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# MALTA HUMAN RIGHTS REPORT 2015

**2<sup>ND</sup> Edition**  
*January to December  
2014*

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*The Malta Human Rights Report is a first-of-its-kind review of human rights issues and developments in Malta. This report is the second edition published by The People for Change Foundation, covering January to December 2014.*

*Beyond the recording and documentation of human rights issues, the report engages with ongoing underlying and causal factors as well as legal, policy and social mechanisms leading to, and hindering the redress of these issues.*

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## ***About the People for Change Foundation***

*The People for Change Foundation's vision is of a just, fair and inclusive society where all members may reach their full potential unhindered by factors such as age, race, colour, gender, language, religion, political or other opinion, national origin, property, birth or other status. Since 2007, the People for Change Foundation (PfC) has been conducting on-the-ground legal and policy research on human rights in Malta and across Europe.*

*The People for Change Foundation was set up with the express aim of contributing to a multilateral process between different entities - governmental, non-governmental and academic - to conduct research in an area of direct relevance to the livelihood and quality of life of asylum seekers, and to address human rights concerns through international and national legal obligations and development.*

*The Foundation operates at the intersection between law, policy and social science, delivering analysis that is practical in input and pragmatic in outcome.*

## ***About the Malta Human Rights Report***

*The Malta Human Rights Report 2015 is the second edition of a series that is the first of its kind covering human rights issues in Malta. This is an initiative of the People for Change Foundation, aimed at developing a Maltese discourse of and on human rights that is sensitive, responsive and builds on the national context and culture.*

*The report is comprehensive, covering the key human rights developments within the reporting period of January to December 2014, particularly in areas related to work undertaken by the Foundation.*

## Executive Summary

The Malta Human Rights Report for 2014 provides an overview of the major developments relating to human rights in Malta over the past year. The year 2014 was marked by the introduction of the Civil Unions Bill, giving civil unions between same-sex partners the same rights as marriage in all but name; the *Valenzia Report* which heavily criticized Malta's detention policy and its services; and the beginning of an investigation against Leisure Clothing Ltd into allegations of human trafficking.

Although this publication focuses on developments in the year 2014, it is written to reflect the socio-political climate present throughout this year. It should be noted that many of the issues identified throughout the report were, and remain, ongoing. The report explores thematic issues such as maritime migration, migrant detention, asylum, racism, integration, human trafficking and children's rights, amongst others. It

incorporates developments that have taken place at the national and a European level, both of which come to bear upon the way in which human rights are effectively realized and experienced in Malta.

With regards to immigration, 2014 saw the death of over 3000 persons in the Mediterranean. Malta's detention policy continued to be criticized by various actors both locally and internationally. The *Valenzia Report* identified serious concerns with some of the personnel in the Detention Services, mandatory and automatic detention, as well as the services and facilities used for detention. The fact that the report was published two years after its completion with no action being taken on its conclusions and recommendations was another cause for concern. The appointment of a new Minister for Home Affairs; Dr. Carmelo Abela, has provided renewed impetus for changes to occur in the sector. On his appointment, Dr. Abela

renewed dialogue with NGOs and other actors in the sector and is currently in the process of drawing up a new immigration policy.

Racism, discrimination and problems with integration of groups such as migrants and other minorities also continued to be an issue throughout 2014. These concerns have been exposed through an increase in the number of votes achieved by the far-right party *Imperium Ewropa* in the MEP elections as well as several planned protests marches against

immigration in Malta. Moves towards the development and adoption of an integration policy, a report racism website and a pledge against racism by MEP candidates were some of the initiatives that looked to address these issues in Malta's society. Through this update, PfC strives to point out the human rights failures in Malta but also promote the positive aspects in order to induce positive change both at governmental level through policy changes but also in and through societal attitudes.



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## Abbreviations

AD	Alternattiva Demokratika (Malta's Green Party)
AFM	Armed Forces of Malta
CEAS	Common European Asylum System
COI	Country of Origin
CPT	Committee for the Prevention of Torture
EC	European Commission
EP	European Parliament
ETC	Employment and training Corporation
EU	European Union
FSSM	Foundation for Shelter and Support to Migrants
ICCPR	International Covenant of Civil and Political Rights
IOM	International Organisation for Migration
JRS	Jesuit Refugee Service
LGBT	Lesbian, Gay, Bisexual and Transgender
MEP	Member of the European Parliament
MP	Member of Parliament
MS	Member State
MSF	Médecins Sans Frontières - Doctors Without Borders
PfC	The People for Change Foundation
PL	Partit Laburista (Malta's Labour Party)
PN	Partit Nazjonalista (Malta's Nationalist Party)
PTSD	Post Traumatic Stress Disorder
RRM	Report Racism Malta
SL	Subsidiary Legislation
TCN	Third Country National
TIP	Trafficking in Persons
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

## I. Introduction

This report is the second edition of the Malta Human Rights Report with the first having been published in March 2014 and covering the period January to December 2013. This report covers January to December 2014 and seeks to address the various human rights developments over that period. The Malta Human Rights Report has become a flagship publication of The People for Change Foundation.

2014 was a year of significant promise for human rights with developments and commitments made in a number of areas whilst a number of critical concerns remained. A key highlight of the year was the adoption of the Civil Unions Act that gives rights akin to marriage to LGBT persons including the right to adopt as well as the constitutional protection of the prohibition of discrimination on the basis of sexual orientation or gender identity. The political and social climate continued to be characterized by migration being seen as a key concern for most persons in Malta as well as the European parliament elections which saw, for the first time, a majority of women amongst elected candidates as well as an increase in the votes received by far right party imperium Europa.

The maritime migration context remains marred by further deaths in the Mediterranean with over 3000 persons having perished during perilous journey to Europe, journeys renders necessary by the lack of legal channels for seeking protection in Europe. For Malta, the issue was also marked by the failure of the authorities to provide information regarding the search and rescue efforts around the Lampedusa tragedy. More broadly, 2014 saw Operation Mare Nostrum by the Italian Government which rescued some 130,000 migrants from the central Mediterranean route. The operation, which cost around 9 million a month, was replaced by the more limited Frontex Operation Triton with a more limited scope of operation and approximately a third of the budget. Operation Mare Nostrum also resulted in a sharp decline in the number of boat arrivals in Malta that for 2014 stood



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at just 568 arrivals on 5 boats. 2014 also saw a greater number of asylum seekers arriving in Malta through regular means and then seeking protection with Syrian and Libyan nationals being the main nationalities in this category.

Malta's refugee law regime came under scrutiny on various occasions as we saw some high profile asylum cases as well as a series of amendments to the legal framework in line with the requirements of the recast directives. The concern regarding non-harmonized forms of protection that do not have a concrete legal basis continued. The detention regime was once again in the spotlight not only in Malta's review before the ICCPR but also as a result of riots that occurred in detention centres in March 2014 and the publication of the 2 year delayed report into the death of Kamara in detention in 2012. The report was described as a scathing commentary of Malta's treatment of migrants and asylum seekers.

