

## Information Request - OHCHR report of the SG to the UNGA 69

### Challenges and best practices in promoting and protecting human rights of all migrants at international borders

Malta has experienced heavy influxes of irregular migration mainly from sub-Saharan Africa for over a decade. Since 2002, the number of irregular migrant arrivals has remained consistently high, reaching a record of 2,775 arrivals in 2008.<sup>1</sup> In 2012, a total of 1,890 irregular migrants reached Malta's shores, whilst in 2013, 2,008 arrivals were recorded. In 2014, as at 30<sup>th</sup> May, a total of 91 irregular migrants already reached the Maltese shores. In 2009-2013, Malta received the highest number of asylum-seekers compared to the EU, with an average of 20.2 and 2.9 applicants per 1,000 inhabitants respectively.<sup>2</sup> This phenomenon puts severe pressure on Malta's financial and human resources. Moreover, most irregular migrants that arrive are undocumented.

Nonetheless, Malta has consistently continued to make efforts to further improve the situation, ensuring 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.

The fact that most irregular migrants arriving in Malta apply for international protection, with figures reaching 90% in 2012 and 84% in 2013, clearly demonstrates that effective access to asylum procedures exist and that the asylum system is readily accessible. Furthermore, Malta's asylum recognition rate has consistently exceeded 50% over the past years, in recognition of the needs of persons seeking protection in Malta. This therefore demonstrates that the principle of non-refoulement is not only upheld legally, but also implemented effectively. It is also worthwhile mentioning that asylum proceedings have suspensive effect throughout, including at appeals stage. Therefore, no removal order is executed before a definitive decision has been given. Thus, where an appeal has been lodged, the outcome of that appeal must be awaited.

Furthermore, the right to apply for asylum is also respected in case of asylum seekers *sur place*, including vis-à-vis those who would have entered Malta legally and documented. Moreover, it is also possible to file an application for asylum immediately upon entering an authorised border crossing point.

Another measure implemented intended to ensure the safeguarding of human rights at the international border 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;

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<sup>1</sup> The only exception was 2010 when 47 irregular migrants reached Malta. This relatively small number could be attributable to the Treaty of Friendship signed between Italy and Libya and which was in force at the time, which led to a number of migrants being intercepted at sea by Italian/Libyan authorities and being returned to Libya.

<sup>2</sup> UNHCR, Asylum Trends 2013: Levels and Trends in Industrialised Countries, [available at: <http://www.unhcr.org/statistics>], 2014, p. 22.

- 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.

Ways and means to promote and protect the human rights of migrant children, including unaccompanied children and children separated from their families, with particular reference to the risks faced by adolescents in this regard.

In Malta, the Department for Social Welfare Standards is the designated Central Authority for the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. Malta acceded to this Convention on the 24th February 2011. It came into force on the 1st January 2012.

Besides, the Department for Social Welfare Standards is also the designated Central Authority for the 1980 Hague Convention on the Civil Aspects of International Child Abduction and for the (EU) Regulation 2201/2003 on conflict of law issues in family law between member states; in particular those related to divorce, child custody and international child abduction (the Brussels II bis).

The role of the Department for a protection mechanism for unaccompanied minors is defined primarily within these legal instruments, particularly with regard to the following:

1. Reinforcement of the 1980 Child Abduction Convention;
2. Unaccompanied minors;
3. Cross-frontier placements of children.

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

Unaccompanied minors are screened for communicable diseases and they are housed in a dedicated reception facility until the results are out.

It should be noted that in 2013, there was a big influx of immigrants including unaccompanied minors, arriving in Malta. The major challenge was to determine the age of the minors on arrival. In case of doubt about the age of the unaccompanied minor, it is normal practice to air in favour of the minor.

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 legal guardian is also appointed for the purpose of the asylum determination interview.

The importance of the Care Order is to be underlined as in this way unaccompanied minors are protected with the State taking over their responsibility in terms of Care and Custody.

The Advisory Board has now introduced an additional meeting such that cases of unaccompanied minors under a Care Order are reviewed, thus ensuring that these minors have a care plan which is being followed.

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.