



**National Contact Point for Malta**

## **UNACCOMPANIED MINORS IN MALTA**

Their Numbers and the Policies and Arrangements for their Reception,  
Return and Integration.

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## **Unaccompanied Minors in Malta**

**Their Numbers and the Policies and Arrangements for their Reception, Return and Integration.**

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**DISCLAIMER**

This report has been prepared by the authors for the National Contact Point of the European Migration Network (NCP) Malta, in co-operation with various relevant entities participating in this activity. However, this report does not necessarily reflect the views and position of the Ministry for Justice and Home Affairs of Malta. The Ministry cannot be held responsible for any errors that may arise in the content therein.

## Executive Summary

Despite much dedicated work and fast growth, reception services for migrants are severely constrained by the sheer numbers of arrivals on unsafe boats crossing from North Africa to Europe, often forced to land in Malta having met distress on the seas. Escalating to 2700 during 2008 on the European Union's (EU) smallest country, 316 sq km in size, such arrivals are equivalent to a typically-sized EU country receiving several millions of combined asylum seekers and illegal immigrants per year. Malta, in fact, now has the greatest number of asylum seekers per 1000 population of any country in the world.

Unaccompanied minors arrive among such boat people, travelling for the same main reasons, whether escaping danger or poverty. All undocumented arrivals in Malta are subjected to detention. Unaccompanied minors and other vulnerable immigrants are freed relatively soon after; others once recognised as rightful asylum seekers, or after 18 months maximum if they are not. Forced repatriation of rejected asylum seekers has been almost inexistent, due to yet-unsolved logistical problems. Many immigrants travel undocumented to the continent.

In 2008, 400 out of 2223 asylum claimants (out of 2700 immigrants) claimed to be unaccompanied minors, out of whom 28 (7% of the claimants) were accepted to be so. In 2007 the latter proportion was 30%. Efforts to keep waiting claimants (who turn out to include a vast majority of adults), in special areas within detention separate from non-claiming and non-vulnerable detained adults have only partly succeeded. The age assessment process may at time take up to several months, during which detention of pending claimants of unaccompanied minor status persists.

Recognised unaccompanied minors are placed under the care of the Ministry for Social Policy through a Care Order and placed in two residential hostels. There, social workers and other staff offer a safe home, implement individualised care plans, and work to offer them social, educational and leisure opportunities. The richness of this program varies from time to time and according to area of growth and integration. While there has been a measure of in-house tuition, and extended programs offered by two Church schools, the efforts to apply the right for education is still far from assuring that each is attending full-time and appropriate education. Involvement in local social and leisure opportunities can further develop. Different unaccompanied minors will have different needs, so that moving some to specialised mainstream facilities is a good practice worth further developing. Large proportions of the unaccompanied minors of higher age groups tend to abscond, possibly in search of their intended destinations. There is growing awareness of the dangers of human trafficking and an increasingly vigilant application of this to unaccompanied youngsters, which is especially needed for those who move to other countries. One notes that unaccompanied minors are among those who gain from generous help from Non-Governmental Organisations (NGOs) and International Organisations (IOs), as well as programs of resettlement to other countries, the latter process being carefully monitored with the help of IOs

Thanks to good progress made in many areas, it is noted that, if taken up, decisive and coordinated action involving the all departments concerned can now achieve effective fast tracking and the always separate accommodation of claiming unaccompanied minors, the education and wider integration of unaccompanied minors and further improved vigilance regarding human trafficking. Meanwhile, it is only very recently that EU countries seem on the point of acknowledging the need of taking a significant share of the burden Malta is bearing, which would obviously be the only possible solution to the most intractable aspect of the problem, that is, the overwhelming numbers.

## 1. Introduction: Purpose and Methodology

This study has been prepared in response to the request and specification of the European Migration Network (EMN). In line with those specifications, it seeks to describe the situation and policies, the quantities and significance of the movements and trends concerned but, most of all, to highlight good practices and lessons learnt as a way of attempting to contribute to the improvement of practice and to highlight what needs to be done for this improvement to be made possible, facilitated and encouraged.

### INTRODUCING THE PARTICULARITIES OF THE MALTESE SITUATION

Malta's reception of unaccompanied minors must be understood within the islands' very particular context. Malta is located halfway along the route taken by thousands, mainly sub-Saharan Africans travelling from Libya to Europe. UNHCR (2009) ranks Malta first in the asylum applications received per 1000 inhabitants. Opinion polls show a majority of Maltese consider immigration to be Malta's number one problem.

From nothing a few years earlier, numbers of boat arrivals have risen from 1,686 in 2002 to 2,700 in 2008. 2,775 in one year arriving in the EU's smallest country, with an area of 316 sq km, is equivalent to the arrival of 4.7 million arrivals in France in one year, considering that its area is 1,700 times that of Malta. 2009 is already characterised by an acute pre-summer upsurge of irregular immigrants (meaning 'arriving otherwise than through normal port or airport procedures', whether illegal or rightful asylum seekers). In fact till 31 March 2009, 758 immigrants entered the Maltese shores irregularly.

This very large, sudden, increasing and unpredictable influx is not only a national challenge with financial, political, intercommunal and international ramifications. It has also overwhelmed the reception services put on by the authorities, as well as NGOs and IOs.

Malta subjects illegal immigrants to detention of up to 18 months. NGOs and human rights groups castigate this as in breach of human rights, the EU basically issuing rules that accept detention 'in extraordinary circumstances', seemingly very much with the Maltese case in mind. The Maltese government explains detention as a security imperative amid overwhelming numbers. Médecins sans Frontières recently withdrew its service within Malta's immigrant detention services, protesting that the living conditions there are too crowded and inimical to human dignity and health for them to do other than protest against them, a protest not accepted by the Home Minister.

Malta's irregular immigrants arrive by boat to an island whose only border is the sea; though undocumented, very few are clandestine (meaning 'unknown to the authorities'), since almost every arriving boat is identified and boarded by immigration police, or else its landed passengers are soon rounded up and identified, so that their declared identity and fingerprints are recorded in practically every case.

'We used to use the winter to catch our breath and catch up, but now we are having boats arriving in the winter as well, and that makes developing the reception services much harder' said a service manager.

After leaving detention a good number manage to move on to a clandestine life on the continent, a few being identified and returned to Malta in line with Dublin 2 specifications, some of them going through this experience more than once.

While almost all immigrants request asylum, about half are granted a protected status. Repatriation tends to happen more or less immediately for arrivals from countries not entitling to refugee status but representing a safe return, but otherwise, as yet, practically not at all, even



for the rejected, because of the logistical problem of organizing return where individual is unwilling to go and government of the country of origin not prepared to receive.

Malta has lobbied within the EU and obtained both increasing financial help as well as a promise of some mitigation of the Dublin 2 obligation to carry on its own the burden of all who land in Malta. However, Malta's immigration is clearly unmanageable without substantial burden sharing, a measure whose need EU institutions increasingly recognise but are still slow to act upon.

## **NATIONAL AIMS**

It is against such a background that the arrivals of unaccompanied immigrants have unfolded, and the services for them developed. In fact, from 2002 till 28 April 2009, a total of 12,413 irregular immigrants entered the Maltese islands illegally and undocumented, merely by small boats departing from North African countries, of whom 9134 immigrants applied for asylum protection. More than 50% were granted protection, 215 were approved as refugees and 4531 immigrants given subsidiary protection (Mifsud Bonnici & Caruana 2009).

Since early summer of 2005, the Government of Malta has embarked on an intensive campaign which focused, primarily, on three objectives:

- raising awareness on the burden being faced by the Maltese islands with respect to the problem of irregular immigration,
- attaining assistance from international partners in line with the principles of solidarity and burden sharing, and
- pursuing strategies and policies within the EU and other international fora which provide durable solutions to the problem of irregular immigration.

In a discussion on Irregular Immigration at the House of Representatives, top government officials highlighted the 5 main objectives of the national policy on irregular immigration (Mifsud Bonnici & Caruana 2009):

1. Safeguarding the national interest by means of security measures and border control;
2. Fair, just and humane treatment of migrants;
3. Establishment of standard procedures and practices for dealing with asylum seekers;
4. Inclusion of asylum seekers and integration of beneficiaries of protection; and
5. Expeditious removal, insofar as possible, of migrants who are not eligible for international protection.