On a related note, the Prime Minister issued a statement that children would not be detained and indeed the period of time children spent in detention over the second part of the year was considerably shorted even if no legal or formal policy change has yet occurred by the end of the reporting period. This despite the efforts by various entities, including IOM and the UNHCR on the issue of alternatives to detention for unaccompanied minors in Malta. Also relating to children, 2014 saw a number of improvements including further attention to the issue of child migrants and the increase of the age of responsibility from 9 to 14 years of age.

Beyond detention, UNHCR also launched Malta's first mapping of statelessness in Malta finding that the stateless population in Malta is most likely a small and not visible one. It also identifies a number of gaps in the Maltese legislative framework and calls on the Maltese authorities to accede to the two core statelessness conventions. Proposals were also made on addressing issues of child statelessness.

The leisure clothing case, which involves a large scale situation of alleged human trafficking of Chinese and Vietnamese nationals was the key human trafficking issue



of the year, however this was accompanied by the provision of training to various stakeholders, the adoption of an action plan for 2015-2016 and a reduction in allocated budgets. Moreover, a tool for stakeholders was created presenting the issue of trafficking as well as the set of national indicators and the standard operating procedures in this context. Finally, the Victim's Rights bill makes a series of provisions regarding trafficked persons including for the provision of assistance and support to be independent of the willingness of the trafficked person to cooperate with the authorities. This notwithstanding, the transposition carries the same deficiency as the directive it transposes in that the right to stay remains dependent on the willingness and ability to cooperate with the authorities.

Other important developments included an increase in the female participation in the labour market, the ratification of the Domestic Violence Convention and the publication of research on the issue by the Fundamental Rights Agency. This report does not attempt an in depth critical analysis of all human rights issues but rather seeks to provide an overview of the most important developments, focusing in particular on areas of concern to The People for Change Foundation including migration, asylum, integration, children's rights, statelessness and human trafficking. Other developments are also highlighted whilst the social and political context is also explored.



## 2. Political and Social Context

In 2014, the political and social climate around issues of human rights and migration in Malta was marked by a mix of background and active factors. On the one hand was a heightened attention to human rights, consultations on human rights issues and a more mixed cohort of human rights organisations. On the other, there was a continued and developing resistance to some human rights issues, in particular towards migration, expressed through various channels including protests and social media.

### 2.1 Attitudes and events relating to migration

The *Eurobarometer Survey* published in December 2014 found that immigration continued to be a key concern for 57% of Maltese respondents. Immigration was also the main concern in the UK and Germany but with significantly lower rates, at 37% and 38% respectively.<sup>1</sup> Similarly a survey carried out by the University Students' Council (KSU) among 400 University of Malta students found that more than a third of students were unwilling to share their campus with irregular migrants. A further 40% felt

that they would not be comfortable with an immigrant living on their same street,<sup>2</sup> whilst 20% of respondents were against granting equal opportunities to migrants in the work force, even if they were in possession of valid qualifications and work permits.

Throughout the year, migrants, migrant groups and NGOs working on migrants' rights issues continued to come under severe criticism and in some cases threats, through various social media sites as well as through comments on online news websites and other avenues. For instance, in

<sup>1</sup> Standard Eurobarometer 82: Autumn 2014

<sup>2</sup> 'Migrants - third of students don't want them on campus', Times of Malta, Saturday 22nd March,

[2014<http://www.timesofmalta.com/articles/view/20140322/local/Migrants-third-of-students-don-t-want-them-on-campus.511606>]

early November, a Labour Party candidate posted comments on Facebook urging people not to donate money to the annual national charity fundraiser L-istrina in response to the President's stance on migration and the fact that some of the money collected would be given to organisations working in the field of migration. Various individuals and organisations were also subjected to threads and comments on a number of anti-migrant Facebook groups. Over the year, a number of protests and marches against migration and integration were organised.

## 2.2 MEP Elections

The European Parliament elections were held on the May 24<sup>th</sup>, 2014, only one year after the general elections. The electoral manifestos of the main parties contesting the elections gave considerable attention to the issue of migration as well as human rights more broadly.

On the issue of migration, the Partit Laburista (PL) manifesto stated that one of its ten key commitments was

that of being 'firm on irregular immigration'. It noted the Labour government and Labour MEPs' efforts on the issue, including cooperation with other Mediterranean countries, whilst highlighting its policy of being strong with politicians and compassionate with persons escaping persecution. Whilst noting that its MEPs will make their voice heard if elected, it promised to push for solidarity in Europe and effective methods to deal with the humanitarian crisis of irregular immigration. PN's manifesto endorsed the manifesto of the European Popular Party including for instance the commitment to spreading democracy and the rule of law to Europe's neighbours, a more effective development policy, the promotion of peace and stability in a globalized world as well as the fight against organised crime.

The Partit Nazzjonalista (PN) manifesto criticised the government's approach to EU efforts on migration, noting the push back attempt to Libya in the summer of 2013, and concluding that the heavy handed-approach adopted by the government was





threatening Malta's esteem and reputation at the European and International level. The party also committed to making voters' voices heard on issues such as irregular immigration whilst ensuring that European institutions are more sensitive and proactive on matters concerning the Mediterranean. This included raising awareness of the difficulties faced by countries at the border of Europe which invariably face a larger burden of irregular migration, in order to instigate wider active responsibility sharing.

The Alternattiva Demokratika (AD) manifesto committed to being vociferous on the need to overhaul the EU's migration policy and to promoting policies through which people can acquire legal entry into the EU to seek international protection for instance through humanitarian visas. It called for greater efforts for further coordination of 'rescues at sea' as well as working towards the abolition of the Dublin II rules. AD also committed to pushing for adequate foreign relations as well as decent trade and

development policies that address the issues that force people to migrate.

In contrast to this the Imperium Europa manifesto argued that the party does not believe in 'burden sharing' and instead believes in a resolute, pushback policy coupled with repatriation of migrants already in Europe. Moreover, the party expressed itself resolutely 'against any public funding towards integration of illegal immigrants'. The manifesto did not distinguish between different categories of migrants.

On issues of equality PL made a commitment to continued action to tackle discrimination and inequality another key commitment. Noting the developments achieved in the previous year, it promised a progressive country free from discrimination, noting that the European Union is the best place to continue to fight all forms of discrimination. AD committed to working towards the equal representation of women in politics, in local and EU institutions through affirmative action as well as working to remove practices of discrimination

against people on the basis of their sexual orientation and disability (among other grounds) at a national and European level. It also committed to championing the Greens' long-standing position for the extension of the Anti-Discrimination directives to become a fully-fledged Equalities Directive. Imperium Europa stated, in its promises on education, that it does not believe in equality, and that it sought instead a society that hones the particular skills of individuals and that seeks to achieve through the education a sense and understanding of traditional values, national pride.<sup>3</sup>

On broader human rights issues, the PN manifesto committed to the strengthening of democracy in Malta including by ensuring the independence of institutions and authorities set up to safeguard human rights and the protection of the social rights of workers. Moreover it committed to promoting the recognition of data protection as a human right.

