significant percentage could also be indicative of the need for a long-overdue better prioritisation of cases and improved operational procedures namely in terms of more expedient vetting of international protection applications – a situation which is currently being addressed.

5.9.3 The ‘*Refugee*’, ‘*Subsidiary Protection*’ and ‘*Temporary Humanitarian*’ decisions amounted to 56 (2.5 per cent), 352 (15.9 per cent) and 14 (0.6 per cent) respectively of all decisions taken during 2019. This audit’s scope did not cover issues related to the type of decisions awarded. Consequently, NAO cannot comment on the type of decisions by category.

5.10 In 2019, RefCom took between nine and twelve months to conclude decisions which allocated international protection or were inadmissible

5.10.1 During 2019, on average, RefCom required between two to twelve months from the lodging of applications to formalise decisions. Table 17 refers. This Table excludes 144 decisions taken during this year due to the unavailability of the application lodging date as already outlined in Table 16.

5.10.2 Table 17 also indicates that 238 (11.5 per cent) decisions taken during 2019, referred to applications lodged prior 2018. Applications with an *'Administrative Closure'* and *'Dublin Closure'* decisions, on average took nearly three months to be concluded which is understandable as these cases are deemed to be quite straightforward cases since the relevant information is usually much more easily available. *'Explicitly Withdrawn'*, *'Implicitly Withdrawn'* and *'Rejection'*, on average took nearly six months to be concluded signifying a reasonable amount of time allocated to such cases. RefCom contended that, in such cases, when it was concluded that the applicant has withdrawn the application, absconded or has not complied with the legally prescribed obligations, a decision to discontinue an application, is generally taken within a matter of days.

5.10.3 The applications which took longest to be decided were those, which, due to their nature, are the most difficult to determine since they result in or thwart international protection from being granted, namely the *'Inadmissible'*, *'Refugee'*, *'Subsidiary Protection'* and *'Temporary Humanitarian Protection'* categories. These four categories constituted 763 cases (36.8 per cent of all decisions taken during 2019) and required an average of between nine months to almost 12 months to conclude. In accordance with the law (Subsidiary Legislation 420.07 [6.5(b)]), in these cases, RefCom was still obliged to inform the applicants concerned within a reasonable time of the reasons for the postponement in the examination procedure or why the complexities of their cases merited extensions to the six-month period prescribed by legislation.

5.11 The Office of the Refugee Commissioner revised processes and prioritised cases which were deemed routine and most in need of protection

5.11.1 The incumbent Refugee Commissioner, appointed in October 2019, recognised the need to revise processes which were lengthy and inefficient. In line with European standards, the RefCom revised the interview and assessment templates in order to process cases more efficiently and in order to execute a proper individual assessment based on facts and the appropriate legal analysis.

5.11.2 RefCom confirmed that priority was given to vulnerable applicants or those in need of special procedural guarantees. Applications lodged by applicants claiming to be Bangladeshi nationals or Moroccan nationals, and other designated safe countries of origin, and applicants who applied for protection after being issued a removal order by Immigration Police were also prioritised in 2019.

Table 17 - Duration of RefCom decisions (2019)

Year application lodged with RefCom	All RefComs decisions (January to December 2019)													Total
	Administrative Closure	Dublin Closure	Explicitly Withdrawn	Implicitly Withdrawn	Inadmissible	Refugee	Refugee Rejection	Subsidiary	Temporary Humanitarian	Withdrawal Refugee	Withdrawal Subsidiary	Withdrawal Temporary Humanitarian	Protection	
2015	-	-	-	-	-	-	-	1	-	-	-	-	-	1
2016	-	-	1	3	41	-	5	-	-	-	-	-	-	50
2017	-	-	-	2	82	11	21	70	1	-	-	-	-	187
2018	2	103	10	116	34	13	58	153	7	-	-	-	-	496
2019	127	610	26	64	213	19	160	117	1	-	-	-	-	1,337
Total	129	713	37	185	370	43	244	341	9	0	0	0	0	2,071
Average days taken for a decision	85	73	171	172	266	269	166	358	284	not applicable	not applicable	not applicable	not applicable	182

Source: RefCom.

5.12 During 2019, each concluded case cost RefCom an average of €714.21

5.12.1 During 2019 the total cost of processing asylum applications amounted to €1,581,977. This financial information was sourced from Government Accounts. Table 18 refers.