As regards their welfare entitlements, both beneficiaries of refugee status and subsidiary protection have the right to work, social assistance, free medical care and free education. Refugees have the right to family reunification as well. In a 2005 Policy Document on Irregular Immigrants, Refugees and Integration, the Government indicated how these legal rights can be translated into concrete social support practices and provisions (Ministry for Justice and Home Affairs & Ministry for the Family and Social Solidarity 2005). Moreover, a joint-Ministerial effort was outlined with clear guidelines on who will be responsible for the welfare of immigrants, including unaccompanied minors.

The 2005 Government's Policy Document identifies the vulnerability of unaccompanied minors and attempts to address it by means of various legal and practical measures, such as the Care Order Act, fast release from detention, appointment of a legal guardian, the inception of Residential Homes, and various integration practices. As from 2002 till 2008, a total of 1197 unaccompanied minors' status claims were investigated of whom 223 were accepted (*see Table 1*).

## **METHODOLOGY**

The present study follows the European Migration Network's (EMN) specifications in basically being a desk study of pre-existent studies and reports. However, since the situation in Malta is both new and fast developing, and since the literature about it, though quite significant, needs much updating and complementing, the authors have additionally used extended interviews with key participants and observers, in most cases backed up by audio recording. A focus group was also conducted with a small group of unaccompanied minors in an attempt to put their experiences and concerns at the forefront of the present exercise.

The authors are very grateful for the full cooperation we have found among all the informants contacted, who are listed in annex. This is especially appreciated in view of the severe pressures under which all of them work. We have encountered an admirable dedication to duty spread wide in the services. Some inconsistencies in statistics received reflect the general atmosphere of working hard against great odds, though it is hoped that the improvement of data gathering will be one of the fruits of the present report. In an area that has its share of controversy about what should be done, and even sometimes about what is happening, the authors hope this study will be seen to be fair and constructive, and a help to those providing support to vulnerable youngsters in search of a good present and future.

## **ACKNOWLEDGEMENTS**

The following have been interviewed, with their organisations' kind permission:

A representative of Jesuit Refugee Services (JRS) (Malta)

A representative of the Malta office of the International Organisation for Migration (IOM)

A representative of Médecins sans Frontières, Malta

The Refugee Commissioner and the Assistant Refugee Commissioner, Malta

The Director and the Service Manager of the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS)

A representative from the Office of the Children and Young Person Advisory Board

A representative of the Immigration Police, Malta.

The professionals (two social workers, 1 psychology officer, 1 social policy graduate and 1 care worker) working directly with unaccompanied minors within their residence.

Focus groups took place with:

The age assessment team which is part of the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS)

A group of unaccompanied minors under the age of 16, residing at Dar is-Sliem St. Venera, one of the homes accommodating young girls and boys.

NB: Where respondents from NGOs or IOs have been cited, they have been referred to with an element of anonymity as 'Observers'.

*This opportunity is also taken to thank Ilse Derluyn, Centre for Children in Vulnerable Situations, Department of Orthopedagics, Ghent University for her advice on a number of points.*



## 2. Motivations for seeking entry into Malta

### **KNOWN REASONS FOR UNACCOMPANIED MINORS' TRAVEL TO THE COUNTRY**

Most undocumented migrants arriving in boats from North Africa do not have the intention to land or stay in Malta, in other words, they come to Malta by accident or by mistake. Rather, their intention is to seek asylum on the European mainland. In fact, even after being granted asylum, some still manage to leave the island believing a better life awaits them on the continent. While the most are young men in their twenties, in every boat one usually finds a few women, children and also unaccompanied young persons under the age of 18. Upon entry into Malta, almost all, including unaccompanied minors (UM), apply for asylum.

The motives behind the recent upsurge of such migration have hardly been studied. One interviewed asylum seeker disclosed that one reason is that United Nations (UN) Refugee Camps and resettlement programmes in Kenya and Sudan have reached saturation point resulting in asylum seekers being stuck in appalling conditions for years, compelling them to keep moving onwards. During a Technical mission to Libya on illegal immigration by the European Commission, it was noted that Libya is experiencing an increase in migration pressure and lacking from proper border control and infrastructure (European Commission 2004). Illegal immigrants in Libya are estimated to number between 750,000 and 1.2 million, and part of this population includes unaccompanied minors. A large percentage of migrants consider Libya as a transit country and a “jumping board” to reach Europe: they remain in Libya only for the period necessary to work and earn (legally or illegally) the money required to fund the last leg of their voyage. The Libyan authorities often told the mission that the illegal migrants want to go to Europe because they watch satellite TV from Europe in their home country and they hear from their relatives that they can get social benefits if they are not able to get a job in Europe (European Commission 2004). Persons in direct contact remark an increase of immigrants coming to Malta deliberately, rather than by mistake, probably as an entry point to Europe. Escalating ‘Fortress Europe’ reactions, more so from Italy, may have also diverted more migrants than before to Malta.

IOM carry out information campaigns to let people in particular parts of Africa know what to expect if they were to settle in any of the various countries in Europe. An interviewee considers this a drop in the ocean amid the wide information and misinformation that migrants get through other channels, especially media. This is underscored by the boldness of youth who are confident that they will make it, even though they know that many perish on the way.

Asylum seekers are difficult to classify into those who leave by choice or are forced to, both types of motive being often mixed. The causes of forced and economic migration are often closely related: countries afflicted by armed conflicts and human rights abuses usually also suffer from a poor economic situation and those fleeing to secure their physical safety also want to safeguard their economic security.

With unaccompanied minors, motives mirror those of adult asylum seekers. UNHCR (1997) claims their motives can include fear of persecution, human rights abuses or the desire to secure a better future, or a mixture. The difference between adult asylum-seekers and minors, especially those that are unaccompanied is that, according to UNCHR (1997), regardless of the motives, the latter often have had ‘little or no choice in the decisions that have led to their predicament and vulnerability’ (UNHCR, 1997, p. 4). According to the Care Manager of OIWAS (the state-run Organisation for the Integration and Welfare of Asylum Seekers), the main reasons for leaving for most unaccompanied minors residing in the OIWAS Residential Homes are religious persecution, family reunification, poverty and human rights abuses.

Under Council Directive 2003/86/EC of 22.9.2003 on “Family reunification”, refugees can exercise the right to be reunited with their families that are already living lawfully in EU member states. There are specific provisions under this directive for unaccompanied minors, and the possibility of being reunited with their family might also be a motivation for them to seek entry into an EU country (The Council of the European Union 2003 ).

**Table 1:UMs, claiming and accepted, among Asylum Seekers**

Year	Overall number of Asylum Seekers	Number of Asylum seekers claiming to be UM	Number of Accepted UM	Percentage of Accepted UM Over total number of Asylum seekers	Percentage of Accepted UM over AS so claiming to be
2002	1686	14	14 (no age assessment)	0.85%	100%
2003	502	16	16 (no age assessment)	3.19%	100%
2004	1388	Unknown	Unknown	Unknown	Unknown
2005	1822	141	23	1.27%	16%
2006	1780	219	58	3.25%	26%
2007	1072	397	84	7.84%	21%
2008	2223	*400	28	1.26%	7%

**Sources: Overall number of Asylum Seekers:** European Commission 2004; **Number of Asylum seekers claiming to be UM and Number of Accepted UM:** 2002 to 2005 DAPHNE country report (Schlenzka 2007) citing APPOGG; 2007 to 2008 according to Age Assessment Team, AWAS.

\* 40 of the 400 have not been through the age assessment process since they escaped from detention

IOM (2008) observes an increase in children experiencing human rights abuses such as child prostitution, child marriages, slavery and recruitment of child soldiers. All of these may also compel persons, especially minors, to escape their country of origin and seek protection in countries where children’s rights are safeguarded.

### **THEIR COUNTRIES OF ORIGIN**

Reasons also vary by country of origin, stated interviewees. Unaccompanied minors in Malta generally come from countries in Eastern Africa. By far the most numerous hail from Somalia, a country characterised by 20 years of conflict. This is followed by Eritrea and Ethiopia, where young persons are called up to military service that has no limited time frame. Some UM also came from Sudan, Ivory Coast, DR of Congo, Niger, Mali and Sierra Leone. There seems to have been an increase persons coming from Nigeria that may raise special concerns about human trafficking. Meanwhile, there have only been two cases of UM arriving from outside Africa, but none from EU countries.