<sup>3</sup> IE Manifesto, p.3

<sup>4</sup> The full text of the pledge is available at: <http://www.pfcmalta.org/mep-pledge.html>



Fourteen MEP candidates from PN (9), PL (3) and AD (2) signed a pledge for dignity and against racism, an initiative of The People for Change Foundation. In it, candidates undertook to ensure that their political discourse and actions during the campaign would not promote, instigate or condone racism and xenophobia.<sup>4</sup> This was based on a similar campaign by the same Foundation that encouraged Members of Parliament to sign a similar pledge one year earlier.<sup>5</sup>

Four MEP candidates from Malta also signed the ILGA Europe's Come Out Pledge, committing to stand up for

<sup>5</sup> See [www.pfcmalta.org/mp-pledge.html](http://www.pfcmalta.org/mp-pledge.html)





human rights and equality in Europe if/when elected as a Member of the European Parliament, including the rights of lesbian, gay, bisexual, trans and intersex (LGBTI) individuals, and to advance LGBTI equality by supporting a number of actions including supporting the roadmap for LGBT equality, completing the EU anti-discrimination law, and combatting homophobic violence and bullying.<sup>6</sup>

Voting participation in the MEP election was low by Maltese standards but high by European standards, standing at 73.80% of all eligible voters casting their vote; and 73.14% valid votes cast.<sup>7</sup> Of the six candidates elected, three belonged to each of PL and PN. For the first time in Malta, a majority of the candidates elected were female, with each party electing two females: Roberta Metsola (PN), Therese Comodini Cachia (PN), Marlene Mizzi (PL) and Miriam Dalli

(PL). They were joined by David Casa (PN) and Alfred Sant (PL). This was a positive result in terms of women's representative participation in the Maltese political scene, which has in the past faced criticism for a lack of women in Parliament, despite the current legislature having a record 10 women elected to Parliament in the 2013 general election.

Far-right party *Imperium Europa* received 6,761 votes (2.68%) of the popular vote in the MEP election, gaining more than a percentage point over the previous MEP elections when they obtained 1.47%.<sup>8</sup> This is a reflection of the rise of support for such parties throughout Europe, as the 2014 European Parliament elections saw 'an unprecedented number of seats won by right-wing parties, ranging from right-of-centre Eurosceptics to far-right fascist groups' across the Union.<sup>9</sup> Given the electoral

<sup>6</sup> The full text of the pledge is available at: [www.ilga-europe.org/home/how\\_we\\_work/european\\_institutions/ep2014/mep/pledge](http://www.ilga-europe.org/home/how_we_work/european_institutions/ep2014/mep/pledge)

<sup>7</sup> See: MEP Elections 2014, [www.um.edu.mt/projects/maltaelections/elections/mep/elect2014](http://www.um.edu.mt/projects/maltaelections/elections/mep/elect2014)

<sup>8</sup> University of Malta, Elections, MEP Elections 2014

[<http://www.um.edu.mt/projects/maltaelections/elections/mep/elect2014>]

<sup>9</sup> *The Rise of the Far Right*, Global: The International Briefing, [<http://www.global-briefing.org/2014/09/europe-2014-the-rise-of-the-far-right/>]

system in Malta, when votes were transferred after the last of the Imperium Europa candidates got eliminated, 46.5% of votes received by Imperium Europa were non-transferable, 26.4% were transferred to PL, 14.06% to PN and 13.13% to Alternattiva Demokratika.

### 2.3 Civil Society

Throughout 2014 a number of new developments in civil society around human rights developed, including the setting up of the President's Foundation for the Welfare of Society, a non-profit entity advising the President of Malta on initiatives to help improve social inclusion and standards of living.<sup>10</sup> The Platform of Human Rights Organisations in Malta (PHROM) was launched with the support of EEA Funding to bring together organisations working on broad human rights issues.<sup>11</sup>

Contemporaneously, a number of human rights organisations were also formed whilst formal and informal

cooperation between various groups of organisations continued. An informal set of eleven established NGOs working on migration issues have continued to publish joint statements and positions. On the occasion of human rights day at the end of 2014, human rights organisations held a march in Valletta. This led to the presentation of a statement calling for six specific actions on human rights including the establishment of a national human rights institution, the establishment of mechanisms for consultation, the development of a system of human rights impact assessments, the appointment of a human rights focal point in all Ministries, a commitment to a zero tolerance policy of any form of attack or intimidation of civil society organisations and the introduction of effective, proportionate and dissuasive sanctions in situations of breach of human rights. The list of demands received positive feedback from the Prime Minister.

<sup>10</sup> For more information see: <https://www.facebook.com/pages/President>

s-Foundation-for-the-Wellbeing-of-Society/1515279792042330

<sup>11</sup> See [www.humanrightsplatform.org.mt](http://www.humanrightsplatform.org.mt)



## 2.4 Migrant Community Organisations

The year 2014 saw the setting up of various migrant community organisations able and willing to engage with national debates on migration and with wider communities of migrants across Europe. In December 2014, for instance, a group of Somali journalists set up the African Media Organisation in Malta including a specific project for Somali Journalists specifically. The objective of this project is to provide an interactive service to the African community promoting integration and a means of active communication and information sharing, as well as a form of respite for those within the African community seeking asylum. The individuals involved in this project are all aged under 27, and are also aiming to develop their skills and knowledge in a number of areas including administration, management, finance and broadcasting. The broadcasting schedule planned for this project will provide a valuable source of information and entertainment for

migrants in Malta via a number of radio programmes.

Partly in response to the exponential growth in the number of migrant community organisations, the Foundation for Shelter and Support to Migrants (FSSM) is leading a project to develop a Third Country National Support Network in Malta. The aim of this initiative is to develop a sustainable network of organisations that use collaborative and participatory processes to build coalition and democratic representation, whilst developing the capacity of individual TCN organisations, communities and groups. The project gives priority to elements such as democratic representation and good governance, including measures for the promotion of inclusion, multicultural social dialogue, self-representation of minorities, gender equality and environmental sustainability.

## 2.5 Human Rights Consultation

In early 2014, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties hosted a consultation process entitled 'Towards a Robust Human Rights and Equality Framework'. The aim of the consultation was to gather input from interested entities and individuals, including the general public, civil society organisations, trade unions, business organisations, political parties, governmental institutions and others interested in contributing to the process of strengthening Malta's human rights framework.

The consultation questions for this phase were broad, namely: Do you think that human rights and equality are sufficiently protected and promoted in Malta? If not: Which human rights do you believe need further protection and promotion? How can Malta better protect and

promote human rights and equality overall? Are there any models that you would propose that government should consider looking at in terms of legislation, institutional frameworks or both? If yes, what is especially good about such models?

