



**Irregular Immigrants,  
Refugees and Integration**

**Policy Document**

# **Irregular Immigrants, Refugees and Integration**

## **Policy Document**

**Ministry for Justice and Home Affairs**

**Ministry for the Family and Social Solidarity**

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## Preamble

The phenomenon of irregular migration, mainly involving people from North African countries, has increased considerably over the past few years, as may be seen from the recent migration flows towards the European continent. As a result of its geographic position, at the crossroads of the Mediterranean and on the threshold of Europe, Malta is also experiencing a steady influx of irregular immigrants/asylum seekers. Records show that in 2002 there were a total of 1686 irregular immigrants. Although in 2003 the figure decreased to 502, this rose again in 2004 to 1388 arrivals in 52 different groups.

This migration phenomenon is mainly triggered either by a well-founded fear of persecution because of race, religion, nationality, political opinion, membership in a particular social group or because of some natural disaster. People also migrate for economic reasons when they choose to leave their homeland in search of stability and a better future in another country.

Prior to 2002, in the absence of a national mechanism to process claims by asylum seekers, applications for refugee status were received, processed and determined by UNHCR (Rome) and the relative decisions were subsequently implemented by Malta. However, in the year 2000 Malta enacted the Refugees Act. Besides defining the rights and duties of asylum seekers and refugees, this Act, which came into force on 1<sup>st</sup> October 2001, also provided for the establishment of the Office of the Refugee Commissioner and the Refugees Appeals Board. Irregular immigrants who are duly recognised as refugees have the right to work and are also eligible to receive social assistance, free medical care, free education and a Convention Travel Document.

The Office of the Refugee Commissioner became fully operational on 1<sup>st</sup> January 2002. Between January 2002 and November 2004, this Office processed 1,569 cases involving 1,903 persons. As a result of this process, eligible asylum seekers were granted either refugee or humanitarian protection status and were thus, in terms of the Refugees Act, allowed to reside in Malta. It may be pertinent to note that by granting 53% of applicants refugee or humanitarian protection status, Malta emerges as the country with the highest acceptance rate in Europe.

In August 2004, the Refugees Act was amended, as experience highlighted the need for amendments to be made to the legal framework in the interest of genuine asylum seekers. Among other

provisions, the 2004 amendments introduced the right to review a person's detention under the Immigration Act whenever it was felt that the period of detention was unreasonable, provided for the setting up of a number of Chambers of the Refugee Appeals Board, and introduced a list of safe countries of origin.

The trends and characteristics of irregular migration vary, mainly in terms of the individuals concerned and in the patterns of their irregular entry and residence. Malta basically encounters three types of irregular immigrants. There are those who enter the country legally but remain beyond their authorised stay, there are others who arrive in Malta without the proper documentation and others who arrive in an irregular manner either voluntarily or after finding themselves in distress at sea and are saved by the Maltese coast guard authorities. Most of these irregular immigrants eventually apply for refugee status. All such immigrants, with the exception of those who are still minors, pregnant women and those who have some form of disability, or condition are kept in detention in terms of the Immigration Act until such time as their request for refugee status is determined.

Owing to its strategic position, exposed coastline and size, Malta is definitely much more vulnerable than other European countries when it comes to irregular migratory flows. Moreover, the Maltese islands are characterised by size (316 km<sup>2</sup>), a high population density of 1200 person/km<sup>2</sup> and a built up area of 23%. These characteristics not only reflect the country's physical restrictions but result in a range of social, cultural and environmental challenges.

The foregoing suggests that in terms of population statistics, the arrival of one illegal immigrant in Malta is *pro rata* equivalent to the arrival of 114 immigrants in Italy and to 150 immigrants in the United Kingdom. At a time when Malta's resident population is experiencing a natural growth as a result of a longer life expectancy and a slowly rising crude birth rate (9.86 in 2002; 10.06 in 2003<sup>1</sup>), the influx of an average 1200 irregular immigrants per annum is bound to exert considerable pressure on the country's human, financial and economic resources. Estimates indicate that in 2004 the costs involved in addressing this issue will reach 2.5 million Maltese lira. It is therefore in the national interest, and more specifically, for reasons concerning employment, accommodation and maintenance of public order, that a detention policy be adopted in cases concerning the arrival of irregular immigrants. Such a policy has actually been in force since the enactment of the Immigration Act in 1970.

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<sup>1</sup> National Statistics Office, Malta

Within a European Union context, Malta is in a truly vulnerable position as its geographic location renders it a prime Member State along the migration path of those fleeing Africa and Asia in search of a better future in Europe. The influx of irregular migrants that Malta is facing, mainly because of its geographic reality, warrants the commitment, support and assistance of the European Union since the issue of irregular migration is a matter that should not only concern southern Member States. The co-operation and collaboration of all EU Member States are necessary so as to ensure equitable burden sharing. Malta looks forward to the implementation of the Hague Programme which not only aims to strengthen freedom, security and justice in the EU, but also intends to address various issues within the areas of asylum and migration.

Malta considers the fight against irregular migration as a priority issue, not only because such migration patterns undermine national stability and pose challenges to the labour market but also because it considers itself legally and morally obliged to combat human trafficking.

The exploitation of thousands of people, who are often exposed to life-threatening conditions during their trip in small open boats across the Mediterranean, has to be immediately curtailed. In acknowledging the need to deter such illegal activity, in 2002 Malta amended its Criminal Code so as to provide long term imprisonment and heavy fines for persons involved in this type of criminal activity. Further to such legal provisions, Malta continuously strives to strengthen its border management and control capacity through better cooperation and exchange of information with international police networks.

