**Human Rights Council Resolution /HRC/29/2 n the Protection of the Human Rights of Migrants: Migrants in Transit**

1. Does your country have laws, public policies or programmes, action plans or other relevant measures in place to ensure protection of the human rights of all migrants in transit? For example, including the following area:
   1. Access to essential services in transit, such as health care and services, including sexual and reproductive health care;

Irregular migrants arriving to Malta are screened upon arrival for any clinical signs and symptoms of infectious diseases. Urgent clinical needs are attended to. They are also screened for active TB. Any cases which are found to be/ suspected to be infectious are isolated. Persons needing treatment are provided with treatment according to need in reception/open centre, at primary care or at hospital as required during their stay in Malta. The provision of health services upon arrival is provided indiscriminately to all irregular migrants.

Asylum seekers, Migrants granted refugee status, subsidiary protection and temporary humanitarian protection and their dependants are provided with free Public Health Care.

* 1. Protection from violence, including sexual and gender-based violence, as well as abuse and exploitation of migrants in transit by State and non-State actors;

There are no specific laws or policies in place targeting migrants in transit, but such acts are punishable according to the relevant articles of the Criminal Code.

Similarly, Maltese labour law applies to all employees employed in Malta, irrespective of nationality. Thus, apart from Maltese nationals and citizens from European Member States, the law also applies to migrants, third country nationals, and also migrants in transit etc and such workers are entitled to all the rights and entitlements which emanate from Maltese legislation, irrespective whether they are regularly or irregularly employed.

If such workers feel that their employment rights have been breached, they can contact the Customer Care of the Department of Industrial and Employment Relations to submit queries or even lodge complaints.  In case of a complaint or report such a case is taken up by the Inspectorate Section where the case is investigated by the Department’s inspectors. If need be,   such inspectors visit the place of work and talk separately with the employer and employees. If a breach is detected, the inspectors advice the employer to rectify the situation. Failure to rectify the situation leads the inspectors to start proceedings before the criminal court against the employer.

The Department also has an Enforcement Section where, in cases where the employer fails to pay the employee the wages due or does not observe employment legislation, , the employee can also lodge a complaint with the officers of the Department who will then take the necessary steps to investigate the circumstances.  If the officers deem that the law has been breached, the employer concerned is contacted and the Department follows the issue accordingly. In case that the employer persists in breaching the law, criminal proceedings against the employer are initiated before the Court of Magistrates as a Court of Criminal Judicature. The employee as a private individual has the right to institute a civil action as well.

* 1. Specific measures to protect and ensure the best interests of all migrant children in transit, whether they are travelling on their own or with their parents/guardians;

Upon arrival vulnerable groups, including minors, are screened and given immediate attention, including in relation to any medical requirements.

All unaccompanied children asylum seekers in Malta are issued with a Care Order under the Children and Young Persons Care Orders Act. This ensures that they are protected by the State. In practice it implies that the Minister for Family and Social Solidarity has their care and custody. They are accommodated at Open Centres for unaccompanied minors with a programme that ensures an individual follow-up with a care plan that ensures their well-being and protection. An advisory board is also set up to oversee the implementations of these care plans. A guardian is also appointed for the purpose of the asylum determination interview.

Once a care order is issued, a placement in the government education system will also be provided. This ensures the child’s right to education but also assists with his/her integration into Maltese society.

The Agency for the Welfare of Asylum Seekers works closely with different professionals and other entities and organisations including non-governmental organisations to offer these adolescents a dignified way of life that enables them to become independent young adults.

In line with the preservation of the right to family life, all refugees including unaccompanied children are eligible for family reunification.

Moreover, action will be taken with a view to trace the family members of unaccompanied minors, in cooperation with pertinent stakeholders.

Children are provided with free health care, social welfare benefits and also free state education.