Table 18 - Costs incurred by RefCom to process applications (2019)

Description	Total Actual Cost €	Percentage of total cost
Salaries of RefCom staff	880,487	55.7
Professional services	349,564 ³⁸	22.1
Administrative services	351,926	22.2
Total costs	1,581,977	100.0
Total concluded cases in 2019	2,215	
Average cost per concluded applications	€714.21	

Source: RefCom.

5.12.2 Table 18 shows that the total cost incurred by RefCom during 2019 amounted to €1,581,977. These costs related mainly to fixed costs such as salaries of public service officers employed by the entity. From a purely financial point of view, RefCom's costs were dependant on the efficiency of the application review process. Consequently, the longer a case to be decided, the higher the costs. Moreover, costs would have continued to escalate beyond RefCom's budget since Government would have been obliged to accommodate applicants – charges which would be incurred by other government entities.

5.13 Conclusion

5.13.1 RefCom, which eventually became IPA, played a critical role when processing applications for international protection status. The examination of these applications touches on legal and humanitarian aspects as well as administrative efficacy in terms of consistency and fairness in the application of policies and procedures. These two elements are not mutually exclusive and moreover, they also have a bearing on national socio-economic factors. As a main cog in the asylum process, it was imperative that RefCom maintained a strong position to execute its mandate efficiently and effectively. The year reviewed for the purpose of this audit, 2019, proved to be a very challenging one for RefCom as it had to deal with an abnormal number of applications lodged in addition to the outstanding requests submitted in previous years.

³⁸ The €349,564 includes amounts for the International Protection Agency is currently implementing two EU co-financed projects under the Asylum, Migration and Integration Fund which both include interpretation costs. These are MT/2015/AMIF 1.13 *Improving and strengthening the asylum determination procedure through the training and funds for interpreters* and MT/2015/AMIF 1.14 *The setting up of a unit that deals with requests related to Regulation (EU) No 604/2013 of 26 June 2013 – establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national or stateless person (recast)*. In 2019, a total amount of €214,442 in relation to interpretation costs on both projects was paid by the Treasury.

- 5.13.2 This Chapter has shown that at the time of this review, RefCom lacked the administrative capacity to be able to keep up with the number of applications lodged. Given the complexities involved and the thoroughness of the asylum procedure, RefCom's shortage of officials transcended in processing delays – which in cases surpassed legal requirements. As a result, as at end 2019, there were 3,574 applications outstanding. 802 (22.4 per cent) of these applications date back between 2013 and 2018.
- 5.13.3 Apart from the legal and administrative implications, the prolonging of review procedures – albeit through issues beyond RefCom's control – has far reaching implications. Applicants for international protection remain uninformed on the status of their case, capacity related pressures at closed and open centres become increasingly more apparent and the repatriation process, where applicable, was delayed and perhaps rendered even more problematic. This implied that the likelihood increases that those persons who are not entitled to protection status still remain in Malta indefinitely.
- 5.13.4 In August 2020, RefCom became a fully-fledged Agency, the International Protection Agency. The main aim was to beef up its administrative capacity to enhance throughput. Moreover, there were plans that the main office was to move to more appropriate premises to improve working conditions which ultimately translates to enhancing customer interface. This move happened in the first week of March 2021.
- 5.13.5 Around ten months since RefCom was afforded Agency status, the number of officials employed has not increased – which means that the 66 members of staff planned, have still not materialised. EASO's input in this regard has been a critical factor to minimise application processing time. This audit acknowledges that some changes to work practices have been implemented. To varying degrees, the recently introduced procedures of fast-tracking some applications has contributed to reducing the number of outstanding applications. Nonetheless, these measures mainly relate to the more recent applications. By the time of drafting of this report, the International Protection Agency (IPA) was still lacking the capacity to expediently address the high number of outstanding applications for international protection.
- 5.13.6 The next Chapter of this Report discusses the appeals procedures. This is another important phase in the quest of granting international protection to asylum seekers since the vast majority of rejected applicants appeal to the International Protection Tribunal, previously known as the Refugee Appeals Board.

Chapter 6 | Refugee Appeals Board

6.1 Introduction

6.1.1 Should asylum seekers have their application rejected by the International Protection Agency (IPA), formerly known as Office of the Refugee Commissioner (RefCom), applicants can appeal through a mechanism governed by the International Protection Appeals Tribunal (IPAT), formerly known as the Refugee Appeals Board (RAB). Additionally, asylum seekers who believe that they are entitled to refugee status rather than ‘Subsidiary Protection’ or ‘Temporary Humanitarian Protection’, or who want to appeal the Dublin decision taken by IPA, can also put forward their appeal with the IPAT. The performance audit will be referring to the RAB rather than IPAT since this review is concerned with 2018 and 2019. Figure 3 refers to the procedures adopted by the RAB as at end 2019.