## **SPECIFIC REASON FOR A SIGNIFICANT CHANGE IN THE NUMBER OF UNACCOMPANIED MINORS**

As one can see from statistics (European Commission, 2004) the number of immigrants arriving by boat and claiming asylum has been steadily increasing for the past seven years. This resulted in an increasing proportion of unaccompanied minors (See Table 1).

On the occasion of the 'National Conference on Irregular Immigration' in 2005, Government launched a policy document entitled Irregular Immigrants, Refugees and Integration that, amongst others matters, dealt with the protection and care of unaccompanied minors, including a fast-track procedure for them to leave closed accommodation centres after a shorter time (Ministry for Justice and Home Affairs & Ministry for the Family and Social Solidarity 2005). The policy document made official a practice that had been operative since 2003.

Following the release of the first group of UM from detention under the above-mentioned informal practice in 2003, the number of referrals increased significantly since this was perceived by detained asylum seekers as a way to get out of detention. Furthermore, at a time where no Open Centres for adults were in place, being an unaccompanied minor meant that a person would have food and shelter, access to education and financial support. At that point in time, no age-assessment procedure was in place, so this meant that whoever alleged that s/he was a minor, was treated as such, even if quite obviously older.

In 2005, with the introduction of more formal policies, based on experience and good practice abroad, procedures for age-assessment were put in place, and therefore, while the number of referrals remained high, the numbers of verified cases were reduced drastically. According to interviews held with various observers, the situation seems to have now been reversed. Assessment has become very restrictive to the point that observers see a serious risk of meriting cases being refused, partly out of fear of further overburdening the care services they would proceed to if accepted. It must be noted that the age determination process happens in a context that in many ways is often not a fully serene, one as will be seen more thoroughly in Section 4 of the report.

### **3. Entry procedures, including border control**

The only entry point of unaccompanied minor migrants in Malta is by means of small boats departing from North Africa, mainly Libya. No unaccompanied minors (UM) have been reported to enter Malta through the Malta International Airport or the Malta Freeport Terminal; while no UMs from EU countries have arrived in Malta during this period. Sometimes boats do manage to reach Maltese shores; however these are soon spotted by locals and intercepted by police. But most boats arrive escorted by the Armed Forces of Malta having been in distress and asked for assistance. Many tragic experiences have occurred and many minors are said to have died in the Mediterranean. In 2007, immigrants who survived a capsized boat reported the death of 5 children and 2 babies.

After landing in Malta, immigrants are medically assisted on site by a team of health care professionals from the State Hospital Emergency Department and Médecins sans Frontières. This International NGO is complementing State resources and is an example of good practice. Immigrants who need medical attention are transferred to the main State hospital and others who are certified stable are escorted by the Immigration Police to the Police Headquarters interviewing premises. According to the Immigration Act (Cap 217), the Immigration Police have the authority to grant leave to land to Third Country Nationals (Laws of Malta 1970).

A series of personal interviews (one-to-one) are carried out with all immigrants and a demographic questionnaire is compiled. Immigration Police try to investigate and discover information on the immigrants' journey, giving particular attention to reasons behind voyage, human trafficking issues, place of departure and costs of trip. The cost of the trip is usually declared to be around 1000 USD or 1000Euros, thus indicating that UM have been exploited and engaged in illegal or forced labour in the transit country. This effort by local Immigration Police, contrasts with a European Parliament (2006) report that claims that little effort is made by Member States to distinguish between the trafficked, the economically-driven and those escaping persecution and to claim asylum.

In this particular period of vulnerability, interviewees, including those who claim to be UM, are not given legal assistance nor the assistance of a guardian or an NGO or IO representative<sup>1</sup>. This causes concerns as children are being questioned in the absence of parents and/or legal guardians. This is not in line with the United Nations Convention on the Rights of the Child (United Nations 1990), at least in cases where there is any element of allegation or accusation of having infringed the penal law. Moreover, police do not make use of independent interpreters and cultural mediators and they try to seek interpretation with the assistance of English speaking immigrants who are in the same boat. Immigrants who are 14 years and older are documented on the EURODAC register.

After interviews, all immigrants including claimant UM, except those hospitalised are taken to the detention centres. Immigrants who claim to be minors are noted and referred immediately to OIWAS. This referral system between State agency OIWAS and Immigration Police addressed a long-standing gap and proves to be a positive practice, as children are released faster from detention. Age assessment is done not by police but by an OIWAS team of social workers. However, whilst awaiting age assessment, UM are still kept in detention. Well informed sources claimed that if age is not disputed, UM are released from detention within a fortnight, transferred to a residential home and a legal guardian appointed. This is in line with a Committee of Ministers declaration where UM

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<sup>1</sup> Maltese laws do not permit legal assistance at police interrogations irrespective of the person's citizenship.

should be placed in residential homes or foster placements, and where provided for by national legislation, legal guardians should be appointed, within the shortest possible time (European Parliament 2006). On the other hand if age is disputed, release from detention could take months, therefore treating UM as migrants first and children second. Automatic detention of UM, both as a matter of law (Immigration Act, 1970, as later amended) and practice, is not in the best interest of the child, until further investigations confirm otherwise and that claimants are not minors. Accompanying tables give relevant figures.

**Table 2: Numbers who claimed to be minors, by year**

Year	Claimed to be minors
2005	42
2006	97
2007	184
2008	198
2009	48 <i>(till 24 April 2009)</i>

*No gender data provided.* **Source:** Immigration Police

**Table 3: Detention duration\* until age confirmation**

Participant 1	2 months
Participant 2	1 month
Participant 3	2 weeks
Participant 4	1 month
Participant 5	1 month and 2 weeks
Participant 6	3 months and 3 weeks
Participant 7	20 days
Participant 8	2 months and 2 weeks
Participant 9	20 days
Participant 10	2 months and 2 weeks

*\*from detention start, not from time of claim; information from focus group members.*

All children, except if needing immediate hospital care, are detained at least for some time of unpredictable duration, meaning that they are then treated as adults, and given only minimal support and care. The authors remark that practices need reviewing, though it is good to note that an ad hoc parliamentary committee on immigration is going to scrutinise the whole reception system.



## THE IMMIGRATION POLICE

The small Immigration Police Department was described a stressful department to work in, dealing as it does with overwhelming numbers of exhausted immigrants within demanding time schedules. No specific training had been given to Immigration Police Officers, on cultural sensitivity or on how to deal with children or unaccompanied minors, though a new course was introduced to sensitise police on racism, xenophobia and discrimination, and in-house training is provided to be in line with national and international legal frameworks on dealing with immigration issues.

**Table 4: UM Claim and Acceptance**

*(Figures collected by Médecins sans Frontières for the six months preceding March 2009)*

Detained immigrants referred to OIWAS by that NGO as claiming to be minor:	156
Of which, cases closed by OIWAS	91
Accepted as minor	5
Escaped before assessment	4
Repatriated	25
Claim for minor status rejected:	57
Average duration of the completed determination process	from 2 to 5 months
Overall result: accorded minor status*	8%
Not accorded minor status	92%

\*Excluding the repatriated and escaped, we have a total of 62 minors assessed

Immigration Police officers are also frequently changed, losing the benefit of experience. Immigration Police are willing to keep on improving their skills and ameliorate services to immigrants.

The financial costs of Immigration Police operations could not be disclosed, however during Summer period 80% of the department's resources are taken up by immigrants coming by boats. During winter season, 50% of the resources would be dedicated to the cause.

## 4. Reception Conditions<sup>2</sup>

### LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

Reception of unaccompanied minor (UM) migrants falls under the responsibility of the Ministry for Justice and Home Affairs (MJHA) in matters of reception, placement and granting of asylum. The welfare of UM falls under both the above Ministry and the Ministry for Social Policy.

The MJHA administers the Immigration and Border Police, the Detention Services that manage the closed centres and OIWAS (Organisation for the Integration and Welfare of Asylum Seekers). OIWAS, financed and working under the overall auspices of MJHA is responsible for implementation of the fast tracking procedure, the Age-Assessment procedure and the residential homes for UM. **OIWAS are also members of the Save the Children European Network and in fact have imported and adapted knowledge gained from this affiliation on issues such as Age Assessment and Legal Guardianship.**

The Office of the Refugee Commissioner is responsible for receiving and processing the asylum application of all asylum seekers, including unaccompanied minors. While the Office is under the MJHA, it is an independent body making recommendations directly to the Minister.