Within the framework of the European Union's external affairs policies, partnerships with third countries emerge as a key component in the strategy against irregular immigration. These efforts should focus both on the supply as well as on the demand side. Thus, besides having in place effective readmission agreements and effective border control strategies and procedures, other fundamental issues such as long-term development aid, economic cooperation, and the safeguarding of human rights policies should also be addressed.

Apart from its EU commitments, as a signatory to the United Nations Convention related to the Status of Refugees and to other thematic conventions, as well as a member of the International Organisation for Migration (IOM), Malta is fully committed towards fulfilling, within the limits of its economic development, its international obligations in terms of the reception and assessment of asylum seekers. While Malta's relatively high acceptance ratio is a reflection of this commitment, the need to adequately protect its labour market, internal security and public order is a responsibility that cannot be ignored.

While committing itself to express solidarity and to extend support and protection to all those who are officially certified to be genuinely fleeing from persecution, Malta shall adopt strict measures to repatriate those illegal immigrants who do not warrant such protection.

This policy document, whilst laying down rights and obligations on the part of both the host country as well as asylum seekers, is intended to outline Government's efforts and initiatives to effectively and efficiently address this complex problem within the country's geographical and economic constraints.

The objectives of this policy document are to set out the parameters to ensure:

- a fair, just and humane treatment of irregular immigrants;
- standard procedures and practices when dealing with asylum seekers;
- the social inclusion of asylum seekers; and
- the orderly removal of irregular immigrants who are ineligible for refugee or humanitarian protection status.



## **PART I RECEPTION OF IRREGULAR IMMIGRANTS**

### **1. Objective**

The United Nations High Commissioner for Refugees estimates that around a quarter of the world's 20 million displaced persons are people of African origin who are either seeking to escape persecution or are looking for a better social and economic future in Europe.

The objective of PART I of this policy document is to set out the parameters within which all stakeholders will operate so as to:

- meet the basic needs of irregular immigrants on reception;
- complement existing legal provisions by adopting standard procedures and practices when dealing with asylum seekers between such time that these immigrants file an application for refugee status until such a time when all legal procedures and remedies have been exhausted; and
- ensure the repatriation of irregular immigrants who do not qualify for refugee or humanitarian protection status.

While establishing the administrative and operational procedures to be adopted in terms of irregular immigration, this policy also takes into account national security and public order.

### **2. Guarding Malta's territorial waters**

The responsibility to guard Maltese territorial waters lies with the Armed Forces of Malta. The Maritime Squadron of the AFM provides adequate supervision and security although its ongoing commitment does not always suffice to establish an impenetrable net around the Maltese archipelago. In fact, there have been a few occasions when irregular immigrants succeeded in reaching Maltese shores without the immediate knowledge of the authorities.

The Armed Forces of Malta cannot by international law prevent any boat from navigating through Maltese territorial waters if that boat is exercising its right of innocent passage; and when it is not, intervention is permissible only when such vessel manifests its intention of breaching Maltese law. The AFM as the Coast Guard Agency in Malta should intervene when any illegal operation prohibited by local or international law is taking place in waters where the AFM has jurisdiction.

In the light of Malta's membership of the EU and aware of the need to address the problem of illegal migration on an EU level, Malta will strive to participate in joint action aimed at curbing the phenomenon and to tackle it at source.

In compliance with International Search and Rescue (SAR) obligations, the AFM will intervene directly or indirectly in all SAR cases occurring within the Malta Search and Rescue Region and any persons rescued will be landed as per instructions stipulated in International Instruments or according to bilateral treaties that Malta may be party to.

### **3. Standards and Procedures**

Irregular immigrants usually arrive in Malta without documentation, often following a life threatening journey with their original destination being Italy, since this country appears to be widely perceived as the stepping stone to mainland Europe. Finding themselves unexpectedly in Malta together with people coming from different countries, cultures, religions and family groups could therefore prove to be a traumatic experience for them and is likely to exert additional pressure on local authorities who are responsible for the proper management of such immigrants.

Against this scenario, border and national security officials, together with all those entities involved in the management and processing of applications filed by asylum seekers, will aim to secure a fair and transparent process by;

- being sensitive to the physical and emotional needs of persons in detention;
- making irregular immigrants aware of their rights and obligations under the Refugees Act;
- providing applicants with information about those organizations that provide assistance to asylum seekers; and
- ensuring that applications are examined within the shortest time possible and that decisions are taken individually, objectively and impartially.

#### 4. **Detention of Asylum Seekers**

Although by landing in Malta without the necessary documentation and authorisation irregular immigrants are not considered to have committed a criminal offence, in the interest of national security and public order they are still kept in detention until their claim to their country of origin and other submissions are examined and verified. Irregular immigrants who, by virtue of their age and/or physical condition, are considered to be vulnerable are exempt from detention and are accommodated in alternative centres. The social welfare rights and obligations of these immigrant categories and the role that the Ministry for the Family and Social Solidarity undertakes in their regard are presented in greater detail in Part II of this document.

Although closed reception centres restrict the independence of detainees, these are not to be considered as a prison facility but as administrative detention services that shall, as far as possible,

- ensure that irregular immigrants are not detained for longer than is administratively necessary;
- respect the personal dignity and confidentiality of all irregular immigrants;
- provide for residents' basic needs;
- respect ethnic and cultural diversity;
- organise recreational activities and encourage residents' participation; and
- seek to promote among detained immigrants a degree of confidence in the authorities and in the legal process of their application for asylum.

#### 5. **Closed Reception Centres**

Irregular immigrants will remain in closed reception centres until their identity is established and their application for asylum processed. No immigrant shall, however, be kept in detention for longer than eighteen months. The cooperation or otherwise of the irregular immigrant significantly influences the period that he/she spends in detention since by providing the necessary information to the competent authorities, asylum seekers will be facilitating the processing of their claim for refugee status.