6.1.2 Most of the RAB decisions tended to confirm the RefCom’s recommendations. As prescribed by law, the RAB’s decision was final. Following a negative decision, the police officers delegated by the Principal Immigration Officer would commence procedures to return former applicants to their respective countries of origin. Appellants may have attempted to overturn the RefCom’s decision through a human rights claim pursuant to the European Convention on Human Rights (ECHR) and/or the Maltese Constitution on points of law related to violation of some fundamental human right. Appellants, at times also seek judicial redress through the ordinary courts by way of judicial review of administrative action (Section 469A of Chapter 12 of the Laws of Malta).

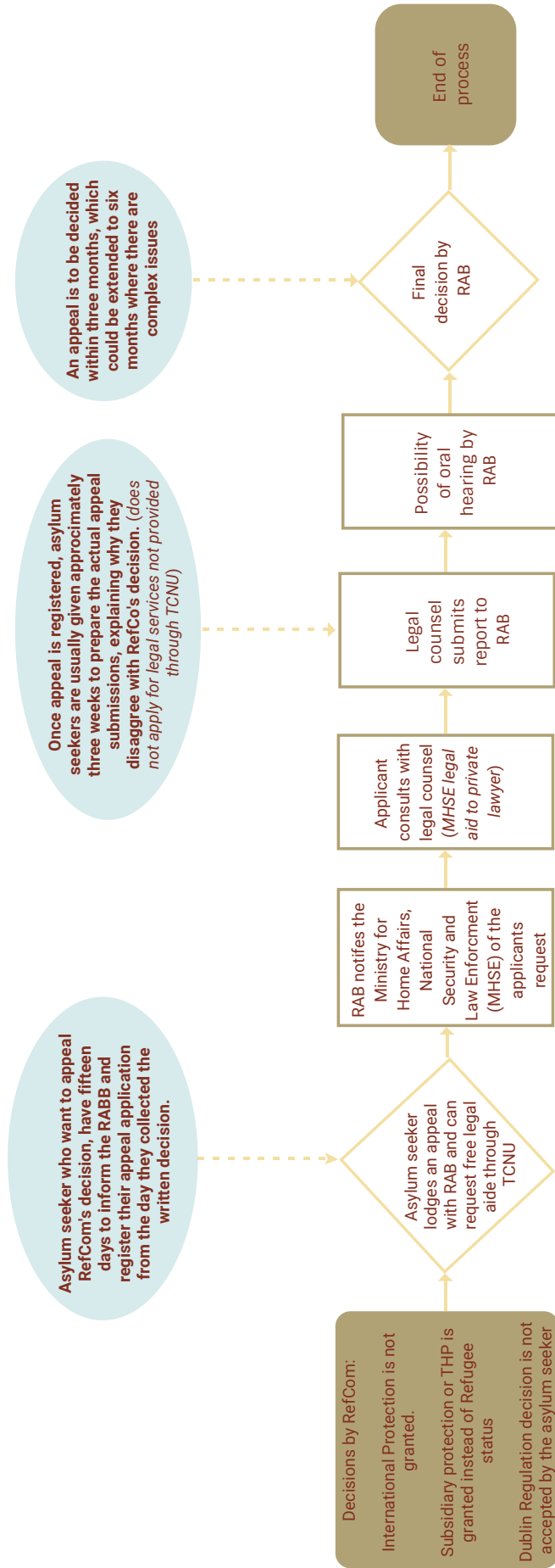
Table 19 - Cases overview of work at RAB (2018 and 2019)

Year	New Appeals submitted at RAB	Decided Appeals at RAB	Pending Appeals at RAB
2018	929	717	489
2019	764	586	668

Source: RAB.

6.1.3 Table 19 shows data in terms of new cases that were received in 2018 and 2019 as well as the number of cases that were decided and pending as at end 2018 and end 2019. The decided and pending categories were not necessarily cases lodged in the same year.

Figure 3 - RAB procedures (2019)



6.1.4 This Chapter sought to determine the extent to which the RAB fulfilled its legal obligations and provided efficient and effective remedy. Against this backdrop, this Chapter covers the following aspects:

- a. the suitability of the Board members to fill their role;
- b. the lack of administrative staff and team members aiding the Boards' operations;
- c. the procedures related to RAB sessions and meetings;
- d. the delays in decisions; and
- e. the small pool of Legal Aid resources which prevailed for a brief period.