The Ministry for Social Policy takes on the guardianship of UM through the issuing of the Care Order thus it is responsible for their social welfare. This is done through the Children and Young Persons' Advisory Board, which is made up of 7 professionals with expertise on children's rights and child specific situations. The Advisory Board is responsible for reviewing all the care plans related to each minor.

The Ministry of Health's responsibility lies in clearing the UM medically before they are allowed to leave detention and in providing health care services while they are residing in the residential homes for UM.

### INTERNATIONAL LEGAL FRAMEWORK

The legal framework is made up of different international conventions and agreements as well as national laws. In the context of refugees, including Unaccompanied Minors, the most important international convention is the 1951 Geneva Convention on Refugees, signed and ratified by Malta in 1971. Malta has also signed and ratified the following laws and Conventions:

- European Agreement on the Abolition of Visas for Refugees (The Council of Europe 1959),
- UN Convention Against Transnational Organised Crime (United Nations 2004 ),
- Protocol to Prevent , Suppress and Punish Trafficking in Persons, especially women and children (United Nations 2000),
- Protocol against the Smuggling of Migrants by land, sea or air (United Nations 2000),

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<sup>2</sup> In this section what can be considered beneficial practices are highlighted in bold lettering.

- Convention for the Protection of Human Rights and Fundamental Freedoms (The Council of Europe 1950),
- European Social Charter (The Council of Europe 1961),
- Framework Convention for the Protection of National Minorities (The Council of Europe 1995),
- Convention on the Rights of the Child (United Nations 1990), and
- Dublin Convention (European Commission 2003)

## **NATIONAL FRAMEWORK**

The Maltese Refugee Act (Chapter 420) that came into force in 2001 sets out the legal framework that regulates the procedure for claiming asylum and the reception conditions (Laws of Malta 2001). Through the Refugee Act, the Office of the Refugee Commissioner and the Refugee Appeals Board could be established. The act further outlines the rights and responsibilities of asylum seekers and refugees, including unaccompanied minors. The Refugee Act further makes reference to the Children and Young Persons Care Orders Act (Chapter 285) and states that any asylum seeker under the age of 18 in need of care and protection will be assisted in terms of this law (Laws of Malta 1980/1985). In fact, the Care Order Act ensures that unaccompanied minors have the same rights, access to support and resources as Maltese children.

The Maltese Immigration Act (Chapter 217) provides the possibility to detain persons who enter Malta through illegal methods, especially when arriving without documentation (Laws of Malta 1970). Under this law, the detention of minor is also allowed, however Malta adopted EU Directives in 2005 for processing Vulnerable Persons, including unaccompanied minors, in order to allow them to be fast tracked and leave detention after a shorter period (Laws of Malta 1970). Furthermore, Malta adopted Council Directive 2003/9/CE in 2003 outlining the minimum standards for the reception conditions for asylum seekers in Member States (The Council of the European Union 2003 ii) and Council Directive 2005/85/CE in 2005 relating to the minimum standards concerning the procedure for granting and withdrawal of refugee status in Member States (The Council of the European Union 2005) as well as Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted States (The Council of the European Union 2004).

There is a good number of NGOs that work directly with UM, most of which have limited resources, the larger ones being the Jesuit Refugee Services, Church Migrants' Commission, Médecins sans Frontières and Peace Lab,. Other organisations that works actively in the field of migrants and that have set up offices locally are the international organisations UNHCR, IOM and Red Cross.

## **DETENTION**

After first identification and referral, the policy is to transfer UM to one of the closed (detention) centres, where they are put together in a zone for vulnerable people, assisted by OIWAS Closed Centre Programme and various NGOs. This section also includes adult women and families as well as adults (both male and female) who are vulnerable because of age, disability or mental health issues. However, minors living at Dar Is-Sliem

claimed, and observers agreed, that there was no separate accommodation for minors and that they were just as often placed with adult men and women.

### **FAST TRACKING PROCEDURE IN DETENTION**

If minors, due to various reasons, have not informed the Immigration Officers immediately after their arrival about their age, they can do so at any point later in detention. Various members of the helping professions serve as agents that help detect and refer persons as minors. In fact, sometimes minors are referred by detention service officers, NGO representatives, or OIWAS workers who come in contact with them.

The fast tracking procedure starts after the referral to OIWAS. The aim of this procedure is to verify the age of the minor and transferring them from detention to one of the specialised residential homes. The process consists of an interview with the Age Assessment Panel, further age verification procedures if the age is disputed, the issuing of a Care Order and medical clearance.

### **AGE ASSESSMENT**

The Age Assessment Panel, made up exclusively of OIWAS employees is responsible for verifying the age of minors and allowing them to leave detention. UM are given 24 hours from arrival to settle down, and then are visited in detention where the Age Assessment Panel carries out an interview with each of them. This panel used to meet once a week, however to further accelerate the process, **they are now visiting the Detention Centres as soon as they get referrals, sometimes as often as three times a week in the summer months.**

### **APPROACHES TAKEN WHEN AGE IS DISPUTED**

When age is disputed, further assessments take place comprising any of the following:

- a. Further assessment by other professionals (e.g. clinical psychologist)
- b. Further assessment and monitoring by CCP (Closed Centre Programme, OIWAS)
- c. Referral to Radiology Department for the Tanner and Whitehouse Hand and Wrist Test
- d. Further assessment by another social worker from OIWAS

The most frequently used assessments are the Radiology Test and further assessment by the social worker from OIWAS. Referral to a bone test increases the duration of the process as it requires the issuing of an Interim Care Order under the Care Order Act. Interviews disclosed that this medical process usually takes around three to six weeks, thus prolonging UM stay in detention.

### **ISSUING OF CARE ORDER**

All verified unaccompanied minors in Malta are placed under a Care Order, which ensures their rights and access to support. This Care Order places the child under the direct care and responsibility of the Minister for Social Policy. Due to their special circumstances, UM are given a special provision and they are protected until the age of 18. When age is verified, the process for the issuing of a Care Order commences. The social worker on the Age Assessment Team [a] prepares a Social Work Report which is

then approved and signed by both the Chair of the Team and the director of OIWAS, seen and countersigned by the Director of Social Welfare Standards and submitted to the Minister for Social Policy for signature that makes it effective. The Children's and Young Persons' Advisory Board receive a copy of the Care Order that includes information on where the child has been placed. Unfortunately this procedure is sometimes unduly lengthy and further prolongs the detention of UMs.

## **MEDICAL CLEARANCE**

In parallel, Detention Services personnel accompany UM to a State Health Centre where a general health screening, including TB screening is carried out. Medical results are given within three days.

Interviews revealed that the most common ailments diagnosed are Tuberculosis or Scabies. In the case of scabies, the detention centre nurse administers treatment which is completed in two days and therefore does not obstruct the process of release. In the case of active TB, UM are transferred to a State mainstream hospital and after treatment they are placed in one of the residential homes. In cases of dormant TB, the minor is released into a residential home but is obliged to receive medical treatment for a period of three months. Strict compliance with TB treatment is regulated under the Public Health Act (Laws of Malta 2003/2007).

## **COMMENTS ON THE RECEPTION PROCESS**

The main concern in this whole process is that minors are held in detention, in conditions that are grossly inadequate and unacceptable until the whole age assessment process is carried out. When Further Age Verification is needed, this takes a period of two to four weeks if the process has been smooth but at times much longer. Nevertheless, better coordination is resulting in shorter waiting.

There was consensus that the members of the Age Assessment Team (AAT) are fast gaining experience and are deeply committed to caring values, but do not carry with them the benefit that would accrue from long years of familiarity with the field. The persons on the panel that make the decisions as regards age are the same persons that are responsible for placing the minors once they get out of the Closed Centres, making them face the conflict of risking service overload the more generous they are with their assessments. Observers state that many age declarations made at the initial screening process are unreliable due to factors like the immigrants being exhausted, unavailability of interpreters, and the fact that some of them can give information confused by the need to switch from Ethiopian to Gregorian calendar, by illiteracy or by information gaps in cultures that do not record or celebrate birthdays. Resulting inconsistent or unclear age claims reduce credibility in a situation where amid scarcity of evidence credibility is what carries most weight.

There is also a considerable risk that a number of minors claim that they are older than their real age. In the case of minors under 16, who cannot be employed legally and cannot travel unaccompanied, they might decide that the best tactic is to declare themselves to be an adult, to ensure quicker access to a job enabling them to send remittances to their families. In such suspected cases, a recently developed good practice is for the AAT to refer the minor for a radiology test to ensure that the minor receives age appropriate care.