Irregular immigrants have the right to request provisional release from detention if they believe that they have been detained for an unreasonably long time. As stated above, irregular immigrants who are considered to be vulnerable by virtue of their age and/or physical condition shall be given particular attention. Administrative procedures are in place to release such irregular immigrants from detention once their identification has been determined and they have been medically screened and cleared.

Closed reception centres are an administrative requirement in the interest of national security and public order. The aims and objectives of these centres are therefore different from those of a correctional facility. In the best interest of irregular immigrants placed in these centres, the Ministry for Justice and Home Affairs in conjunction with other ministries and NGOs will strive to maintain the following standards within closed reception centres:

- **Basic Conditions:** Closed centres shall adhere to international standards in terms of physical environment. A degree of privacy, adequate sanitation facilities and basic material necessities shall be made available.
- **Health Services:** People in detention shall be entitled to free state medical care and services.
- **Sanctions:** Disobedience or criminal behaviour on the part of detainees is to be addressed according to established norms. However, when pressing charges, due weight shall be given to such mitigating circumstances as trauma, disorientation or inability to communicate. No sanctions shall prevent the detainee's claim for refugee status or his/her right to basic necessities.
- **Religion and Customs:** Detainees have the right to freedom of thought, conscience and religion. Customs and religion are to be respected as far as these do not entail disrespect for the customs of other ethnic groups and do not hinder the safety and proper running of the centre.
- **Communications:** Detainees shall not be prevented from seeking professional assistance or from communicating with relatives and UNHCR and NGO representatives.
- **Regulations and conditions:** The competent authorities shall ensure that all detainees are made aware of their detention rights and obligations.

## 6. Special Cases

Particular attention is to be given to those irregular immigrants who are considered to be more vulnerable, namely unaccompanied minors, persons with disability, families and pregnant women. The social welfare rights and obligations of these immigrant categories and the role that the Ministry for the Family and Social Solidarity undertakes in their regard are presented in greater detail in Part II of this document.

### *Unaccompanied Minors*

Unaccompanied children and minors will be placed under state custody in terms of the Children and Young Persons (Care Order) Act (Chapter 285). This ensures that an unaccompanied minor is given the same treatment as a Maltese minor. Considerations affecting the minor's interest should be made in full consultation with professionals in this field. The detention of minors should be no longer than what is absolutely necessary to determine their identification and health status. Interviews are to be carried in a "child friendly" manner. Unfortunately there will be cases where individuals make false claims about their age in order to benefit from the terms and conditions of a Care Order.

In order to ensure, as far as possible, that:

- (a) Care Orders are only issued in respect of true minors;
- (b) provisions for minors are not abused, and
- (c) actual minors are not deprived of the accommodation and services to which they are entitled by virtue of their age and the degree of vulnerability associated with it,

Ministry for Justice and Home Affairs in consultation with the Ministry for the Family and Social Solidarity shall, in those cases where there is good reason to suspect the veracity of the minority age claimed by the immigrant, require the individual concerned to undertake an age verification test as soon as possible after arrival.

### *Vulnerable Persons*

Vulnerable persons such as elderly persons, persons with a disability, lactating mothers and pregnant women shall, where appropriate, not be kept in detention but will be provided with alternative accommodation. Monitoring is to be conducted on particular cases to confirm whether detention remains admissible.

### *Women*

Single women asylum seekers and those not travelling in the company of their spouse should be accommodated separately from male asylum seekers. Where possible, female staff should be deployed with irregular immigrant women.

### *Family Unity*

The principle of family unity should be respected throughout the time of detention and accommodation, as far as possible, preserves their existing family unit. Families shall, in the best interest of small children, be kept in detention for no longer than is absolutely necessary.

Family for the purpose of this document shall be understood to mean the spouses and their minor children.

## **7. Assistance and Information to Asylum Seekers**

While in detention asylum seekers shall not only be granted access to legal advisors and other professionals but they shall also be updated on the progress of their application for refugee status.

In the event when an irregular immigrant's appeal to a decision regarding status is turned down, the consequences should be explained to the asylum seekers preferably in writing and where possible in a language that he/she understands.

Asylum seekers shall also be kept informed of the changing situation in their home country. Such information may relieve immigrants' anxiety, assist with their applications for asylum and prepare immigrants who are not eligible for a refugee status for the eventuality of returning home.

## **8. Access to Detention Centres by the Public**

Media access to detention centres shall be restricted so as to:

- protect potential refugees;
- protect detainees' family and friends who are still in their homeland from retribution by the regime against which protection claims are being made.

However, notwithstanding the above considerations, in recognition of the important role that NGOs play in the best interest of irregular

immigrants, Government shall cooperate with those entities that provide support to irregular immigrants and will also consider granting them access into detention centres.

Cooperation with NGOs should be encouraged as they provide moral and emotional support and assistance to irregular immigrants and also act as a link between Government entities, International Organisations and detainees. NGOs should contribute to educate public opinion on the subject and assist refugees' integration during their period of stay. NGOs may be an alternative source for social care service and accommodation and may also enter into management agreements with Government to run such facilities.

NGOs and other interested parties shall be granted visits to detained irregular immigrants upon request in writing. Authorisation will be granted once it is ascertained that such visits will not negatively impact on the good management or security of the facility.

Media visits to detention centres may in exceptional cases be authorized as part of the government's aim to promote an informed public debate on issues concerning irregular immigrants and asylum seekers.

## **9. Repatriation of Irregular Immigrants**

Asylum seekers who have exhausted all legal remedies to their application under the Refugees Act (Cap 420) will be considered prohibited immigrants in terms of the Immigration Act (Cap 217) and shall be detained in custody until such a time as they are removed from Malta in terms of the conditions laid down in the same Act.