6.2 Most Board members lacked adequate legal background and experience in asylum matters

6.2.1 The Board set up in terms of the Refugees Act (CAP. 420) was composed of four Chambers; the fourth was set up in April 2019. Its remit was to hear and uphold or overturn appeals against recommendations issued by the Refugee Commissioner. Each Chamber consisted of a chairperson and three members who were appointed for three years or until their successors were appointed. One member unofficially fulfilled the role of secretary of the Chamber. The members of the Chambers consisted of a chairperson (lawyer) and another member from the legal profession; the other two members would have had different and varied professional backgrounds such as in the education and employment sectors within public entities. The Chambers were nominated by the Office of the Prime Minister, in terms of Article 5 of the Refugee Act and were chosen accordingly:

“persons of known integrity who appear to him to be qualified by reason of having had experience of, and shown capacity in, matters deemed appropriate for the purpose:

Provided that at least one of the members of the Board shall be a person who has practised as an advocate in Malta for a period or periods amounting, in the aggregate, to not less than seven years:

Provided further that one of the members shall be a person representing the disability sector”.

6.2.2 The RAB Chairs deemed such open criteria not amenable to the expertise essential to rule on such technical and life-changing matters since there was no onus or requirements for the Board members to possess any direct educational or legal preparation or experience in asylum matters. This lack of familiarity shown by the members in legal interpretation of the appellants' cases resulted in the chairpersons or members from the legal profession within the Chambers to practically decide the outcome of the appellants' cases on their own, with the rest of the Chamber simply endorsing the decisions.

6.2.3 Some of the Board members received training in asylum legislation and procedures through the European Asylum Support Office (EASO) and the United Nations High Commissioner for Refugees (UNHCR), specifically on the Dublin III legislation in 2017, attendance for which was voluntary. However, the Board chairpersons did not provide concrete evidence of the attendance, the frequency and efficacy of the training and they made it clear that more training was required especially for new members and those who were not legal professionals.

6.3 Recruitment of administrative and professional staff to facilitate the RAB's operations was required

6.3.1 The duties of the administrative staff of the former RAB were varied and wide-ranging. Whilst, they were not present at the RAB sessions, they carried out follow-up work of the Chambers such as upkeep of files and data inputting, follow-up through provision of forms and information to the appellants, general correspondence with asylum seekers and RefCom, setting meetings with asylum seekers, keeping information for the Board and distributing cases amongst the Chambers.

6.3.2 The administrative staff included five clerks and a messenger who also covered work related to the Immigration Appeals Board. At the time of the audit, the administrative staff were mostly quite new to the office set-up since there had been staff turnover. Furthermore, there was no officer occupying the role of Executive Secretary of the Board and overseeing the work of the administrative staff since the person who fulfilled the role had resigned in 2018 and had not been replaced since. This resulted in the staff, especially those relatively new, working without any clear guidance or procedures and working differently according to the needs of the RAB chairs.

6.3.3 The RAB chairpersons indicated a lack of a pool of interpreters, research assistants and/or officers that could have qualitatively assisted the Board in its hearings or in researching and drafting decisions. Nonetheless, formal requests for recruitment or memos drawing the attention to shortages in permanent key staff roles in administration and otherwise were not put forward by the Chairs to the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) to enable the latter to initiate the recruitment process. This Office deems this state of affairs a missed opportunity as the whole decision-making process could have been improved by making it less onerous on the Chairpersons.

6.4 RAB sessions were not carried out according to uniform procedures and at the same frequency across all Chambers

6.4.1 An asylum seeker had two weeks' time to start the appeal procedure through written submissions to the Refugee Appeals Board, from the day the decision of the Refugee Commissioner would have been received. The Refugee Appeals Board did not accept late appeals. The law did not give a deadline for the conclusion of any particular case, except for inadmissible and/or manifestly unfounded cases; in such cases the accelerated procedure

applied whereby the Chairperson had a three-day time limit, to carry out a review of the RefCom's recommendation.