## ACCOMMODATION IN A SPECIALISED RESIDENTIAL CENTRE FOR UM

Homes for UMs are worlds apart from detention, and operate to provide a safe residential setting, education, preparation for employment, cultural orientation and leisure activities. There are two of these, Dar is-Sliem accommodating up to 30 under-16s of both genders, and Dar il-Liedna hosting up to 18 male over-16s. Osanna Pia, a mainstream Church run hostel, now takes some who need special attention.

Both OIWAS homes are run by a care coordinator, a social worker and a number of care workers. **The staff seeks to instil a sense of responsibility and do their utmost to facilitate access to resources and find opportunities for integration measures.** The teaching of hands-on life skills is integrated into the residential programme, and the residents, assisted by the care workers are expected to contribute to the residence through cleaning and cooking duties. Various interpersonal skills coloured with an element of acclimatisation to Western culture and values are taught through role modelling, discussion and weekly community meetings.

**An element of good practice is the employment of immigrants as care workers. The authors had the privilege to observe the role of one such care worker, whose intervention, both as a translator, but more so as a cultural mediator proved to be essential for the collection of information for the purpose of this report from the residents in one of the homes.**

However, authors noted lack of guidelines and formal interagency collaboration affecting Residential Homes, together with lack of adequate leisure facilities in one such home. Residential Homes also needs more security measures since staff have been threatened by UM who do not want to adhere with Home policies. The need to be able to accommodate youngsters with different needs in different homes is also felt.

## GUARDIANSHIP

According to UNHCR Guidelines on Policies and Procedures in dealing with UM (1997) a guardian should be assigned to the unaccompanied child or young person as soon as they are identified.

In Malta, in practice, this is done once the minor is placed in one of the residential homes. Generally, it is the residential social worker who applies to become the child's legal guardian. This proposal needs to be approved by the Children and Young Persons Advisory Board of the MFSP.

Whilst the guardian is officially the representative of the minor in all legal and administrative issues, in practice, his/her main role is that of supporting the minor in the asylum procedure. In this regard, Article 15 of Legal Notice 243 (Laws of Malta 2008) stipulates that

*..the appointed representative of the unaccompanied minor is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself for the personal interview. The representative shall be present at the interview and may ask questions or make comments within the framework set by the person who conducts the interview.*

Given that the two social workers in Dar il-Liedna and Dar is-Sliem are the guardians of nearly all UM, meaning the responsibility of around 20 minors each. Evidently, it is not possible for these social workers to follow in depth each UM and this is not in the best interest of the child. Schlenzka (2007) further reasonably points out that though there are positive elements in guardians having such close contact with the minors, there is a high risk of conflict of interest since the guardians are also the minors' social workers and are employed within the agency which is responsible for their care and accommodation.

These factors could lead to the fact that whilst the guardians are officially the representatives of the minor in all legal and administrative issues, in practice, their main role is that of supporting the minor in the asylum procedure. In fact, when the appointment of a guardian is finalised, the Refugee Commissioner is informed and the process of claiming asylum commences.

### **INDIVIDUAL CARE PLANS FOR UM**

Upon arrival in his/her new home, the minor is given a month to settle into the residential facility. When this month lapses, the Care Coordinator calls a case conference whereby an individual specific care plan is drawn up for the minor for the next six months. Various aspects of the child's life are discussed during this case conference, including social care, health, education, social integration and possible plans for resettlement or family reunification prospects. It is considered crucial for minors to be an active participant in the decisions being made regarding their life. The social worker writes a Case Conference Report that includes recommendations and this is presented to the Children and Young Persons' Advisory Board who are responsible to support the implementation of such recommendations. The case is usually reviewed every six months; therefore the care plan is updated regularly. Recommendations may include psychological, medical and/or education support, which are funded by the Child and Young Advisory Board. It was commented that the Advisory Board is usually very cooperative and are willing to support the minors in this regard.

**These care plans can be regarded as an element of good practice since their aim is to ensure the optimal care of the minor.**

### **INTEGRATION MEASURES**

Integration of asylum seekers is problematic in Malta since the majority of immigrants, including UM regard Malta mainly as a country of transit and not as their final destination. However, in a practical manner, various practices that are adopted by the residential homes, do facilitate integration into the Maltese community, or on a wider level, into the European community. However, the challenge of how to tackle integration amid widespread and tricky uncertainty about the future merits deeper thought on how to proceed. Various integration measures as well as challenges facing UM and service providers in the areas of health care, education, employment and housing are outlined in the following sections.

### **HEALTH CARE**

**Unaccompanied minors are given similar access to Health Services as Maltese citizens. Since their care falls under the responsibility of the state, they are further provided with free medication. They have access to the General Practitioner (GP) in the health centres and in one of the residential homes; a private GP assists them regularly on a voluntary basis.**

The public health services in Malta are very much overstretched, characterised by shortage of staff resulting in long waiting lists. Though healthcare professionals are being acquainted with cultural sensitivity during formal training, the authors learnt that cases of cultural insensitiveness and lack of understanding to UM are still frequent by some health care professionals and staff. Lately the Department of Primary Health introduced interpreters and cultural mediators that could be used by appointment. **It has been noted that in urgent and/or severe medical concern, the Advisory Board has funded consultations and screening in private clinics.**

In general, access to mental health care is very restricted in the public sector, thus the Advisory Board often needs to provide funding for psychologists and psychiatrists in the private sector. Due to limitations in resources this inadvertently implies that only those displaying severe symptoms of mental health disturbance are referred. **Recently, a psychologist from MSF started providing service in the Residential Homes in the form of individual and group sessions.**

**As part of the care programme for minors, the coordinators regularly invite health officers from the Department of Health Promotion and Disease Prevention as guest speakers to provide information and advice regarding health issues such as nutrition, sexual health, smoking, drugs and alcohol and health and safety in the workplace.**

Since Tuberculosis (TB) infections are a reality among the immigrant population, **OIWAS staff are acquainted on TB issues and are trained regularly by Department of Health officials so as to be able to identify any minors displaying symptoms of TB.**

When there is a problem, such as when the minor refuses to take medication, the social or community worker is responsible for immediately informing the department, which in turn has the responsibility to investigate. However, it has been noted that there seems to be insufficient guidelines for the required interdepartmental cooperation.

## **EDUCATION**

In Malta, all children up to the age of 16, including UM, are entitled to free education and are legally obliged to attend. However, in practice, hardly any of the unaccompanied minors residing in the residential facilities attend school.

There seems to be huge obstacles to integrate UM into mainstream schools and the Ministry of Education and Ministry of Justice and Home Affairs are still discussing how to overcome such obstacles. An observer pointed out that at the beginning of this scholastic year, a group of UM started attending school but were told not to attend any more so that school could make arrangements for their needs. The Education Department will now be sponsoring a teacher to visit the residential facility three times a week to teach English and Maths as a stop gap until support can be provided to integrate these minors into mainstream education. **In the meantime, the Advisory Board has also sponsored a social work graduate on a part-time basis to act as a Mentor with the current residents of Dar is-Sliem who are under 16 in order to pave their way to facilitate their impending transition into mainstream schools.**

**In the residential homes, the coordinators try their best to encourage the minors to continue their education and seek out various opportunities for them to attend specific courses and vocational training.** For those over 16, they liaise with various institutions such as ETC (Employment and Training Corporation) and Adult Education



Division. The Advisory Board is often supportive and partly funds such courses when someone is interested to attend.

**Occasionally, the minors are provided with opportunities to participate in activities carried out by volunteers or through specific projects such as computer courses, English lessons and drama workshops.**

**These opportunities, apart from having an educational value offer a chance for social integration.** As an example, when visiting one of the residential homes, we were informed that a group of Girl Guides were going to visit the next day and had planned a day full of activities for the residents.

## **EMPLOYMENT**

**UM at the age of 16 onwards have legal access to the Maltese labour market. They are assisted by the residential workers to fill in all necessary applications to obtain a work permit and are financially supported to pay the fees needed.** The State Employment and Training Corporation Job Centres further send their vacancy lists directly to the residential homes.

Workers in the residential homes often call the employers themselves and act as reference persons for the minors, though the illegality of work under the age of 16 is made clear.