Irregular immigrants who are not eligible for refugee or humanitarian protection status shall be required to leave Malta. However, for humanitarian reasons, voluntary return will always be preferred to forced return. Forced removal from Malta shall only take place so long as there is no well-founded fear that any deportee moved faces serious danger to his life or liberty, or be subjected to persecution on reaching his destination.

Changes in the international political climate as well as changes within the local legal context may lead to the withdrawal or non-renewal of

a refugee or humanitarian status. The repatriation of such individuals shall follow the same repatriation procedure outlined above.

Since the repatriation of irregular immigrants depends on the co-operation of third countries, the safe return of irregular immigrants relies heavily on diplomatic relations.

The Ministry for Justice and Home Affairs shall therefore collaborate with the Ministry for Foreign Affairs so that Liaison Officers in Maltese Consulates be established, their mandate being:

- to create and maintain regular constructive dialogue with those countries known to serve as points of origin or points of departure for irregular immigration; and
- to build effective channels of co-operation with those countries offering resettlement schemes to those granted asylum status in order to facilitate the transfer of such people from Malta to their new adoptive country.



## **PART II SOCIAL WELFARE SUPPORT**

### **10. The social welfare of irregular immigrants**

The Ministry for the Family and Social Solidarity is responsible for the social welfare of all irregular immigrants irrespective of whether these people are recognised as refugees, have been granted humanitarian status or are still without some form of official status. Social welfare is a complex issue that ranges from food and shelter to financial entitlements to education and job opportunities to medical and health coverage. The complexity of welfare issues reflects the need for close collaboration with other Ministries, a collaboration that can be secured through the setting up of an inter-ministerial committee composed of representatives from the Ministry for Justice and Home Affairs (MJHA), the Ministry for the Family and Social Solidarity (MFSS), the Ministry of Education, Youth and Employment (MEYE), the Ministry of Health, Elderly and Community Care (MHEC) and the Ministry of Foreign Affairs (MFA) to:

- (i) *promote a holistic and integrated approach towards the development of social welfare policies concerning irregular immigrants;*
- (ii) *develop roles and work practices that are co-ordinated in such a way that offers a holistic service which promotes efficiency and reduces/eliminates duplication of work; and*
- (iii) *liaise with the NGO forum that brings together all non-governmental players involved in the provision of services to irregular immigrants.*

Guided by the above terms of reference, such an inter-ministerial committee would ensure effective action that promotes and safeguards the concepts of dignity, freedom, equality and non-discrimination, solidarity, citizens' rights and justice.

Against this background, the Ministry for the Family and Social Solidarity is responsible for the co-ordination of the welfare of irregular immigrants in different areas of social protection. The Department of Social Security, the various agencies within the Foundation for Social Welfare Services and the close collaboration with non-government organisations will continue to cater for the financial benefits and social welfare support of irregular immigrants. The Ministry for the Family and Social Solidarity, in liaison with other government and non-government entities, shall also promote the social inclusion of such immigrants by providing them, where possible, with the necessary skills to integrate in mainstream society.

In order to collaborate even more closely with the various non-governmental organisations that have committed themselves towards promoting the rights, welfare and well-being of irregular immigrants, the Ministry for the Family and Social Solidarity has set up an NGO forum. The objective of this forum is to facilitate discussion, cross-fertilisation of ideas and co-ordination of tasks thus ensuring that available resources are used as effectively and as efficiently as possible in the interest of irregular immigrants.

### *The way forward*

In this policy document, the Ministry for the Family and Social Solidarity is setting the parameters for the provision of irregular immigrants' welfare services while outlining also the rights and obligations that irregular immigrants have within this context.

In view of the different parameters to be addressed, the provision of irregular immigrants' welfare services is being categorised as follows:

1. Promoting and safeguarding the social welfare of irregular immigrants;
2. Promoting and safeguarding the social welfare of irregular immigrant families, unaccompanied women with children and pregnant women;
3. Promoting and safeguarding the social welfare of unaccompanied irregular immigrant minors;
4. Social welfare initiatives in closed centres;
5. Social welfare initiatives in open centres;
6. Social welfare initiatives in homes for unaccompanied minors;
7. Integration;
8. Family reunification and voluntary repatriation; and
9. Dissemination of information, research and training.

## **11. Promoting and safeguarding the social welfare of irregular immigrants**

The absolute majority of irregular immigrants arriving in Malta claim that they do not have any form of official documentation and are therefore unable to prove their identity, age and country of origin. In the absence of documentation at point of entry, every immigrant is issued with a reference number by border officials and is subsequently allocated different references by the various entities that process his/her case. This system of allocating multiple references to the same person may hinder administrative processes to the detriment of the immigrant concerned.

Against this background, the Ministry for the Family and Social Solidarity is proposing that every immigrant be issued with a unique form of identification that would incorporate all the information that is gathered by the local competent authorities about each immigrant. Such information would include the basic demographic data that is compiled by border officials at point of entry and any other information that may be eventually made available by competent authorities. From a social welfare perspective, this information gives the immigrant an identity and in so doing promotes his/her personal security and facilitates his/her social integration.

In the best interest of the personal security and social integration of irregular immigrants, the Ministry for the Family and Social Solidarity will therefore collaborate with key players to issue each immigrant with a unique identifier as soon as possible after arrival. The issue of such a personal document for each irregular immigrant should also promote efficient and effective administration in all aspects concerning the interests of the irregular immigrant.

Irregular immigrants are likely to be traumatised and impoverished by their experience. Their mode of travel and their separation from family and friends can potentially hold physical and psychological health implications. Their relocation to a country whose culture is so different from that of their homeland can in itself be truly traumatic. This may be even more the case with those immigrants who never planned to come to Malta in the first place and who may thus feel more disillusioned. The psycho-social needs of these irregular immigrants therefore need to be understood and addressed.