The Chambers did not follow any written procedures or harmonised Standard Operating Procedures (SOPs)

- 6.4.2 Chambers Chairs could have decided to hold an oral hearing thus providing the appellants with an opportunity to put forward any new information or documentation that would not have been available to him/her whilst the RefCom was deciding the case.
- 6.4.3 The audit tried to establish whether there were formal preparations for oral hearings held by the Board. Upon a request for information and records, the National Office Audit (NAO) were not provided with concrete information on the number of oral hearings that were held in 2019 and which cases were deemed worthy of oral hearings or not. This Office was not in a position to establish if and how many times the relevant Chamber would have met with the appellant for an oral hearing. The current Chair of the IPAT contends that the Board would hold an appeal worthy of a hearing when there was a particular point of law or fact which needed clarification, or where there was a specific request by appellant for an oral hearing. One of the Chambers held oral hearing for all cases it decided upon in 2019. Whilst acknowledging that the law provides for the Chairs' discretion whether to hold a formal oral hearing or not, such difference in procedures raises the question as to whether appellants are being given an equal opportunity to present their case.
- 6.4.4 This performance audit also established that there were no written procedures that guide the Chambers. The Chambers worked differently to determine decisions. There were Chambers which claimed that they met and actually discussed files together and agreed upon a decision. Other Chambers distributed cases and then agreed on decisions. The latter point shows that such practice meant that not all four members would have viewed the files deeply but relied on each other's opinions. The current Chair of the IPAT contends that this is a practice which is used even by the Court of Appeal and the ECHR and that it is legitimate for one member or two to look into the details of the case and report findings to their colleagues.

Record-keeping related to the RAB sessions was not made available to NAO

- 6.4.5 While the members of the Chambers who fulfilled the role of secretaries confirmed that their Chamber met frequently, no records were presented to NAO with the dates and times of these sessions. Furthermore, no fixed schedules and agendas showing what cases were to be discussed were made available to NAO. There were also no documented minutes since such minutes were taken informally and retained within the relevant Chamber. Moreover, information relating to cases that would have been discussed was included in separate files pertaining to different appellants, making it difficult to trace the timeline of the specific case and outcomes of meetings related to the case. MHSE contend that they restricted access

to Board processes and decisions, including minutes due to the confidentiality of these documents and to protect appellants. NAO cannot agree with this position since various legislative provisions grant this Office reasonable access to such documentation to enable it to carry out its audit assignments.

6.5 Similar to RefCom, the issuance of appeals decisions were prolonged to the detriment of asylum seekers and increased costs for Government

- 6.5.1** There was no time limit set in law for the Board to take a decision prior to the set up of the IPA. The decision given by the RAB was binding on the parties. As mentioned within the RefCom Chapter, Paragraph 5.8.2, the considerable time in issuing the decision could have resulted in asylum seekers staying longer in Malta than they might have wanted without an official international protection status. For the asylum seekers, this could have incurred protection challenges and potentially increased their susceptibility to different forms of exploitation in relation to practical and social issues such as rent, job opportunities and tenure and social benefits.
- 6.5.2** From a Maltese government stance, their staying could have resulted in increased costs to provide adequate housing and basic needs over a long period since an asylum seeker cannot be removed from Malta whilst the final decision on his/her appeal is pending. Furthermore, an unfavourable outcome of the decision after a number of months and years, could mean that the authorities could be seeking return of asylum seekers who would have already settled in Malta; it would imply an unnecessary hardship for appellants and an extra burden on the authorities to trace them.
- 6.5.3** RAB decisions were categorised according to Table 20.

Table 20 - Categories of RAB decisions

Confirmed THP	The Office of the Refugee Commissioner concedes temporary humanitarian protection to applicants where it deems fit. This type of protection has been established through practice, not through law, and the Board does not have the remit to grant the Temporary Humanitarian Protection (THP). Appellants would generally claim that THP status is not sufficient for them, and that they should have been granted refugee status or subsidiary protection.
Dismissed Appeal	An appeal can be upheld or dismissed/rejected.
Implicitly Withdrawn	Cases where an appeal is deemed to have been implicitly withdrawn. These cases are provided for in Section 7(2) of Chapter 420 of the Laws of Malta.
Inadmissible	Applies to cases for which the accelerated procedure is applied. These are regulated by Section 24 of Chapter 420.
Inadmissible {Vulnerable (UAM – Unaccompanied minor(s))}	Cases which are accelerated due to the fact that they involve an unaccompanied minor.
Inadmissible Rejections	Applies to cases for which the accelerated procedure is applied. These are regulated by Section 24 of Chapter 420.
Late Appeal	An appeal which would have been filed more than two weeks after the appellant has been notified with the RefCom’s decision.
Manifestly Unfounded Negative	Cases in the accelerated procedure, regulated by Section 23 of Chapter 420.
Positive [Dublin]	A decision whereby appellant successfully proves that his asylum application should be considered in Malta and not in another state, in accordance with the Dublin III Regulation.
Rejection [Dublin]	A decision whereby the Board rejects appellant’s Dublin appeal and confirms that his asylum case is to be heard in another jurisdiction, in accordance with the Dublin III Regulation.
Referred back to Refcom	These are cases where there is some point which is not clear, and which are referred back to RefCom so that this office provides further details.
Refugee Status	Decisions whereby the Board grants refugee status to the appellant because of the reasons provided for by law.
Sine Die	Where a case is put off without a date, in other words ‘archived’, since either appellant shows no more interest in the case, or else where the Board would have requested information from appellant and this would not have been provided.
Subsidiary	Board decides to grant subsidiary protection in accordance with Section 17 of Chapter 420.
Withdrawn	Appellant withdraws his own case through a letter or an act.