## **SOCIAL BENEFITS**

OIWAS donate a 7 Euro fee to UM, specifically for public transport use. Shelter, food and all social services are free. An 'phone card is also provided to keep telephone contact with relatives. OIWAS home coordinators apply for a Child in Care Benefits, for every UM under their care. **Clothes are bought by means of a one-off 70 Euro grant, however if specific needs crop up, OIWAS are willing to financially assist residents, especially for books and uniforms.**

## **HOUSING**

There are no official guidelines in relation to housing. Nonetheless legally working UM, who are assessed to be capable of living on their own, are encouraged to rent private accommodation when they are approaching the age of majority, rather than be transferred to an Open Centre at the age of 18. **Contact is made with landlords and the residential staff act as reference persons in this regard as well.**

## **TURNING 18**

Observers point out that vulnerability does not disappear at the stroke of midnight on turning 18. At that age UM have to leave the Residential Home and are either supported to move into privately rented accommodation if they earn sufficient income or else are placed in one of the Open Centres depending on their vulnerability. Moving to one of the centres for vulnerable adults is easier than moving to one of the mainstream Open Centres especially for males as the latter are overcrowded, lack individual care and facilities are much more basic than in the residential homes for UM.

There is no formal follow up or 'after care service' from the Residential facility or from OIWAS. **At the same time, the Residential Homes' coordinators have adopted an open door policy, so that these young adults who need general support or more specific advice can drop in to visit and also take part in certain activities. In fact, it**

was noted that quite a number of young adults stay in close contact with the staff in the Residential Homes.

## **APPLICATION FOR ASYLUM – FROM INTERVIEW WITH REFUGEE COMMISSIONER**

The asylum process in Malta is initiated when irregular immigrants register their desire to apply for asylum in terms of the Refugees Act (Cap 420), by filling in a form, termed as the Preliminary Questionnaire (Laws of Malta 2001). This form is distributed to immigrants and is then forwarded to the Office of the Refugee Commissioner. As in the cases of adult immigrants, the process with unaccompanied minor claimants initiates when the Refugee Commissioner receives their duly filled in Preliminary Questionnaire. In this form, the applicant is requested to give basic details, including date of birth and it is through this form that the Refugee Commissioner establishes that there are alleged minors who are registering their desire to apply for asylum.

The Office firmly believes that the interest of the child, has to be considered as a first priority, thus treating UM as children first and migrants second, even at the point when age has not yet been verified. **The Office of the Refugee Commissioner believes that it is important that the agency responsible for age assessment keeps the Office informed of the stage reached in the age assessment**, even though the office can only proceed after the AAT have reached their decision. The Office of the Refugee Commissioner can proceed to interview the minor after he/she has been appointed a legal guardian and released to the residential home. .

**The Office, despite the increasing numbers in asylum applications, proceeds to interview UM as early as possible and gives them priority over other cases. Furthermore, the office asserts that they are interviewed in the most sensitive manner.**

## **PROVISIONS AND CONDITIONS - TYPES OF PROTECTION**

The Office of the Refugee Commissioner as stipulated by law, may recommend two types of protection: (a) Refugee Status; and (b) Subsidiary Protection. Refugee Protection is derived from Malta's accession to the 1951 Geneva Convention and the 1967 Protocol relating to the Status of Refugees.

According to Act 14 of Legal Notice 243 (Laws of Malta 2008) a refugee is entitled (a) to remain in Malta with freedom of movement, (b) to be granted, as soon as possible, personal documents, including a residence permit for a period of three years, which shall be renewable; (c) to be given a Convention Travel Document entitling him to leave and return to Malta without the need of a visa; (d) to have access to employment, social welfare, appropriate accommodation, integration programmes, state education and training, and (e) to receive state medical care especially in the case of vulnerable groups of persons.

Should the Refugee Commissioner decide that the conditions to declare an asylum seeker a refugee are not satisfied, he may recommend to the Minister to grant the applicant, **subsidiary protection**. This applies to failed asylum seekers, who if returned to their country of origin would face a real risk of suffering serious harm. The subsidiary protection status replaced the temporary humanitarian protection status as from 2008.

According to Article 14 (1) (b) of Legal Notice 243 (Laws of Malta 2008), a person enjoying subsidiary protection shall be entitled (a) to remain in Malta with freedom of movement and to be granted personal documents, including a residence permit for a period of one year, which shall be renewable; (b) to be provided with documents which enable him to travel especially when serious humanitarian reasons arise that require his presence in another State; (c) to have access to employment, subject to labour market considerations, core social welfare benefits, appropriate accommodation, integration programs, State education and training, and to receive core state medical care, especially in the case of vulnerable groups of persons.

On the recommendation of the Office of the Refugee Commissioner, the Ministry of Justice and Home Affairs has introduced another regime of protection i.e. Temporary Humanitarian Protection an administrative procedure which is to be granted in special and extraordinary cases where applicants are found not to be eligible for recognition as refugees or beneficiaries of subsidiary protection, but who are nonetheless considered to be in need of protection due to special humanitarian reasons. For instance, in the case of unaccompanied minors, who are not recognized as refugees nor qualify for subsidiary protection, this Office would grant Temporary Humanitarian protection, under the care of the legal guardian, until the minor reaches adult age.

#### **PROVISION AND CONDITIONS – INTERPRETERS AND CASE WORKERS**

**The Office of the Refugee Commissioner is doing its best to employ more female interpreters, so as to adopt a gender sensitive approach, especially with female UM. The office has for some years, adopted a policy where female asylum seekers, including UM, are interviewed by a female asylum determination officer.** Each case is assigned an interpreter unless the individual claiming for asylum decides not to use this service. Before the start of every procedure, the asylum seekers, including UM are given the opportunity to ensure that they are able to communicate and understand clearly the assigned interpreter.

**These interpreters are given induction training which is provided by the Office of the Refugee Commissioner.** Asylum determination officers, who work closely with interpreters on a frequent basis, are also encouraged to give feedback to the interpreters as to allow for on- the spot training. This is in congruency with the UNHCR (1997) guidelines which stipulate the importance of having skilled and trained interpreters.

**The asylum determination officers are required to have a first Degree and/or a Masters Degree in social sciences such as Psychology and Sociology.** The office also has asylum determination officers with a background in Law. Asylum determination officers are given a minimum of one month training, which includes training on both the legal aspect as well as the interviewing process. After being acquainted with this theoretical background, asylum determination officers are given hands on training, where they are monitored by a senior colleague. The office has also introduced a mentoring system whereby a senior asylum determination officer follows closely the work of their new colleagues. All cases are thoroughly re-examined by the Refugee Commissioner or his Assistant.

The Office of the Refugee Commissioners assigns the most experienced case workers to lead interviews with UM. A discretionary policy may also be used, by which an **UM who is of a tender age, is not interviewed directly, but the asylum procedure is conducted by compiling the information about the UM from his/her legal guardian. Thus, in the best interest of the child, the interview may be pursued by his/her legal guardian.**

## **SUMMARY OF AVAILABILITY OF LEGAL, TRANSLATION AND GUARDIANSHIP ASSISTANCE AT VARIOUS STAGES**

1. At Police HQ interviewing premises just after landing: interview about the journey, motives and organisation behind it: no interpretation, no guardian, no legal assistance (latter not allowed in Maltese police interviews, irrespective of citizenship, though at present being raised in public debate).
2. Filling Preliminary Questionnaire: no formal interpretation, no guardian, normally no legal assistance: they get help from other detainees and from detention staff.
3. At Age Assessment: nobody has a guardian yet by this stage; interpreters not always available, and this either slows down the process or there is reliance on 'informal' translators.
4. At Refugee Commissioner Interview: guardian is present, being one of the residence social workers; trained interpretation is very carefully assured and sensitively used; legal assistance usually available through an NGO, but lately not in all cases, because of insufficient NGO personnel.
5. In cases where UM appears before the Juvenile Court: hostel social worker attends but role of guardian for court purposes can conflict with role of witness at least where the case is about incidents that took place at the hostel; legal assistance is provided by JRS but, if not available, through Legal Aid.