In order to promote irregular immigrants' psycho-social welfare, the Ministry for the Family and Social Solidarity shall liaise with other Ministries and as much as possible:

- a) ensure that all irregular immigrants, without discrimination on any ground, shall have access to food (as provided by MJHA), shelter and other welfare services including health (as provided by MHEC), education, job training and development of personal skills (as provided by MEYE);
- b) provide shelter and welfare support services to irregular immigrants released from closed centres;
- c) monitor the well-being of irregular immigrants and work towards their integration by offering them education, training and, where possible, employment opportunities and accommodation within the community; and

- d) require all irregular immigrants to immediately report to the competent authorities any changes in their circumstances (e.g. employment, completion of training, health conditions, knowledge about location of family members etc.) according to established norms. Such notification does not only enhance administrative efficiency but is also in the best interest of immigrants' welfare.

## 12. **Social welfare initiatives in closed centres**

As explained in Part I of this document, all irregular immigrants are placed in closed centres upon arrival. The Ministry for the Family and Social Solidarity will as far as possible ensure that immigrants detained in such centres have access to social welfare services.

In order to safeguard and promote the social welfare of irregular immigrants in closed centres the Ministry for the Family and Social Solidarity shall:

- a) in collaboration with other Ministries and entities co-ordinate social welfare initiatives in closed centres;
- b) address referrals made by closed centres for social work intervention with irregular immigrants; and
- c) within reasonable time of notification of irregular immigrants' date of release from closed centres, in collaboration with NGOs, provide released irregular immigrants with accommodation in open centres.

## 13. **Promoting and safeguarding the social welfare of irregular immigrant families, unaccompanied women with children and pregnant women**

Families travelling with small children, unaccompanied women with children and pregnant women may find themselves in a more stressful and vulnerable situation than other irregular immigrants. Their particular needs may differ from those of adult male irregular immigrants who are travelling on their own. Therefore, further to the general welfare considerations discussed above, the Ministry for the Family and Social Solidarity will promote equality of opportunity and adopt a family oriented approach that acknowledges and addresses the particular needs and conditions of these more vulnerable immigrants.

In collaboration with other Ministries, civil society and particularly non-government service providers, the Ministry for the Family and Social Solidarity shall as far as possible:

- a) ensure that irregular immigrant families are, where possible, accommodated together so as to remain united. This will also apply to unaccompanied women with children;
- b) allow, where possible, families and women with children to prepare their own meals if they so wish;
- c) ensure that irregular immigrants have access, on request, to family planning information.;
- d) promote and encourage the participation of pregnant female immigrants in existing psycho-social programmes with a view to prepare them for motherhood; and
- e) liaise with Health authorities so that ante-natal and post-natal classes are, where possible, delivered in a language that immigrant expectant mothers understand so as to facilitate their participation.

#### **14. Promoting and safeguarding the social welfare of unaccompanied immigrant minors**

Irregular immigrants who claim to be below the age of 18 years and are not travelling in the company of either of their parents or a guardian, warrant particular protection. In the absence of a responsible adult, the State, through the issue of a Care Order<sup>2</sup>, assumes legal responsibility for such unaccompanied immigrant minors. By virtue of this care order, irregular immigrant minors become eligible to receive the assistance, care and services to which local children are entitled.

In view of their vulnerability because of age and the absence of parents/guardians, the Ministry for the Family and Social Solidarity, in collaboration with other Ministries and non-government service providers, shall as far as possible address the specific welfare needs of unaccompanied minor immigrants.

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<sup>2</sup> As laid down in Chapter 285 Children and Young Persons (Care Orders) Act.

The Ministry for the Family and Social Solidarity shall work towards the social welfare and integration of unaccompanied minors by ensuring, as far as possible, that:

- (a) they are placed in foster care. Alternatively they are provided with a residential service that specifically caters for persons under 18 years of age;
- (b) the necessary mechanisms to enhance efficiency in the appointment of guardians are developed within the existing administrative framework;
- (c) through collaboration with the Ministry of Education, unaccompanied minors are given access to educational and training opportunities through (i) their integration in existing education institutions and (ii) ad hoc in-house training courses specifically designed for immigrant minors (e.g. teaching of English, national and European culture);
- (d) through co-ordination with the competent entities, irregular unaccompanied immigrant minors are helped to develop the necessary skills to eventually enable them, upon reaching 18 years, to live an independent life as integrated adult citizens within society; and
- (e) in collaboration with the competent authorities, minors aged 16 years and over are granted the right to work when this forms part of their apprenticeship or training courses.

### *Consultative Committee*

In order to achieve these objectives and ensure that the social welfare interests of irregular immigrant unaccompanied minors are safeguarded, the Ministry for the Family and Social Solidarity shall appoint a consultative committee for the development of policies concerning unaccompanied minor immigrants. The function of this Committee would be guided by the following terms:

- identify welfare requirements that are particular to minors e.g. socialisation, educational development, recreational activities etc;
- monitor emerging needs so as to facilitate a proactive approach;
- propose ways of how to co-ordinate the provision of services to this client group; and
- recommend welfare policy changes to Director Policy Development (MFSS).

## 15. Social welfare initiatives in open centres

Once irregular immigrants are released from closed centres, open centres become their ordinary residence until such time as these immigrants find alternative accommodation, proceed to a third country or return to their country of origin. Open centres thus have to cater for the communal living of people having different needs, cultures, traditions, languages and personal religious beliefs. This diversity asks for the establishment of basic parameters within which such centres would have to operate so as to ensure that the welfare needs of all residents are adequately met.