Source: RAB.

The vast majority of appeals decisions in 2018 and 2019 were classified as inadmissible or had a negative outcome

6.5.4 The figures listed in Table 21 show how the majority of cases were inadmissible and/or had a negative outcome (almost 98.0 per cent of all decisions in 2018 and 96.1 per cent in 2019). The majority of such appeals decisions were taken under the so-called accelerated procedure which provides for a three-day review for all decisions deemed inadmissible by RefCom. This decision still entail an assessment of facts and law, both by Refcom and by the Chairperson of the RAB at review stage.

Table 21 - Breakdown of decisions at RAB (2018 and 2019)

Decisions	2018	2019
Positive decisions	15	23
<i>Refugee Status</i>	2	5
<i>Subsidiary</i>	4	13
<i>Temporary Humanitarian Protection</i>	0	2
<i>Dublin</i>	9	3
Negative decisions	702	563
<i>Inadmissible</i>	596	320
<i>Implicitly Withdrawn</i>	1	50
<i>Withdrawn</i>	28	26
<i>Others³⁹</i>	77	167

Source: RAB.

6.5.5 The Asylum Information Database (AIDA) 2019 report deems such inadmissible decisions as going contrary to the Asylum Procedures Directive since there is no actual examination of all points of facts and law. Furthermore, the AIDA 2019 report specifies that such a practice impedes the right to an effective remedy even though the 2017 amendment of the Refugees Act classifies such a review as an appeal.

6.5.6 On the other hand, while this Office did not enter into the legal merits of such cases, in view of the backlog of the RAB Chambers during 2018 and 2019, case files do not reflect the Board's deliberations on RefCom's interpretation of points of law. MHSE contends that in cases adopting the accelerated procedure, the Board need not carry out a new examination of facts in the file. The Board is a review body in accelerated procedure, not a second instance examination forum. This position has been confirmed in the judgment of the Court of Justice of the European Union in the '*Alheto*' judgement of 25 July 2018.

³⁹ The '*Others*' category refers to dismissed appeal, inadmissible (vulnerable UAM), inadmissible rejections, late appeal, manifestly unfounded, negative, rejection (Dublin), referred back to RefCom, and sine-die.

Various internal issues within the Chambers affected the throughput and decision time of cases during 2019

6.5.7 It is worth noting that in 2019, there was a throughput of decisions that amounted to around 18 per cent less than the previous year. When one factors in that the highest number of cases were inadmissible and were taking an average of four days each to decide, the time taken by the Board to decide the remaining cases is deemed to be excessive. Furthermore, information referred to the Office regarding case conclusion by RAB confirms that cases remained active for a considerable period. Table 22 refers:

Table 22 - Decisions by RAB in 2018 and 2019

Year when appeal was lodged at RAB	2018 decisions	2019 decisions
2013	4	0
2014	1	36
2015	5	16
2016	9	17
2017	49	28
2018	649	91
2019	n/a	398
Totals	717	586

Source: RAB.

6.5.8 Table 22 portrays the number of cases that remained active since 2013. Despite enquires with the RAB and MHSE, which maintain statistical information related to case progress, NAO was not furnished with justifications explaining the reason for the delays to decide the 19 cases lodged between 2013 and 2016 and decided in 2018.

6.5.9 To further validate the information in the preceding paragraph, the NAO carried out a tracer study which considered 120 randomly selected new application lodged at RefCom during 2018 and 2019. Eleven of these cases were subsequently to be analysed by the RAB following an appeals application. The tracer study showed that until May 2020, only two of the eleven cases had been decided by the RAB. Table 23 refers:

Table 23 - RAB decisions of 11 randomly selected cases

Type of decision by RefCom (11 cases)	Appeal decided by RAB		Appeal pending at RAB		Total Cases
	RAB decision	Average days from lodging of Appeal at RAB until decision is taken by RAB	Pending cases at RAB	Average days since lodging of appeal at RAB until 19 May 2020	
Dublin Closure	1 was implicitly withdrawn	196	6	231	7
Exclusion	1 was Negative	531	1	533	2
Rejection	n/a		2	478	2
Totals	2	364	9	319	11

Source: NAO Tracer study.