This was a rather broad and far reaching scoping exercise intended to collect the perspectives of interested parties on the various human rights concerns affecting Malta. The exercise received 15 submissions. Despite the intention of the consultation, there was a marked lack of engagement from trade unions, business organisations and political parties. Instead, the submissions made were by Civil Society Organisations (5), Academic Institutions (1), National Institutions (2), International Institutions (2) and individuals (5).<sup>12</sup>

The consultation process identified four wide sets of proposed changes, namely: institutional changes through

<sup>12</sup> The submissions may be downloaded from: [http://socialdialogue.gov.mt/en/Public\\_Consultations/MSDC/Pages/Consultations/HumanRights.aspx](http://socialdialogue.gov.mt/en/Public_Consultations/MSDC/Pages/Consultations/HumanRights.aspx). A review of the results of the consultation was prepared by MSDC and is

available at: [http://socialdialogue.gov.mt/en/Public\\_Consultations/MSDC/Documents/Final%20Report%20of%20Submissions.pdf](http://socialdialogue.gov.mt/en/Public_Consultations/MSDC/Documents/Final%20Report%20of%20Submissions.pdf)



the setting up of a National Human Rights Institution and other institutional committees and arrangements as appropriate; constitutional amendments; legislative amendments; and other general measures.

The other measures include human rights education, access to information, an effective complaints mechanism, regular training, and measures that ensure greater equality. A number of gaps were also identified in the system as it currently stands, including the fragmentation of anti-discrimination efforts, and varying levels of protection depending on the ground of discrimination.

Suggestions were also made to broaden the scope of protection from discrimination to other grounds including nationality, class and language. A number of serious human rights concerns relating to the field of migration were also raised, including migrant detention, the right to a fair

trial when applying for asylum, and statelessness.

The next phase of the process involved the drawing up and publication of a White Paper on Human Rights and Equality and the launch of a consultation process thereon.

The White Paper proposed two legislative initiatives aimed at developing Malta's human rights and equality framework. The first proposal is to recast the Equality for Men and Woman Act into an Equality Act that will address discrimination on various grounds (as well as inter-sectional discrimination) and provide a general principle of anti-discrimination in all spheres of life. The second proposal is to adopt a Human Rights and Equality Act, which will establish the Human Rights and Equality Commission.<sup>13</sup>

Through these changes the White Paper aims to bring the field of Human Rights and Equality in Malta up to international standards as set by the

<sup>13</sup> Towards the Establishment of the Human Rights and Equality Commission, White Paper, MSDC, 10<sup>th</sup> December, 2014

Paris Principles and EU equality legislation. This would provide for robust legislation on Human Rights and Equality as well as the establishment of an independent Human Rights and Equality Commission in order to enforce the legislation, as has been suggested by the ICCPR in its 2014 concluding statements on Malta.

A number of concerns arose from the white paper, which it is hoped, will be addressed in the next steps in this process. These included the conflation of various issues such as integration and equality, as well as the failure of the white paper to consider equality provisions within the immigration legal instruments as part of the core equality framework for Malta.

The white paper also stopped short of providing indications of how terms (including discrimination) would be defined and the grounds to be covered (including whether this will be an exhaustive list or not).



### 3. Maritime Migration

Maritime migration has for a number of years featured as a key issue of socio-political concern for the Maltese population. This is partly due to the media and political visibility of migrant arrivals by boat, which has provided a partial and ill-informed perception of migration realities in Malta.

The number of undocumented migrants arriving in five boats during 2014 was 568.<sup>14</sup> This was a significantly lower number than both the number of arrivals in 2013, which totalled 2008, as well as the annual average of 1,400 as recorded since 2003. In fact, this was the second lowest number of arrivals in Malta in the last decade. Interestingly, 2014 marked a change in trends in the balance between asylum applicants arriving by boat and those arriving by other means, with 568 boat arrival applications and 824 non-boat arrival applications lodged in the year. The two largest populations in the latter category were Libyans and Syrians.<sup>15</sup>

#### 3.1 The Lampedusa Tragedy: Refusal to Disclose Information

The Maltese authorities refused to disclose information about the search and rescue operation regarding a trawler carrying over 400 people, mostly Syrian families, which sank on 11 October 2013. Amnesty International reported that survivors'

testimonies and available data indicated that rescue may have been delayed due to the failure to act in a timely manner by Maltese and Italian authorities.<sup>16</sup>

A request for information by Maltese news agency Malta Today was turned down by the Armed Forces of Malta (AFM) and this decision was upheld by the Information and Data Protection

<sup>14</sup> UNHCR - Malta and Asylum - Data at a Glance, 2014. [<http://www.unhcr.org/mt/statistics>]

<sup>15</sup> Statistics published by UNHCR: <http://www.unhcr.org/mt/charts/category/13/year/7>

<sup>16</sup> Amnesty International; Lives Adrift, Amnesty International; 2014



Commissioner. The reason given for the refusal of information was that ‘the release of documents containing the information requested could run counter to public interest and hence the public is deemed to be better served by non-disclosure’.<sup>17</sup>

This was based on a claim that the information and documentation that would need to be released in such disclosure were related to Malta’s national security and defence and its international relations particularly with Italy, and that the release of the information could prejudice the conduct of an investigation of a possible breach of the law, and in order to safeguard the AFM’s and Malta’s standing, should any proceedings be instituted. The decision to uphold the AFM refusal to disclose raised concerns amongst NGOs, media entities and politicians.

<sup>17</sup> p. 7

<sup>18</sup> European Council on Refugees and Exile (ECRE) Weekly Bulletin, ‘*ECRE and UNHCR concerned over ending of Mare Nostrum without European Rescue Initiative to replace it*’, 24<sup>th</sup> October, 2014,

### 3.2 Mare Nostrum and Frontex Operations

The low number of irregular migrants reaching Maltese shores in 2014 was, at least partly, the result of the Italian Government’s Mare Nostrum operation. The Italian government initiated this mission in response to the Lampedusa tragedy in October 2013, when over 300 migrants drowned in the Mediterranean.

The Mare Nostrum rescue missions, which included both air and sea operations, rescued around 150,000 people over the year, most of whom have been disembarked in Italy.<sup>18</sup> The Italian Navy deployed one amphibious vessel with specific command and control features, medical and shelter facilities for would-be migrants, one to two frigates and two second-line high seas units with wide range and medical care capabilities, aircraft, radar and infrared capability, and a Marine

[<http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/864-ecre-a-unhcr-concerned-over-ending-of-mare-nostrum-without-european-rescue-initiative-to-replace-it.html>]



Brigade team in charge of vessel inspection and migrant safety.