In order to promote an orderly and safe environment that respects the heterogeneity of residents in all open centres, the management and operation of such centres shall be guided by the following principles:

- a) open centres shall host irregular immigrants who have been released from closed centres against presentation of documents issued by the Principal Immigration Officer and/or Refugees Commissioner. Such documents should also include certification by the MHEC showing that the immigrant has been medically screened and is free from infectious disease;
- b) prior to transfer from closed centres, prospective open centre residents are to be informed of their rights and obligations in their new residential setting, possibly in a language that they can understand;
- c) a copy of the open centre's regulations shall be given to each immigrant at point of first admission into the open centre;
- d) registered residents of an open centre will be provided with food, shelter and social welfare support;
- e) residents' culture, ethnic origin, and personal religious beliefs shall be respected;
- f) the open centre shall take cognisance of any immigrant's disability and address it accordingly;
- g) the Centre shall keep a register which shows details of each resident. Such information shall include but not be limited to immigrant's name and surname, date of admission into the Centre, status, date of birth, nationality and date of departure from the Centre;



- h) residents may periodically be reassessed by the Centre so that any changes in their circumstances (e.g. renewal of status, employment, training etc.) are duly recorded and follow-up action taken as necessary and possible;
- i) in case of suspected infectious conditions, the Centre shall have the right to refer resident/s to the competent authorities for medical investigations, advice and treatment in the best interest of the resident concerned as well as that of other residents and the community at large;
- j) the Centre shall adopt a code of conduct for residents so as to maintain an orderly, safe and healthy environment;
- k) the Centre shall set up house rules that actively involve the residents in the day to day running of their shelter while at the same time promoting a community spirit among residents;
- l) if a resident is found to have alternative accommodation, he/she will lose right of residence at the Centre;
- m) residents who are legally entitled to work and who are in gainful employment shall contribute towards their upkeep in the open centre at a rate to be determined;
- n) the Centre shall develop links with other entities regarding the formulation of programmes that focus on (i) development of language, (ii) national culture, history and institutions, (iii) education and job training opportunities, and (iv) development of personal skills;
- o) the Centre shall maintain regular contact with the respective public authorities regarding health issues and employment opportunities;
- p) the Centre shall inform the competent authorities about any resident's change in circumstances (change of address, change of status etc.); and
- q) the Centre shall immediately report the absence of any resident considered as "missing" to the competent authorities.



**16. Social welfare initiatives in open centres for families, unaccompanied women with children and pregnant women**

Families, unaccompanied women with children and pregnant women are likely to have specific needs and characteristics that differentiate them from the rest of the irregular immigrant population and render them more vulnerable. In recognition of the particular circumstances of these more vulnerable immigrants, the management and operation of open centres hosting such people need to acknowledge and address such differences.

Further to the general guidelines outlined above regarding the management and operation of open centres, centres hosting families, unaccompanied women with children and pregnant women shall:

- a) develop house rules that reflect the characteristics of this particular client group;
- b) develop a code of conduct that differentiates between adults and children;
- c) liaise with the competent authorities as and when required so that the best interest of immigrant children is safeguarded at all times;
- d) liaise with the Education authorities regarding the schooling of young children; and
- e) liaise with the competent authorities so as to promote and safeguard the health and social welfare of this client group.

**17. Social welfare initiatives in homes for unaccompanied minors**

Unaccompanied irregular immigrant minors who arrive in Malta are considered to be particularly vulnerable and following medical clearance and the issuing of a care order are not kept in closed centres but are accommodated in homes for minors. Such homes should acknowledge and, as far as possible, address the characteristics and needs of these irregular minor immigrants who because of their age and the absence of their parents or guardians are more vulnerable than other irregular immigrants.

The management and operation of homes for such unaccompanied irregular immigrant minors shall adopt the following principles and practices:

- a) the Home Management shall accept residents following the issue of a care order;
- b) at point of first admission into the Home, each resident shall be given for his/her information a copy of the Home's rules and regulations, where possible, in a language that he/she understands;
- c) the Home shall establish a code of conduct that provides for correctional rather than punitive practices;
- d) the Home shall develop house rules that reflect the age, preferences and characteristics of its client group;
- e) the Home shall organise recreational and group activities compatible with the age, interests, skills and capabilities of its young resident population;
- f) the Home shall encourage residents' involvement in educational, training and personal development programmes and their participation in socio-cultural activities within the wider community; and
- g) the Home shall inform the competent authorities about any change in a resident's circumstances.

## **18. Integration**

Irregular immigrants leave their country of origin either to avoid persecution or in search of better opportunities in other countries. Some immigrants may seek to reunite with family members who have resettled in other countries while others need to start building a new future for themselves and their families. Despite their wish to give themselves a new start in life, immigrants may encounter difficulties to integrate in a new society because of culture, language, lack of job skills and lack of funds to meet their basic daily needs. Moreover, irregular immigrants are also likely to have to face up to the challenge of being understood and accepted by the host society.

In order to promote the social welfare of irregular immigrants holding a refugee or humanitarian status with a view to facilitate their integration, the Ministry for the Family and Social Solidarity will assist

in the areas of (a) education and training; (b) financial entitlements; (c) accommodation; and (d) employment.

(a) *Education and training*

Although irregular immigrants look forward to a new start in life, they may be prevented from doing so either because of a language barrier or because of lack of skills. In this regard, the Ministry for the Family and Social Solidarity will assist in the resettlement and integration of irregular immigrants holding a refugee or humanitarian status by:

liaising with the Ministry of Education, Youth and Employment and other entities that may be willing to participate in educational and training initiatives, to devise programmes that:

- enhance these irregular immigrants' knowledge of national and European culture;
- improve their verbal communication; and
- upgrade their job and personal skills.