6.5.10 Table 23 shows that the RAB took an average of 364 days to decide upon each of the two cases pertaining to the NAO tracer study. On the other hand, a considerable period elapsed in each of the undecided nine cases, which were still active as at May 2020.

6.5.11 Such delays deviate from the principle that justice delayed is justice denied. This data further showcases the importance of deciding cases in a more expedient manner to safeguard the asylum seekers' rights as well as the financial burden on the Maltese government to continue to support asylum seekers who are awaiting RAB decisions.

6.5.12 This performance audit identified two main reasons contributing to these delays namely operational issues within the Chambers and the absence of legal provisions specifying case conclusion deadline prior to 2020. The following refers:

- a. Two major factors contributing to the lower throughput of decisions and consequently delays in RAB decisions materialised:
 - i. One Chamber was affected by the resignation of a Board Member, who was eventually replaced after five months.
 - ii. The workflow in another Chamber was interrupted as a Board Member did not involve himself in the decision-making process. This led to the Chamber in question to cease functioning for several months. Notwithstanding NAO's enquiries, no evidence was provided as to whether MHSE intervened on an official level to address the issue of case backlog and increased waiting for the appellants.
- b. During the period under review, the prolonging of cases was influenced by the absence of legislative provisions regulating case conclusion. The relevant legislation (Refugee Act, Chapter 420) does not stipulate a deadline by when decisions should be issued since the date of lodging. However, following amendments to the legislation (International Protection Act, Chapter 420, Section 7{7}) in 2020, decisions taken by RAB are to be decided within three months unless there are specific reasons for extensions.

6.5.13 An important consideration relating to these figures in Table 23 relates to the introduction of the Dublin Regulation Appeals which resulted in the workload of the RAB doubling whilst the number of members remained the same and the administrative support staff actually decreased.

6.6 During 2018 and 2019, there was no clear system to prioritise pending appeals

6.6.1 As at end 2019, the number of pending cases at the former RAB amounted to 668 cases. One of these cases related to an asylum application which was submitted in 2009. Table 24 refers.

Table 24 - Number of pending appeals as at end 2018 and 2019

Pending Cases	Total	Year of lodging										
		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
End of 2018	489	1	0	0	1	7	40	20	30	77	313	N/A
End of 2019	668	1	0	0	1	7	4	4	13	49	221	368

Source: RAB.

6.6.2 Table 24 shows that as at end 2018, 176 out of 489 cases remained pending for a significant number of years. Furthermore, 300 out of the 668 cases (45 per cent), most of which were lodged during 2017 and 2018 and were still pending as at end 2019, had been awaiting a decision for a considerable period. Despite enquiries, NAO was not informed of the reasons for such delays and at what stage of the RAB process these cases had reached.

6.6.3 Table 24 illustrates that the former RAB processed most of the 2014, 2015, 2016 and 2017 pending cases in 2019. Nonetheless, cases lodged in 2013 and before remained unprocessed by the former RAB by the end of 2019. This state of affairs was mainly due to the considerable influx of asylum seekers during these years. Despite requests, the relevant information connected to such cases was not referred to NAO.

6.6.4 Despite the considerable number of outstanding cases at the former RAB, there was not a system in place to prioritise the processing of cases. Upon enquiry, the administrative staff at the former RAB did not indicate that cases were prioritised by any formal criteria such as in chronological order or in accordance with the specificities of the case.

6.7 Procedures regulating the efficacy of the MHSE’s legal aid service were not clearly established for all stakeholders

6.7.1 Legal aid is fundamental for appellants to put forward facts surrounding their personal situation to the Chambers during the appeals stage. Such assistance is all the more necessary for those appealing from detention centres since access to information and MHSE entities is restricted. A lawyer can be engaged privately, through NGOs or private legal practitioners or alternatively appellants can seek free legal aid through MHSE. Interpreters are also assigned to assist the lawyers during the relative interviews with the applicants, if necessary. Legal aid lawyers contracted by MHSE were for a brief period subject to a considerable workload. Remuneration was also not always looked at favourably by prospective lawyers resulting in a limited pool of legal aid lawyers. MHSE confirmed that its pool of lawyers increased to 10 in 2019. Moreover, the Ministry confirmed that remuneration package was also improved. MHSE also noted that the remuneration is in accordance with the minimum fees stipulated by the Chamber of Advocates. MHSE remarked that it considers the pool of 10 lawyers as sufficient since this is commensurate with the number of negative first instant decisions. Nonetheless, legal assistance and expertise in this area provided by NGOs remains an added bonus to applicants.