Operation Mare Nostrum came to an end in November 2014, and the EU's Operation Triton commenced, with less than one third of the budget compared to Mare Nostrum, with 2.9 million Euros compared to 9 million. The mandate of Operation Triton is, however, rather different, as it does not carry out missions in international waters, but is restricted to within 30 miles of the European border.<sup>19</sup> The mission, which is run by Frontex, is primarily a border management operation rather than a search and rescue one, although representatives have declared that “saving lives is an absolute priority in all maritime operations coordinated by Frontex.”<sup>20</sup>

Frontex coordinates Operation Triton, through the deployment of three open sea patrol vessels, two coastal patrol vessels, two coastal patrol boats, two aircraft, and one helicopter in the

Central Mediterranean. Operation Triton came under severe criticism as being inadequate to address the migration realities in the Mediterranean and to save persons in distress at sea.

### 3.3 Migrant Offshore Aid Station (MOAS)

The Migration Offshore Aid Station (MOAS) was launched in 2014 as a private operation. It helped save almost 3000 lives in a 60-day mission that was wrapped up at the end of October.

MOAS is a Malta-registered foundation, dedicated to preventing loss of life at sea by providing assistance to migrants who find themselves in distress while crossing the Mediterranean Sea in unsafe vessels. MOAS is equipped with a 40-metre vessel, the Phoenix, two Remote Piloted Aircraft, two RHIBs (rigid-hulled inflatable boats), and a team of rescuers and paramedics.

<sup>19</sup> Ibid.

<sup>20</sup> ECRE Weekly Bulletin, ‘Operation Mare Nostrum to end - New Frontex operation will not ensure rescue of migrants in international waters’, 10<sup>th</sup> October, 2014

[<http://ecre.org/component/content/article/70-weekly-bulletin-articles/855-operation-mare-nostrum-to-end-frontex-triton-operation-will-not-ensure-rescue-at-sea-of-migrants-in-international-waters.html>]

MOAS is able to locate, monitor, and assist vessels in distress. MOAS was founded by two philanthropists who funded the operation for 2014 and are currently trying to secure the funding to resume the operation in May 2015. The station reportedly costs 400,000 Euros a month to operate effectively and must therefore requires donations and/or partners to resume its work.<sup>21</sup>

### 3.4 François Crépeau's Visit

François Crépeau, the United Nations Special Rapporteur on the human rights of migrants, alerted and warned Malta of the importance of “stepping up its preparations for the next wave of migrants crossing the Mediterranean Sea” and of considering this phenomenon of increase arrivals the ‘new normal’ with the end of Mare Nostrum.<sup>22</sup>

Crépeau encouraged Malta to adopt a more human rights based approach to

migrants and asylum seekers and to develop a coherent and effective migration policy. By approaching these issues with a security and border control approach, migrants are viewed as a security risk, and a human rights approach would have more positive effects for State, population and migrants alike. Professor Crépeau visited Malta as a follow-up to his 2012 year-long study on the management of the EU's external borders. He met with various Government officials responsible for border management, EU institutions, international organisations, NGOs and migrants themselves to discuss the management of Malta's borders. His work will result in a thematic report on EU border management with specific country missions that will be presented to the UN Human Rights Council in June 2015.

<sup>21</sup> ‘MOAS Mission Ends Today’, Times of Malta, Friday 31<sup>st</sup> October, 2014 [http://www.timesofmalta.com/articles/view/20141031/local/moas-mission-ends-today.542079]

<sup>22</sup> UNHCR Report, ‘Malta needs to step up its preparation for the next wave of migrants

crossing the Mediterranean’, 10<sup>th</sup> December, 2014 [http://reliefweb.int/report/malta/malta-needs-step-its-preparation-next-wave-migrants-crossing-mediterranean-sea-un]

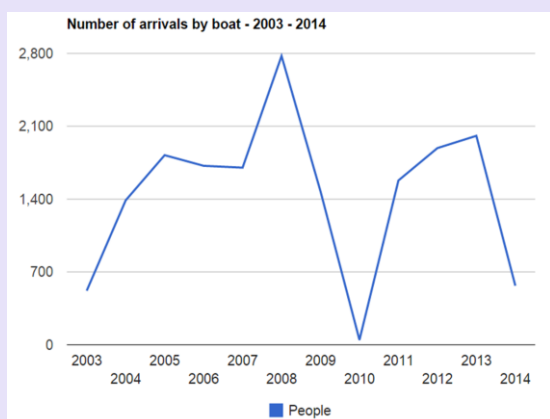


## 4. Asylum

Asylum data from 2014 reflects a number of new trends in protection dynamics. The number of persons seeking protection arriving via regular means increased dramatically, and for the first time the number of asylum applicants was more than double the number of arrivals by boat. Second, the number of persons recognised as refugees as opposed to being granted subsidiary protection has increased considerably. This partly reflected nationality trends with Syria and Somalia being the two main countries from which protection was granted, followed by Libya.

### 4.1 Asylum Applications and Decisions

1350 individuals applied for asylum in Malta in 2014, 40% less than the 2245 applications in 2013.<sup>23</sup>



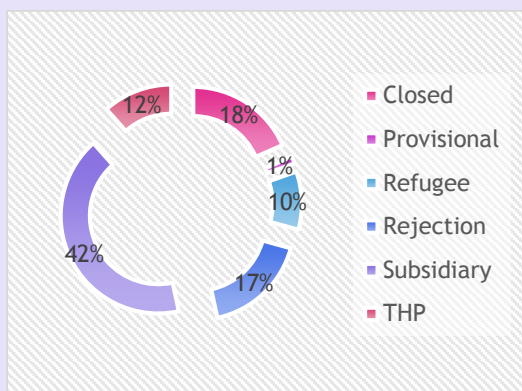
Source: UNHCR Malta

Malta had the fourth highest rate of registered applicants for asylum in relation to the size of national population (3.2 applications: 1000

inhabitants) following Sweden (8.4:1000), Hungary (4.3:1000) and Austria (3.3:1000). Malta received 0.2% of asylum applications made in this period across all European Union countries.<sup>24</sup> Of the applications made, 31% were by Libyan national, 23% were Syrian nationals and 9% were Somali nationals. The Office of the Refugee Commissioner made 2300 decisions in 2014, some of which were for applications lodged in 2013. Just over two thirds of applicants were given some form of protection, whilst 17.4% were rejected and 18.4% of cases were closed or abandoned.

<sup>23</sup> Source: Eurostat Data  
[http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_asyappctza&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en)

<sup>24</sup> Ibid



The countries from which most beneficiaries of protection hailed were Syria (with 364 successful applications), Somalia (292), Libya (208), Eritrea (139) and Sudan (63). The Refugee Appeals Board received 502 appeal applications. From 173 substantive decisions, 19 individuals were granted international protection.<sup>25</sup>

These statistics differ considerably from previous years where for instance in 2013, the percentage of applicants granted subsidiary protection stood at 69.7% whilst only 2% were recognised as refugees and 11.8% had their claim rejected. These changes also partly reflect changes in the countries from which persons were granted international protection with Somalia

(657 claims), Eritrea (548 claims) and Syria (412 claims) being the main countries of origin in 2013.