## **5. Return Practice, including reintegration Assisted Voluntary Return (AVR)**

In line with various international and European studies, the Government of Malta agrees that assisted voluntary return (AVR) is by far the preferred return practice, both for Malta and for returnees, particularly if AVR includes re-integration support in the country of return (EC 2007 & Borg 2008). It is considered as not only a more dignified way for the migrant to return, but also cost-effective and more sustainable than forced return (EC 2007). This was even supported by the authors' interviews with local authorities, international organisations and NGOs. AVR experiences in Malta, is being appraised at all levels, international, national and individual immigrants' level (Borg 2009). Immigrants are being offered cash-grants and pre-return training prior leaving Malta. The Government of Malta has established networking with the Embassies of Ghana, Sudan and Nigeria permitting adequate cooperation in the identification of returnees and the issue of travel documents. AVR in Malta is made possible by means of many stakeholders including IOM, SOS Malta and Med-Europe, the Ministry for Justice and Home Affairs, the Police, the Armed Forces, the Malta Foreign Affairs' agency for migrant integration, OIWAS, Suret il-Bniedem, the Emigrants' Commission, the Refugee Commissioner and the Employment and Training Corporation.

The assisted voluntary return programme in Malta is primarily offered to adult immigrants. However, whilst conducting interviews with stakeholders, the authors were told that AVR can be even offered to unaccompanied minors as well. By means of international contacts, various international organisations assure that unaccompanied minors are entrusted to reliable social care authorities and assisted to integrate in the country of destination. When possible, the unaccompanied minors' family is contacted and consulted, thus establishing the best interests of the child. Assessment is meticulous, and the support of the country's authorities is sought where there is doubt on the genuineness and reliability of the person from abroad who is showing an interest in the migrant. All these stringent measures make unaccompanied minors' AVR complex, thus limiting return, particularly to countries where administrative capacity is limited. Nevertheless, it gives satisfaction to note that local authorities and organisations are very aware of these rigorous international and national laws and guidelines in order to safeguard the best interest of the child.

The analysis of UM demographic data in Malta reveals that more than 60% of the unaccompanied minors in Malta are of Somali origin. Although the authors' interviews recognised Somalis among the first AVR beneficiaries in Malta, it is becoming more difficult to assist Somalis' voluntarily return to country of origin, particularly UM. A European Commission (2007) report on voluntary and forced return migration policies and practices in eleven EU countries<sup>3</sup> (excluding Malta), showed that similarly to Malta, Somalia was one of the asylum seekers' main countries of origin. Moreover, in an indicative overview of these countries' return practices (not including Dublin II transfers), no Somalis were either forcibly or voluntarily returned to Somalia. Somalia's lack of central administrative competencies makes it difficult for adults immigrants to be voluntarily assisted in Somalia. According to the UK Northern Refugee Centre (2009), IOM UK which is responsible for AVR in UK, are formally informing Somali AVR applicants that their voluntary departure applications are being blocked. The reasons are multifaceted, but the main two logistical problems between IOM and Somali authorities are presumably documentation and acceptance.

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<sup>3</sup> Austria, Belgium, Estonia, Germany, Greece, Ireland, Italy, Latvia, Sweden, The Netherlands and UK

Keeping in mind their commoner countries of origin it is no surprise that according to interviews with stakeholders, no unaccompanied minors had ever benefited from an AVR programme in Malta. Apart from problems originating from countries of origin, the specific needs and situation of the UM as separated persons are hindering factors to their life project in their own country. UM would prefer to resettle in another country, possibly with their relatives.

*I know about the AVR programmes; however I will never go back to Nigeria (No reasons for answer given, though facial expressions indicated negative experience in country of origin)*

*Nigerian female UM*

## **PROCEDURES FOR RESETTLEMENT AND FAMILY REUNIFICATION**

Malta's authorities are making the utmost to promote resettling programmes. The Ministry of Foreign Affairs of Malta and the US Embassy in Malta have established a resettlement program to allow more migrants, including UM, living in Malta to be resettled in the US. The program is a collaborative partnership among the office of the United Nations High Commissioner for Refugees, the International Office of Migration, the US Department of Homeland Security, and a number of local NGOs<sup>4</sup>. The last group of 20 beneficiaries were from Somalia, Eritrea and Sudan and left Malta in April 2009 to begin a new life in the US. Since its inception in May 2008, the permanent refugee resettlement program resettled over 269 among refugees and beneficiaries of subsidiary protection in the United States. Interviewees also gave anecdotal accounts of UM who were relocated to the Netherlands and Germany.

Resettlement is usually proposed to UM who have relatives living in the country of resettlement, either country of origin or destination. However the latter is more preferred, as evidently unaccompanied minors prefer resettlement and family reunification in a country where prosperity and stability far out their country of origin. In a focus group with unaccompanied minors, the majority of participants (n=6) claimed that education and work were their priorities in life, preferably not in their country of origin. Only two participants showed interest to reunite with their families immediately, seeing that their country of origin is politically stable again.

In 2007, 5 unaccompanied minors filed an open application with UNHCR for family reunification in the US, another two were resettled and another two were in the process of family reunification. IOM has prepared the necessary documents and medical reports required for the minors to enter the US. In 2007, procedures were being followed so that a female unaccompanied minor would be adopted by an uncle residing in the UK (Separated Children in Europe 2008). This girl experienced the tragic loss at sea of a number of migrants, including her mother and 5 young siblings.

In line with the Dublin II treaty, in August 2006 an unaccompanied minor was returned to Malta from the UK as it resulted that the return was incorrect (Separated Children in Europe 2008). The minor was not accepted by the UK authorities. Malta is a signatory of the Dublin II treaty, thus making family reunification possible. This enables UM to reunite with parents and other close family members or guardians residing in other EU countries and/or countries of origin. Under the responsibility of the Children and Young Persons Advisory Board of the Ministry of Social Policy, social workers who take care of unaccompanied minors in residential homes and IOM assists these young persons during the journey towards reunification and for the best interest of the child.

## **FORCED RETURN**

Malta's strong promotion of AVR, resettlement and family reunification, contrasts with the traumatic episode of its controversial decision to forcibly repatriate 223 Eritrean irregular migrants in 2002. Although it is unclear whether unaccompanied minors were forcibly repatriated or not, a frightening documentary, released by Human Rights Concern – Eritrea and Amnesty International's UK Human Rights Centre, chronicles the story of six Eritrean experiences after repatriation from Malta in 2002 (Lindsay 2008). These survivors claimed that they were detained, tortured and others even died after returned to Eritrea. Eritrea's opposition party and human rights organisations appealed the Government of Malta not to repatriate other Eritreans because of serious human right

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4 That is, all NGOs and IOs listed in paragraph 1 of Section 5

infringements in Eritrea. Through the efforts of the UNHCR and Amnesty International, Eritrean deportees from Malta who managed to escape and survived the imprisonment in Eritrea, were eventually resettled in Canada, Sweden, Denmark, Holland, Australia and the UK.

In light of this sober human right situation, the UNHCR issued guidelines, which are still in force stating that rejected Eritrean asylum seekers should not be returned to Eritrea, having clarified that its previous declaration that Eritrea was a safe haven did not cover all cases. After the 2002 incident, no Eritreans were forcibly returned by the Government of Malta. However, Schlenzka (2007) disclosed that in 2006 2 unaccompanied minors were deported. In instances where boatloads of immigrants coming from a country considered as safe are immediately repatriated, it is worth finding out beforehand how far safety extends to unaccompanied minors, in line with the spirit that underlies the draft directive on returning illegally staying third-country nationals.

Malta had established good diplomatic relations with various sub-Saharan African countries, including Benin, Kenya, Senegal, Sudan, Swaziland, Gambia, Mali, Nigeria, Niger, Uganda, Ghana, Guinea, and Zambia (Ministry of Foreign Affairs 2009). In December 2008, the Maltese Government established diplomatic relations with Eritrea. This relationship was criticised by local media, since Eritrea is being criticised for its lack of human rights recognition (Lindsay 2008). In 2005, Malta also asked to be associated with the decision by France, Italy, Spain, the UK and Germany to carry out joint flights of repatriation (forced) of illegal immigrants to their countries of origin, within the parameters of international law (Jesuit Refugee Services Europe 2005). This means that if Malta intends to repatriate UM, the rigorous international and European legal frameworks must be upheld. The Government of Malta applied for EU funds and projects to reinforce return practices and resources (Parliament of Malta 2007).



## **6. Concluding Remarks: Good Practice and Lessons Learnt**

The aim of this final chapter is to identify good practices encountered and lessons being learnt. Since this document is intended as a help mostly in the learning of those most involved in the service delivery, the good (or beneficial) practices to highlight will not be the ones that are a new concept, but those that are a new local step in the right direction.