- 6.7.2** In 2019, MHSE contended that 74 per cent of new RAB cases requested a legal aid lawyer from their pool while the remaining were represented by NGOs and private lawyers. The lawyers were requested to file appeal submission within 30 days from the interview with the appellant. Supervision of progress registered in the submission of report by the legal aid lawyer also falls within the remit of MHSE. Submissions could remain pending at the lawyer's end for different reasons such as rescheduling of appointments. Whilst the applicants' cases were then received by the RAB administrative staff, who allocated the cases to the Chambers for a decision to be taken, the administrative staff had no control over when the Chambers began discussions and decided the case.
- 6.7.3** Table 25 depicts the situation with regard to the number of cases that were being managed by the Legal Aid lawyers. The new legal aid cases increased by 144 per cent from 134 cases to 327 from 2018 to 2019. Such a drastic increase was the result of the arrival of asylum seekers during 2019. The number of cases that were finalised in 2018 and 2019 were actually cases that were received during the same year. The fourth column shows cases that were not necessarily started in 2018 and 2019 indicating delays in the appeal submission.

Table 25 - Legal Aid cases in 2018 and 2019

Year	New cases assigned to Legal Aid provided by TCNU	Cases finalised by the appointed TCNU lawyers	Outstanding cases at TCNU lawyers' end (includes carried forward from previous years)
2018	134	94	227
2019	327	195	163

Source: MHSE.

6.8 The average cost for each decision amounted to €246.56 during 2019

- 6.8.1** At end-2019, Government Accounts show that the total cost incurred for Administrative staff's Salaries and remuneration for the members of the four Chambers amounted to €109,766. In addition, MHSE incurred an expenditure of approximately €34,720 with respect to legal aid engaged to assist appellants.
- 6.8.2** With a total of 586 decisions undertaken by the Board during 2019, the average cost for each decision amounted to approximately €246. During 2019, the total cost for the Refugee Appeals Board (RAB) amounted to €144,486. A breakdown of the €144,486 RAB cost is provided in Table 26.

Table 26 - Costs incurred by RAB to process appeals (2019)

Description	Total Actual Cost €	Percentage of total cost
Salary & National Insurance cost with regards to the administrative four staff (clerks, etc)	€26,457	18.3
Remuneration to the four Chambers & National Insurance cost	€83,309	57.7
Legal Aid	€34,720	24.0
Total costs	€144,486	100.0
Total concluded appeals in 2019	586	
Average cost per concluded appeal	€246.56	

Source: RAB.

6.9 Conclusion

- 6.9.1 This Chapter has outlined that the international protection appeals process was characterised by the lengthy prolonging of cases in 2018 and 2019. Admittedly, as already stated, during these years there was a high influx of applications for international protection as well as appeals. The impact of these circumstances is immediate and relates to humanitarian aspects from the appellants point of view and increased costs for Government to accommodate appellants for a lengthier period, especially within detention centres.
- 6.9.2 The backlog of cases was primarily brought about by the Chambers’ working methods and, in some cases, delays in the Legal Aid’s submission of reports. Moreover, apart from the Chambers’ Chairs, most Board members lacked adequate legal background and experience in asylum matters making these Chambers less effective and conducive to a fair decision of the appellants. Administrative and professional staff to aid RAB research and contribute towards the conclusion of decisions were also few in number.
- 6.9.3 While not seeking in any way to delve into the Board’s decisions, this audit showed that the Chambers adopted different approaches to deal with pending cases. Moreover, the level of documentation in case files, generally, did not provide a full audit trail supporting the Board’s detailed deliberations backing or supporting the decision. This entails the points of law that were invoked. Similarly, this review did not elicit conclusive evidence on the frequency of Board meetings. Consequently, the audit could not determine the number of hearings within a given period.
- 6.9.4 Similar to RefCom, the issuance of decisions was delayed to the detriment of asylum seekers and ultimately, resulting in increased costs for Government. In these circumstances, one cannot ignore the notion that justice delayed is tantamount to justice denied. Thus, NAO feels that every effort should be undertaken to address such issues in the best interest of all concerned.

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