The number of Libyan asylum seekers grew towards the end of 2014 including both persons who had already been living in Malta and new arrivals. This indicates that the new trend in acceptance of applications as well as countries of origin appears set to continue in 2015, where preliminary data shows 15.4% of applicants being recognised as refugees and 71.2% being granted subsidiary protection, and where Libya was the main country of origin with 281 applications followed by Syria with 39 applications in January and February of 2015.

## 4.2 Durable Solutions for Migrants

There were 72 voluntary returns to countries of origin in 2014, coordinated by the International Organisation for Migration (IOM). 577 individuals were resettled to the United States.<sup>26</sup> No relocations to

<sup>25</sup> UNHCR Malta, Malta Asylum Trends 2014, UNHCR 2015

<sup>26</sup> UNHCR Statistics available at: [www.unhcr.org/mt/charts](http://www.unhcr.org/mt/charts)

other European Countries took place in 2014. According to UNHCR, the total population in open centres has been on the decline since 2010, when the figure stood at 2220, with a population of 764 in 2014. The number of people held in detention centres at the end of December 2014 was 30.

### 4.3 legal Amendments

2014 also saw measures towards the transposition of the recast Common European Asylum System. This included the presentation to parliament of a Bill entitled: An Act to Amend the Refugees Act. The bill seeks to implement the provisions of Council Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

Some of the important features of the bill include the shift from the term ‘asylum’ to ‘international protection’, which is defined as including both

refugee status and subsidiary protection, the introduction of provisions on special procedural guarantees, and the clarification of presumption of future persecution or of serious harm arising from previous persecution or harm. The bill also covers a number of other elements, including an extended definition of family member, a clarification that protection in the State must be of an effective and non-temporary nature, and a clarification on internal protection including the elimination of the possibility of applying the internal protection alternative even if there are obstacles to reaching the place of safety. The bill also revises the grounds of inadmissibility of applications and provides for the continuation of protection when a refugee is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself from the protection of his State.

The transposition of the recast directives was also implemented through Legal Notice 161 of 2014 amending the Procedural Standards in

Examining Applications for International Protection Regulations.<sup>27</sup>

In line with the relevant directives, the regulations extend the residence permits to be granted to people with subsidiary protection from 1 to 3 years. The regulations also enhance the obligations of the Office of the Refugee Commissioner including to ensure that applications are not rejected or excluded from examination on the sole ground of not

having been made as soon as possible. They furthermore state that the Office of the Refugee Commissioner should in the first instance consider an applicant's claim for refugee status and then, if the person does not qualify, to determine eligibility for subsidiary protection. The regulations also set out requirements for the examination of facts and circumstances, and of the application and interview of the applicant.

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<sup>27</sup> Subsidiary Legislation 420.07 of the Laws of Malta



## 5. Migrant Detention

The policy, length and conditions of detention continued to be a critical human rights concern throughout 2014, as has been raised and reiterated by various national and international organisations including the United States Department of State, Amnesty International and the ICCPR Review Committee. However, some developments over the year were particularly notable. The Prime Minister issued a statement which said that children should not be detained, the returns regulations were amended, a system for regular review of detention introduced, the situation in detention was somewhat improved, primarily due to the lower number of arrivals in 2014 with only 30 persons being in detention at the end of the year. Some of the concerns about detention were brought to the fore by a riot that occurred in Lyster Barracks in the first quarter of the year, whilst the publishing of a report on the death of Mohamed Kamara, also raised serious concerns regarding practices within the detention centres. The Minister for Home Affairs was changed towards the end of the year, and the new Minister engaged with the NGOs working in the area of migration, amongst others, and promised a rehaul of the system to bring it in line with EU law.

### 5.1 Lyster Detention Centre Riot

On February 25th 2014, a riot broke out at Lyster Detention Centre. This highlighted various concerns relating to the detention of migrants. According to a ministerial enquiry that followed the riot, no excessive force was used by the police and detention officers. The enquiry also found that

no detainees sustained noteworthy injuries during the incident. This finding contradicted a Jesuit Refugee Service (JRS) representative who stated that some migrants reported abuse, such as excessive shouting and being pinned to the ground with feet, even after the riots were under control. However, the enquiry report stated that none of the police officers, detention officers or representatives



of UNHCR reported such incidents. The report did find that four stun guns were each used once and that rubber pellets were shot into the air as warning shots. One immigrant was taken to hospital after starting to lose consciousness but was discharged after an hour. The report could not conclusively state what caused the riot. However, the rejected applications for asylum status and the unmet expectations of communicating with a visiting parliamentary delegation may have heightened tensions within the centre.

The board of enquiry proposed suggestions to improve the facilities through the construction of new centres designated exclusively for newly arriving migrants as well as separating asylum seekers whose application is still under review from migrants awaiting repatriation.

NGOs questioned the independence of the board, noting that whilst they did not doubt the personal integrity of the individuals appointed to the Board, the fact that all of the members of the board were at the time employed

within the Ministry responsible for the police and the Detention Centres raised questions regarding the Board's independence and impartiality.

## 5.2 The Valenzia (Kamara) Report

Two years after the finalization of the report of an independent enquiry into the death of Mamadou Kamara whilst in the custody of immigration officers, the Valenzia Report was finally published. This report was highly critical of migrant detention. The inquiry provided a damning assessment of a number of issues, brought key shortcomings to the fore, and presented concrete recommendations in order to address those concerns, to ensure accountability and clarify roles. Despite stressing that most of the Detention Services personnel do their utmost in a very difficult job and under challenging circumstances, they found that some Detention Services employees were taking advantage of their positions, in cases even going as far as to engage in sexual relations with detained asylum seekers, mostly women. The death of Mr Kamara itself



was found to be a direct cause of the beating of the detainee by two detention officers, the fatal impact coming from a blow to the groin. The report stressed the need for a ‘complete examination into the whole system of detention in Malta’.

UNHCR agreed with the main findings of the report, whilst acknowledging the government’s efforts to improve conditions, and to review the system. However, UNHCR also mentioned that several issues identified in the report still needed to be addressed, such as conditions at Safi Barracks and the lack of psychological support available for detainees. NGOs released a statement condemning the politicians who read the report when it was initially written and failed to act, stating that the report was “a scathing commentary on the way Malta has freely decided to treat men, women and children who are running for their lives.”