Because the boat people migration is so new in Malta, the growing movement for a coherent policy and responsive service, bringing together the contributions of civil society, government and international bodies, is the first basic good practice. A central lesson being learnt here is the need for the whole effort not to be overwhelmed by the sheer force of the situation and the disproportion of the available resources and help to the size of the problem.

What is possible and what works in Malta must be identified through finding ways of bringing together values and standards with the possibilities and needs of Malta's particular context. These possibilities and needs, in their turn, will not be effectively responded to unless this response is open to the needs and possibilities that occur on all relevant levels. Action on the micro or face-to-face level in directly dealing with the vulnerable minor is crucial, but would be ineffective without harmonising with and mobilising action on the meso or organisational level, as well as the macro, that is the country and international level. Seeking good practice only on the level of person-to-person welfare practice would be ineffective, alienating and frustrating; especially in a situation that has untypical needs.

Immediate fast tracking of persons claiming to be unaccompanied minors, their referral to a panel of qualified evaluators in Malta and the avoidance of the bone test for the majority of applicants are beneficial practices. However, the lesson being learnt here is that there are too many avoidable factors that delay this fast tracking, such as the wait for the overworked members to be available and the wait for the bone test to take place. Another lesson is that, even where full effort has not succeeded in making fast tracking as fast as one would wish, extra fast tracking efforts should concentrate on those claimants who, by their appearance and through other perceptible signs, appear more convincingly to be minor or of a younger age (which seems to have already happened, but only episodically with the very few unusually young, such as clear under-14 UMs, who in fact arrive very very rarely).

The help from translators from among users or employed by Médecins sans Frontières or those employed by OIWAS as well as the free legal aid offered through NGOs, UNHCR and the law faculty are a progressive practice that facilitates understanding and fairness in this crucial process. Unaccompanied minors, like other immigrants, are still handicapped by lack of translation at the embarkation stage and an inadequate supply of it at various points, while the supply of legal aid is not enough to meet the amount of need.

The provision of two residential homes for UMs, accommodating up to 40 or so such service users is a very beneficial practice, since it offers a specialised setting for these young people to have common facilities and individual care programs according to their needs. In each of the two hostels the staff consists of a coordinator, a social worker and a care worker. At any time there are two staff members on duty, but in one of the hostels they have to take care of a second group of residents than the UM. The introduction of reliable age assessment has warded off the danger of overcrowding. A learning point related to this is that overcrowding can only be warded off by a restrictive approach that

does not give the benefit of a state of doubt to the unconfirmed claimant as long as the disproportion between the claiming and the available places is so great. Increasing supply would help UMs as long as this is not done at the price of still mixing the minors with adults. Schlenzka (2007) recommends that such an age mix be tolerated in temporary settings while awaiting the result of the assessment that leads to acceptance in these homes away from detention.

NGO and IO proponents condemn the practice of detention, disagreeing with its justification in terms of security concerns among the main political leaders as well as the widely held expectation that if it were stopped, hardly sustainable boat arrivals would escalate to dramatically unsustainable levels. However, the conditions of detention are well below international and EU standards as to what is consonant with basic human dignity. Though it is difficult to see how this can be alleviated even in the medium term without massive international burden sharing, resources must be found to rescue persons who suffer from this plight, including any UMs among them.

The policy to divert claiming UMs from detention with adults is a beneficial practice. However, there are still very numerous limitations in its practice. Claiming UMs are placed not just in the part of the detention reserved for families, but among all the detention groups. As the expansion and refurbishing of buildings tries to keep step with the growth in numbers, and as the services are actively reviewing the groupings into which detainees are divided, the full implementation of the policy to keep UMs separate should now be among their very highest priorities.

The dedication of the staff in compiling statistics, both long-term and in kind response to the requests of the authors of the present report, is no less than admirable. The benefit of good data is clear, especially when there is guidance as to what is needed and resources to obtain it.

Young people gain through the care programs they receive. These feature a congenial staff and living setting and professional guidance. The financing of outside psychological support by funds from the Children and Young Persons Advisory Board is a great help, as are the contacts made with mainstream local community groups and activities. Participants are learning to appreciate the need to add further features that are often already present in professional and mainstream child and youth care. Such would be the further strengthening of community links and participation, the application of the 'Looked After Children' standards that have been mainstreamed in other local children's residences, care plans of a permanency or long term type that goes beyond the here and now to the post-18 future (fully facing the elusiveness of a long-term settlement that is often shrouded in the uncertainty of a country not yet identified), as well as deep thinking, planning and appropriate training to deal with psychological and life challenges of past events and future aspirations in a culturally and situationally appropriate manner.

OIWAS, mainstream welfare, home ministry, security, NGO, IO and University personnel have been very active in promoting and participating in learning and exchange courses and seminars, often with international participation, at times involving travel to other countries. International organisations and networks such as ENARO, Save the Children and COST HOME have been very active. The University of Malta is launching a Masters in Social Work and in Social Policy of Migration as from October 2009, aimed at practitioners active in Malta and the Mediterranean, with rich input from local and international academics and practitioners. Putting together varied minds and experiences is the hall mark of a fast and motivated learning experience. The organisational challenge

now is to ensure that as many as possible are sufficiently released from pressing duties to participate adequately.

At least two Church schools (St Aloysius' College and the Archbishop's Seminary) have put on special semi-integrated educational programs for migrant children. OIWAS and others have bid, with mixed success, for funds for appropriate educational programs. ESTEEM/ Leonardo is a project that is helping orient young immigrants toward tertiary education, often coming up against formidable situational odds and resource gaps. The effort to assure the UMs' EU-recognised right to an education equal to that of local citizens has however encountered disappointments in the face of a prohibitively widespread mismatch in the mutual preparedness of mainstream schools and migrant students. Representations with the main educational authorities have not yet borne fruit. The opportunity of using the schools as point of insertion of activities to help the harder-to-integrate mothers has not yet been taken up.

Offering specialised hostels for UMs has opened up great opportunities. The use of more specialised but mainstream settings (such as Osanna Pia Salesians' hostel) can be seen as an eye-opener to the need to progress to an element of specialisation in hostel care. Unfortunately, the need for Maltese children's homes to specialise by type of need has only made very little headway; but the services for UMs should be at the forefront to move towards such specialisation. A step forward will be when UMs with different care needs can be accommodated in mainstream settings that are designed for more specific needs.

Recent seminars led by IOM about human trafficking have involved deep international and local input, including the active participation of Appogg and OIWAS. The application of the Care Order Act and the provision of guardianship under its auspices similarly signify that, while mainly transferred to OIWAS under the Ministry for Justice and Home Affairs, the welfare of UMs in many particular areas still enjoys the input and support of the mainstream children and family services under the Ministry for Social Policy.

The challenge which carers are now taking on is responding to needs of UMs that are often different from those typical of the mainstream and from each other. It is difficult to find the balance that seeks the best interest of the child when local demands are at loggerheads with insistence from the impoverished family far away back home for a 14-year old to start earning money to support them. In the same vein, respecting the wish of youngsters over 16 to visit relatives abroad is praiseworthy, as long as the safeguards against exploitation or human trafficking are assiduously applied.

IOM has locally applied its services to support Assisted Voluntary Return for adults as well as family reunification and resettlement programs that have been or could be applied to minors. IOM flexes its rich networking capability in making contacts with other countries, whether to assess the genuineness of claiming relatives or hosts, the safe and supported departure, transit and arrival in voluntary repatriation, and the well-managed resettlement to accepting countries. It is however still a challenge to provide a safe and well supported journey and return for forced repatriation, which is increasingly becoming a policy need for countries overloaded by illegal immigration.

A good practice to report is the recent decision for an ad hoc parliamentary committee on immigration to scrutinise the whole system including UM practices. Meanwhile, no good practice on the micro or person-to-person level is going to alleviate the pressure of sheer numbers on the Maltese services and on the disposition to generosity of many Maltese members of the public and of the security services towards migrants without the success

of the lobbying by Malta on the EU and the international stage in favour of obligatory and significant burden sharing. This indicates a good beginning in what seems to be the only remedy that could make Malta's immigration problem manageable and free the life of unaccompanied minors, directly and indirectly, from the many limitations that constrain them and those dedicated to their well-being. Still, every effort to substantially improve the detention conditions, whether they affects UMs normally, exceptionally or never, and even before the arrival of such much needed relief, is equally a must.

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