(b) *Financial entitlements*

In terms of the Social Security Act, persons who are given a refugee status become entitled to benefits provided under and according to the same Act. The Ministry for the Family and Social Solidarity will, through the Department of Social Security:

- expeditiously process refugees' claims for entitlements and benefits under the Social Security Act in the shortest time possible subject to their eligibility in terms of the same Act: and
- ensure the timely issue of Social Security payments to refugees provided that such beneficiaries furnish the Department with the required documentation and information.

(c) *Accommodation*

In recognising that accommodation is a basic need, the Ministry for the Family and Social Solidarity shall:

- in collaboration with NGOs, provide accommodation in open centres to all irregular immigrants who are released from closed centres; and
- where possible, encourage refugees to find accommodation outside open centres.

(d) *Employment*

In order to be able to lead an independent life as fully responsible adults, those irregular immigrants who by virtue of their status are legally authorised to take up employment should be enabled and encouraged to work. In order to promote job opportunities for such irregular immigrants and ensure that such legally working immigrants are treated fairly, the Ministry for the Family and Social Solidarity shall:

- liaise with entities within the Ministry of Education, Youth and Employment as well as with other private and non-governmental bodies to identify job openings; and
- collaborate with national government bodies to ensure that refugees and immigrants holding humanitarian status who are granted the necessary work permit have the same employment rights and obligations as other citizens.

**19. Family reunification and voluntary repatriation**

Some immigrants leave their homeland to reunite with family members in other countries; others may wish to return to their homeland. Against this background, the Ministry for the Family and Social Solidarity shall, in collaboration with the Ministry of Foreign Affairs and the Ministry for Justice and Home Affairs:

- assist irregular immigrants to re-establish contact and where possible reunite with family members residing in other countries; and
- support and assist the safe return of irregular immigrants who wish to go back to their home country.

**20. Dissemination of information, research and training**

Irregular migration together with the ensuing process of resettlement and integration are areas that ask for knowledge and understanding of immigrants' cultures, fears, strengths and weaknesses. Moreover migration patterns demand monitoring so that trends are evaluated with a view to develop policies and support programmes that address emerging needs. The Ministry for the Family and Social Solidarity acknowledges the importance of information sharing and training so as to be in a position to provide effective welfare support to irregular immigrants and facilitate their integration. However, since integration is a two-way process, one also needs to promote a sense of tolerance, understanding, acceptance and respect among citizens towards irregular immigrants.

In this regard, the Ministry for the Family and Social Solidarity shall:

- maintain close contact with European Union institutions and other international agencies working in the interests of irregular immigrants so as to keep itself abreast on developments in the field of welfare of displaced persons;
- encourage research in the field of immigration so as to be in a better position to understand the changing needs and characteristics of immigrants and thus be better able to enhance the effectiveness of services;
- organise training courses for its members of staff who are deployed with irregular immigrants, so as to enhance the effectiveness of welfare service delivery;
- facilitate the participation of its members of staff in seminars dealing with issues relating to irregular migration so as to promote the cross fertilisation of ideas and expose members of staff to the good practices adopted by others; and
- as far as possible, promote among the local population an understanding of the culture, homeland situation and psycho-social difficulties of irregular immigrants.

## **PART III INTERNATIONAL DIMENSION**

### **21. Beyond our shores**

Malta shall continue to seek to exploit those opportunities brought about by membership of the European Union. These include:

- closer cooperation with other Member States in this field;
- active participation in EU projects and initiatives related to irregular immigrants;
- utilisation of EU funds needed to ensure that Malta can fulfil its commitments and obligations in the area of reception and asylum management.

As already stated, irregular migration is not only a national issue but one of international dimension. Thus, it is important that this human tragedy is addressed not only at national level but within a global context.

Malta, a signatory to the United Nations Convention Relating to the Status of Refugees besides other thematic conventions, and a member of International Organisation for Migration (IOM), is committed to fulfilling its international obligations in addressing this humanitarian problem by pursuing international standards for the reception, assessment and hosting of genuine asylum seekers within the limits of its economic resources.

Following the European Union's enlargement, Malta has become the southern most point of entry into the Union. Furthermore, it lies at the centre of the main migration path of thousands of people escaping the African continent in search of a better future. Within the EU framework Malta actively seeks to promote the importance of burden sharing between member states as well as the promotion of stronger ties between the EU and third countries known to be a source or transit countries for irregular migration.

Malta actively participates in regional fora such as the Ministers of the Interior of the Western Mediterranean Forum (known as the 4+5 CIMO) and the Cooperation Process in the Western Mediterranean Forum (known as Dialogue 5+5) The former is an informal gathering of 9 Western Mediterranean countries: Malta, Italy, France, Spain, Portugal, Libya, Tunisia, Algeria, and Morocco whilst the latter

includes also Mauritania. It aims to promote an effective dialogue among these countries' Foreign Ministers on questions of common concern, including irregular migration issues, in order to possibly identify solutions to political and security issues of mutual interest.

## 22. European Union

Malta cannot be expected to carry the burden brought about by this human tragedy on its own. Indeed emphasis shall continue to be made that this not only an issue of concern for Malta but for the entire European Continent.

Malta shall thus continue to emphasise, in line with the Hague Programme the principle of solidarity and of burden-sharing by all member states aimed particularly at those suffering additional burdens due to their geographical location and in this regard; Malta will

- pursue resettlement schemes by the EU within member states especially those needing economic migrants labour force;
- seek financial aid in the setting up of new accommodation centres as well as for integration and repatriation schemes under the European Refugee Fund II (ERF II);
- seek technical and financial assistance to enhance its border management and control capability given its particular position as the southern most gateway to the EU;
- support initiatives taken by EU in line with the Hague Programme to reach repatriation agreements with those countries known to be areas of origin or transit of mass illegal migration;
- support initiatives to assist the economic recovery of third countries known to be the source of economic migrants;
- seek to participate in joint repatriation flights on a European or bilateral basis.