### 5.3 Return of Illegally Staying Third-Country Nationals

Legal Notice 15 of 2014 amended Subsidiary Legislation 217.12 ‘*Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals*’. The amendments created an application for voluntary removal, declared a maximum time of 6 months in detention (unless there are special circumstances), and stated that coercive measures of forced removal should be a last resort. However, the amendments continued to allow for the detention of unaccompanied minors and families with minors. Article 10 states that they ‘shall only be detained as a measure of last resort and for the shortest period of time possible’, although the lack of criteria for the use of this measure may lead to its being used often. The regulations provide that separate accommodation with adequate privacy, access to leisure activities, education and facilities for a child should be provided. Moreover, the amendments added that children must be allowed to apply for asylum and will

be assisted under the *Children and Young Persons (Care Order Act)* as well as be assured of a return to a family member, nominated guardian or adequate state facility in the country of return before being issued with a return decision. The amendments also cater for the conditions of detention and postponement of removals in cases where such would violate the principle of *non-refoulement*.

### 5.4 Mental Health

Asylum seekers with mental health issues were, in the reporting period, referred by a General Practitioner to governmental psychiatric services either at Mater Dei Hospital or Mount Carmel Hospital. In most cases asylum seekers who were deemed to need inpatient care were put in Male Ward 8B in Mount Carmel, more commonly known as Asylum Seekers Unit (ASU). Besides only being able to accommodate 10 patients at a time, the ward has been given very negative reviews from the European Committee for the Prevention of Torture (CPT) in 2008 and 2011, stating that the ‘living conditions were far below any

acceptable standard and can only be considered as anti-therapeutic.’ Médecins Sans Frontières (MSF) had criticized the unit whilst working in-country in 2009.



Over the reporting period, the Jesuit Refugee Service (JRS) published *Care in Captivity? - a report on the provision of care for detained asylum seekers experiencing mental health problems in Malta*. The analysis highlighted the high vulnerability of asylum seekers to mental health issues. Besides leaving their home, culture and family, asylum seekers may also have been exposed to traumatic experiences such as rape, torture, war and imprisonment. All of these conditions and circumstances can cause mental health issues among asylum seekers. The report also cited a study on the direct relation between detention policies and mental health issues, indicating a link between the policy currently in effect and mental

health issues such as high levels of anxiety, depression and Post Traumatic Stress Disorder (PTSD).

The *Care in Captivity?* report found various problems with the current system of providing mental health care to asylum seekers in Malta but stated that the services can be very much improved through some implementable measures. Among the issues reported were the high amount of respondents who cited tendencies for self-harm, thoughts of suicide, and attempted suicide most of which occurred while in detention, the lack of referral to/accessibility of psychological help, lack of continuity of care, lack of implementation of vulnerability procedures, and lack of interpreters and cultural mediators.

In their conclusion, JRS stated that this report's limitations could only provide 'a preliminary sketch of the issues at stake', calling for a further, more in-depth analysis into the situation. Whilst stating a number of

recommendations to improve the care provided, the report emphasized the need to incorporate services for asylum seekers into the state primary health care system in order to improve efficiency, increasing capacity, improving procedures for vulnerability assessment and providing interpreters and cultural mediators.

## 5.5 Agreements with Countries of Origin

In 2014, Malta signed two repatriation agreements with Nigeria and The Gambia. At time of signing of the agreement with Nigeria in April, 155 Nigerians rejected asylum seekers resided in Malta. The agreement with The Gambia, on the other hand, was signed in September, at which time 80 Gambian nationals were in Malta pending repatriation. These two agreements apply to individuals who enter Malta irregularly and whose claim for asylum is rejected, allowing for their repatriation.

## 6. Integration

According to Eurostat there were 22,466 migrants living in Malta in 2013. Currently no national integration policy exists in Malta, and both measures and subsequent monitoring are sparse and mostly limited to *ad hoc* projects and initiatives. In 2014 a number of relevant instruments likely to have an impact on the integration prospects of migrants in Malta were adopted, together with government commitment to engage directly with integration through both structures as well as consultation.

### 6.1 – A Process Towards Integration

A key development on integration from 2014 was the commitment by the Maltese government, and specifically the Ministry for Social Dialogue and Civil Liberties to develop and launch an integration policy in 2015. The Budget Speech announced that “[a] Directorate for Integration will also be set up to develop strategies and programmes that reach Government targets with regard to civil liberties, equality, anti-discrimination and integration of immigrants.”<sup>28</sup> The statement builds on various other statements and initiatives that

sometimes appear to conflate developments on equality and anti-discrimination with initiatives on integration. A commitment has also been made for a broad consultation process for and about a national integration policy, which is expected to take place in 2015.

### 6.2 legal Amendments

During 2014, The Single Application Procedure for a Single Permit as regards Residence and Work and a Common Set of Rights for those Third Country Workers legally residing in Malta Regulations, was adopted, transposing the provisions of Council

<sup>28</sup> Budget Document 2015, pp. 61; Budget Speech 2015, pp. 155

Directive 2011/98/EC of the 13th December 2011.

Previously, applications for residence and employment licences have had to be submitted separately by individuals, who were only able to obtain a residence permit once they had an employment licence. With the new procedures, more contact is established between the Employment and Training Corporation (ETC) and the Department for Expatriate Affairs allowing individuals to submit one single application form, thereby reducing Third Country Nationals' administrative steps required in seeking legal residence in Malta.

Moreover Legal Notice 197 of 2014 amended Subsidiary Legislation 217.05 'Status of Long-Term Residents (Third Country Nationals) Regulations' to apply to individuals who have been granted international protection in Malta or another EU Member State. Through this amendment, individuals receiving international protection, including both refugee status and

subsidiary protection, are now able to apply for long-term residency permits in Malta. This can now be done following five years of residency in Malta, including half the time between applying for protection and its being granted if this is less than 18 months, or all the time if it was over 18 months.<sup>29</sup> The residence permit will show that the individual was granted international protection by Malta or another Member State, and may be revoked if protection is revoked, ended or its renewal refused.

Moreover, whilst the 'Procedural Standards in Examining Applications for International Protection Regulations'<sup>30</sup> have been discussed elsewhere in this report, a critical amendment has been made in the extension of status for persons enjoying subsidiary protection from renewable one-year periods to three-year periods, following the intention of the recast CEAS to harmonise the level of protection granted to different statuses.

<sup>29</sup> Subsidiary Legislation 217.05 of the laws of Malta

<sup>30</sup> *Subsidiary Legislation 420.07, 4(3)c*

## 7 Statelessness

A proposed amendment to the *Civil Code* will allow for children born at sea to be given a legal identity in Malta. The process to amend national legislation to this effect has commenced, but will only provide children with the ability to register for a legal identity, and not include the granting of citizenship. This amendment aims to help reduce the number of children that find themselves stateless and therefore without access to fundamental rights such as social protection or education.

### 7.1 Mapping Statelessness in Malta

The UNHCR issued a report entitled '*Mapping Statelessness in Malta*'. The report found that whilst some safeguards exist in Malta's nationality legislation, a number of serious concerns remain, relating mainly to the lack of implementation of safeguards at birth, the lack of identification procedures, and the lack of a dedicated protection framework for stateless persons.