* 1. Rescue of migrants in distress at land, sea and air borders, provision of immediate assistance and referral to adequate services;

The Armed Forces of Malta coordinates the rescue of all migrants within Malta’s Search and Rescue Area. Malta continues to respect all its international legal obligations regarding the rescue of persons in distress at sea. All such efforts are conducted in full respect of relevant instruments of international law fulfilling all SAR obligations as set out in the UN Convention on the Law of the Sea, applicable provisions contained within the 1979 Maritime SAR Convention and the International Aeronautical Manual for Search and Rescue (IAMSAR). It is important to note that such obligations are adhered to regardless of the provenance and/or legal status of the persons requiring rescue. The responsibility of Malta within the SRR is to *coordinate* all SAR activities using any available resources including assets of third countries and commercial shipping. AFM has never ignored one single case inside its SRR.

All irregular migrants arriving Malta are upon arrival are met by the Police and Health authorities to ensure efficient registration and immediate needs are addressed. First health medical test are carried out and persons with immediate medical needs are attended to or the necessary referrals are made.

* 1. Alternatives to immigration detention and protection against arbitrary detention;

Malta is no longer pursuing a practice of systematic detention for all asylum seekers and irregular migrants, in view of the fact that apposite facilities have been dedicated to the Initial Reception of migrants and asylum seekers considered vulnerable, including unaccompanied minors and families with children.

With a view to achieving compliance with the EU’s recast Reception Conditions Directive 2013/33/EU, alternatives to detention will be referred to in national legislation in accordance with Article 8(4) of the Directive (e.g. regular reporting). The reasons why asylum applicants may be detained will also be transposed.

Moreover, Malta has already introduced legislative reforms addressing detention for the purpose of return, which system caters for the detention of persons who are not or no longer are asylum seekers. Whilst the legislation provides for a maximum detention period of 18 months in such cases, detention is in fact subject to review at least once every three months. Moreover, the review carried out on the sixth month is an independent review by the Immigration Appeals Board.

Safeguards available to migrants offering protection against arbitrary detention include:

* Article 25A (5)of the Immigration Act which provides for the possibility of appeal from a decision to issue a removal order. Any such appeal has to be presented to the Immigration Appeals Board, within three working days from the date of issue of the removal order. This Board has the authority to grant the immigrant concerned provisional release from detention, even on a verbal request, during the course of any proceedings before it under such terms and conditions as it deems fit.
* Article 25A(9) of the same Act, this Board is empowered to hear and determine applications made by persons held in custody by virtue of a deportation or removal order, to be released from custody pending the final determination of their asylum application or their deportation/removal from Malta, as the case may be. In such cases, release will only be granted where the Board is of the opinion that the continued detention of the applicant is unreasonable as regards duration, in the light of the circumstances of the case, or where there is no reasonable prospect of deportation within a reasonable time.
* a request for a judicial review of administrative detention is possible in terms of Article 469A of the Code of Organization and Civil Procedure (CAP 12, Laws of Malta).
* Article 34 of the Constitution which allows for the possibility to institute proceedings regarding the lawfulness of detention.
* Art. 5 of the ECHR which is part of Maltese law and can be invoked before the local Courts.
  1. Measures to ensure that any returns of migrants in transit are carried out in accordance with international law and standards, including the principle of *non-refoulement* and the prohibition of collective expulsion.

The principle of non-refoulement is enshrined in Maltese legislation according to the Immigration Act Chapter 217 and Refugees Act Chapter 420 and no return may be considered if a migrant requests protection.  This is also valid for migrants in transit.

Every return decision and removal order is issued after a personal assessment and states the particular reasons for its issuance for each migrant.

Furthermore, the Board of Visitors for Detained Persons acts as a monitoring body for effecting returns. It was set up in 2007. The functions of the Board of Visitors for Detained Persons are listed in S.L.217.08, and stipulates that the Board is to:

*(g) to monitor the proceedings relating to the involuntary return of illegally staying third country nationals in accordance with the provisions of the Immigration Act*

*and of the Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations; and...*

1. Does your country (as a country of origin, transit and/or destination) have measures in place that ensure a human rights-based approach to the governance of transit migration? For example, including in the following areas:
   1. Governance of irregular migration, including the non-criminalsation of migrants in an irregular situation;

Malta has decriminalised irregular migration and all migrants have access to the international protection procedure although the detention of irregular migrants is possible, such detention may be challenged in accordance with the Immigration Act. Moreover, amendments to the relevant regulation are being proposed which would ensure further guarantee to irregular migrants.