## 23. Third Countries

The development of closer political and economic cooperation with its neighbouring Mediterranean countries is of particular importance to Malta, not least in the fight against illegal migration. International

dialogue, on bilateral and multilateral basis, other than sharing of information, also plays an important role in preventive action. In this regard, Malta will endeavour:

- To strengthen diplomatic relations with countries known to be a source of irregular immigration and to negotiate repatriation agreements.
- To cooperate with neighbouring countries in joint activities to enhance the surveillance of the illegal transport of immigrants as close as possible to the departing ports with the objective of returning such vessels to the country of departure.
- To actively participate in regional initiatives such as 5+4 CIMO Forum, addressing issues pertaining to the Mediterranean region and thus strengthening the dialogue between countries targeted by illegal immigrants and those known to be source or transit countries.
- To promote EU development aid programmes that assist third countries in improving their economic conditions, thereby gradually eliminating the need for their nationals to seek a better future in Europe.

## **24. Dialogue with Libya**

It is a known fact that the vast majority of irregular immigrants who arrive on our shores start their sea journey from the Libyan coast. In this regard, meaningful contacts have already been made with the Libyan authorities who are adamant in curbing the trafficking and smuggling of human beings.

Libya rightly claims that it is as much a victim of this phenomenon of irregular migration as any other European country bordering the Mediterranean. In fact, the data collected indicates that though most of the irregular immigrants arriving in Malta leave the Libyan coast on their way to the European mainland, almost none of them are Libyan nationals. Most of them come from sub-Saharan region, and having entered Libya through legal channels or otherwise, proceed to Europe for crossing the central region of the Mediterranean sea.

The meaningful dialogue which has already started between Malta and its friendly neighbouring country shall continue with the aim of concluding some kind of arrangement – even if informal – whereby irregular immigrants ARRIVING from Libya shall be repatriated to that country as soon as possible, without prejudice to any rights which they might have under the Refugee Act.



## **25. International Community**

Malta will undertake initiatives to strengthen diplomatic contacts with countries traditionally known to have a resettlement policy for third country nationals, so that recognised status holders can benefit from such schemes. Concurrently, measures will be taken to prepare refugees so as to facilitate as much as possible their integration into host countries offering these resettlement schemes.

On another front, Maltese Consulates already established in source countries will appoint Liaison Officers, whose terms of reference will include the setting up of channels for the sharing of information in order to facilitate the safe repatriation of prohibited migrants.

## **26. International Organisations**

Malta's commitments to international organisations have long been established through its active participation in the United Nations Organisation (UNO) and the Organisation for Security and Cooperation in Europe (OSCE) and their branch organisations. With regard to immigration issues, Malta acceded to the 1951 United Nations Convention relating to the Status of Refugees on 17 June 1971 and the 1967 Protocol on 15 September 1971 but retaining a number of reservations. These were all withdrawn by 24 February 2004.

Moreover, Malta has signed and ratified a number of agreements such as the European Agreement on the Abolition of Visas for Refugees, the UN Convention against Transnational Organised Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air. On the 18 November 2003, Malta also joined the International Organisation for Immigration.

Within this framework of international commitment, Malta adopts the following policies:

- To honour its obligations within the context of its national security and social and economic conditions;
- To exploit to the full the opportunities arising from membership to such organisations so as to better carry out its obligations;
- To support international bilateral and multilateral programmes addressing the issue of illegal migration at country of source. This includes support to maintain democracy, civil rights, economic development and cooperation with these regions;

- To support plans for technical aid to countries of transit to enhance their border control capacity; the dissemination of information on proper channels of migration; the dissemination of information on the risk of illegal migration; and voluntary return programmes and resettlement schemes in cooperation with countries of origin;
- To encourage the use of networking between national authorities and international organisation between countries of source, transit and destination to curtail opportunities for human traffickers and prevent the human tragedies resulting from such practice. At the same time providing safeguards and channels for genuine asylum seekers.

## **PART IV Ownership and maintenance of policy**

### **27. Ownership**

This policy document is not an end in itself. It should serve as a common framework within which all those involved can operate effectively to safeguard the fundamental rights of those seeking asylum in Malta taking into account also national security and public order. A multi-level approach of co-ownership is proposed to maintain this document relevant to changing scenarios.

### **28. Cabinet Committee**

A core Cabinet Committee, chaired by the Deputy Prime Minister and including the Ministers responsible for Home Affairs, Defence, Social Solidarity, Health and Foreign Affairs, shall be responsible for the drawing up of policy initiatives on irregular immigration.

### **29. Inter-Ministerial Technical Committee**

An Inter-ministerial Technical Committee chaired by the Permanent Secretary in the Ministry for Home Affairs and including the Permanent Secretaries representing the respective Ministers forming part of the Cabinet Committee, as well as the Commissioner of Police and the Commander to the Armed Forces of Malta, shall be responsible for the technical coordination and administrative implementation of matters related to irregular immigration. The technical committee will be expected to submit papers for Cabinet Committee's consideration and policy direction. The Director, Third Country Nationals, will be Secretary to the Technical Committee and act as liaison officer with NGOs working in this field.

### **30. Maintenance of policy**

Policies should be periodically reviewed to ensure they adequately respond to the realities being faced in a complex and unpredictable environment. Policy maintenance is about responding to this constant change particularly within the framework of the EU regulations and directives. Responsibility for the maintenance of this policy will be the inter-ministerial technical committee.



Irregular Immigrants,  
Refugees and Integration

Policy Document