* 1. Measures to prevent and combat all forms of xenophobia, racism and religious intolerance against migrants;

Various amendments have been effected to the Criminal Code (Chapter 9 of the Laws of Malta) where legislative amendments were introduced in order to cater for xenophobia, discriminatory acts or use of language against migrants.

In fact, Article 83B of the Criminal Code provides that:

***83B.*** *The punishment established for any offence shall be increased by one to two degrees when the offence is aggravated or motivated, wholly or in part by hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A: Provided that the provisions of this article shall not apply where an aggravation of punishment in respect of the motives mentioned in this article is already provided for under this Code or any other law.*

Moreover,  Article 222A of the Criminal Code provides for a higher punishment when an offence is motivated by racial hatred:

***222A.*** *(1) The punishments established in the foregoing provisions of this sub-title shall be increased by one or two degrees when the harm is committed on a person who has attained the age of sixty years or on a person suffering from a degree of physical or mental infirmity in consequence of which he is unable to defend himself adequately:*

*Provided that the provisions of this article shall not apply where an aggravation of punishment is already provided for under this Code or any other law.*

*(2) The punishments established in the foregoing provisions of this sub-title shall also be increased by one to two degrees when the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.*

*(3) An offence is aggravated or motivated on grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion if:*

*(a) at the time of committing the offence, or immediately before or after the commission of the offence, the offender demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim’s membership (or presumed membership) of a group, denoting a particular gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion; or*

*(b) the offence is motivated, wholly or partly, by hostility, aversion or contempt towards members of a group as referred to in paragraph (a).*

*(4) In subarticle (3)(a):*

*"membership", in relation to a group, includes association with members of that group;*

*"presumed" means presumed by the offender.*

*(5) It is immaterial for the purposes of subarticle (3)(a) or (b) whether or not the offender’s hostility is also based, to any extent, on any other factor not mentioned in that those paragraphs.*

*(6) In this article:*

*"racial group" means a group of persons defined by reference to race, descent, colour, nationality (including citizenship) or ethnic or national origins;*

*"religious group" means a group of persons defined by reference to religious belief or lack of religious belief.*

By means of Act XXIV of 2014 another amendment was introduced whereby the promotion of violence or racial hatred by public officers constitutes an offence.  Article 135A of the Criminal Code provides:

***135A.*** *Any public officer or servant who, under colour of his office, creates or assumes leadership of a group which promotes violence or racial hatred within the meaning of sub-articles (3) to*

*(6), both inclusive, of article 222A, shall, where the act committed does not constitute a more serious offence, be liable to the punishment of imprisonment for a term from one to five years.*

* 1. Human rights-based approaches to border governance, including counter-smuggling measures;

Malta has consistently continued to make efforts to ensure that a fair and humane approach is adopted, treating migrants and asylum seekers, particularly vulnerable persons, in a dignified manner.

Medical checks are systemically carried out for every migrant upon arrival, addressing also any special needs they may require.

In seeking to protect the pertinent rights of all migrants, irregular migrants are informed of their rights, including the possibility to challenge removal orders, as well as to file an asylum application, via the provision of an informative pamphlet. Moreover, information sessions for prospective asylum seekers are held by the Office of the Refugee Commissioner.

Another measure implemented intended to ensure the safeguarding of human rights at the borders is the provision of regular training for border guards, every 18 to 24 months. The content of the training course on human rights for border guards, inter alia, consists of the following:

* Introduction to Human Rights;
* International and national mechanisms monitoring human rights;
* The principles of universality, equality and inalienability;
* The right to life;
* The right not to be tortured or to be subjected to inhuman and degrading treatment;
* The right to liberty;
* The right to a fair trial;
* The right to privacy;
* The right to freedom of association;
* The right of expression;
* Interviewing;
* Relevant case-law.
  1. Data collection to monitor the situation of migrants in transit, including on the number of migrants killed, injured, victims of crime while attempting to cross international borders.

No data is kept on migrants in transit.

The Armed Forces of Malta maintains record of the number of migrants rescued. The number of corpses found is also recorded. The number of missing persons is also kept as provided by the migrants.

The Malta Police Force keeps records of the number of migrant arrivals and returns in Malta.