It also noted shortcomings regarding the availability and fair processes of naturalization of long-term residents, including beneficiaries of international protection and stateless persons. The distinction in treatment between nationals by birth and nationals by

naturalization was also identified as problematic.



The report does not quantify the number of stateless persons in Malta but concludes that the population is most likely a small and socially and politically invisible one. The report identifies a number of profiles of persons and groups who might be affected by statelessness. These include persons within the asylum system who are wrongly registered as having a nationality, and children born in Malta who are stateless. The lack of

awareness of safeguards amongst persons impacted by statelessness, their legal representatives and the Maltese authorities are ongoing challenges that must be addressed.

The report makes a number of recommendations, including accession to the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status

of Stateless persons, awareness raising, collection of data and information about stateless persons as well as the establishment of an effective statelessness determination procedure. The latter recommendation was also made earlier in the year by The People for Change Foundation in its submissions to the Consultation on Human Rights and Equality.



## 8. Racism

Despite legislation and policies protecting individuals from racism and discrimination, the experience of racism and inequality is an ongoing feature in the lives of ethnic and religious minority groups in Malta. 2014 saw amendments to the Criminal Law provisions regarding hate crimes aimed at strengthening the provisions and enhancing their scope. A series of protests against integration were organised throughout the year whilst a service to encourage reporting of racist incidents was launched by The People for Change Foundation.

### 8.1 Criminal Code Amendments

An amendment to the Criminal Code replaced the term ‘hatred’ with ‘racial hatred’ which renders the provision problematic in that the term ‘racial hatred’ is in turn defined as hatred against a person or group defined by reference to a series of grounds including gender, gender identity and sexual orientation. On a positive note, however, the grounds against which incitement to violence or hatred is prohibited has been expanded to include citizenship and national origin. The same also applies to the aggravating circumstances for which

the punishment is increased. A new provision was also added targeting incitement to racial hatred by public officials. Article 135A provides that ‘Any public officer or servant who, under colour of his office, creates or assumes leadership of a group which promotes violence or racial hatred (...) 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.’<sup>31</sup>

### 8.2 Anti-Immigration Protests

A number of marches were organised in 2014 to protest the increasing number of foreigners in Malta. These

<sup>31</sup> Criminal Code, Chapter 9 of the Laws of Malta



events were publicized on social media as well as news portals with various racist comments being posted.

On September 28<sup>th</sup> crowds gathered and marched from Floriana to Castille ‘against illegal immigration’ in order to ‘protect Malta.’ The event was organised by the Ghaqda Patrijotti Maltin (Organisation of Maltese Patriots) who claimed their intentions were not racist, as it was not about the colour of their skin but the fact that Malta just does not have the resources to deal with the migration situation. The organisation further emphasized that immigrants carry infectious diseases and are members of terrorist groups. However, they also believed that other European immigrants threaten the Maltese identity. Alex Pisani, a member of the organisation believed that they had a long way to go but would eventually emerge victorious, stating that “if needs be, we’ll even give up our blood for this cause.” According to Maltatoday who reported the incident, Mr. Pisani did not allow the journalists to talk with any of the other protesters as a lot of people there were not “competent enough to comment”.

A similar march was held on the 6<sup>th</sup> of September when an application by *Imperium Ewropa* to stage a protest against ‘illegal immigration’ was cancelled shortly before it was meant to take place. According to media reports, around 100 people walked in protest from Floriana to Castille despite the withdrawal of the application. One of the organisers, John Paul Zammit, a member of *Imperium Ewropa*, stated that he withdrew the application shortly before the event was meant to take place because of worries over being held responsible for the actions of some protesters, had they carried out any unlawful acts.

## 8.2 launch of Report Racism Malta

In November 2014, The People for Change Foundation launched an online platform ([www.reportracism-malta.org](http://www.reportracism-malta.org)) that provides victims and witnesses of racism an anonymous and user-friendly method of reporting such incidents.

The service is intended to increase reporting of racist incidents, to inform individuals about remedies available, and to offer support throughout the process.



Report Racism Malta also aims to collect data in order to better understand the reality of racism in Malta, as well as to provide evidence that will help inform legal and policy development in the area. The project

reacts to a discrepancy between high levels of discrimination found in victimization surveys (such as the EU MIDIS Research) and the number of cases filed with equality bodies and other authorities. This is a significant step towards tackling racism in Malta, as it provides victims with a voice and support, promotes a culture of reporting racist acts, and allows for the creation of evidence-based policy initiatives. Initial reports filed on Report Racism Malta included instances of verbal abuse, discrimination on public transport and other service providers as well as instances of incitement to racial hatred on social media.

## 9. LGBT

The prohibition of discrimination on the grounds of sexual orientation and gender identity was enshrined in the constitution in 2014, the same year as the introduction of a Civil Unions Bill, which gives the same rights as marriage, bar in name. Also important was the introduction of the Gender Identity Bill, which allows for gender self-identification including changing one's gender without surgical, hormonal or other medical treatment. These developments, whilst hotly debated, were generally positively received, despite some criticism of shortcomings.

### 9.1 Sexual Orientation

The prohibition of discrimination on the grounds of sexual orientation and gender identity received constitutional protection through a unanimous vote on a motion presented by the opposition and seconded by the Minister for Civil Liberties. Article 32 of the Constitution now states that: “every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity, but subject to respect for the rights and freedoms of others and for the public interest”.<sup>32</sup> The

term discriminatory is now defined as “affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.<sup>33</sup> The legislative changes demonstrate both a commitment and a concerted trajectory towards the

<sup>32</sup> Article 32

<sup>33</sup> Article 45

recognition and protection of LGBT rights.

## 9.2 Civil Unions Bill

On April 14<sup>th</sup> the *Civil Unions Act*<sup>34</sup> was enacted. Through this law, civil unions including same sex unions<sup>35</sup> enjoy equivalent rights to marriage in all but name. Article 4(1) provides that except for specific provisions in the act, a civil union, shall have the corresponding effects and consequences in law of civil marriage.<sup>36</sup> In situations where the rights and obligations of civil partners are unclear, every effort shall be made to ensure that the determination of these rights equates to those enjoyed by spouses.<sup>37</sup> The act also provides for the application of provisions in the Civil Code<sup>38</sup> on separation and divorce to civil unions, as well as the provisions of the Marriage Act<sup>39</sup> on restrictions, formalities, validity and annulment, recognition of foreign judgements and marriages of convenience.



Source: Times of Malta

The vote in Parliament took place following much discussion, particularly with regards to the Bill's enactment of the right of same sex couples to adopt children. The latter led to the Act being adopted with 37 votes in favour and 30 abstentions. The Act was celebrated by the LGBT community in Malta, as well as being hailed as a positive and progressive development within the broader regional context. The first Civil Union took place in Malta on June 13<sup>th</sup>, 2014.

## 9.3 Gender Identity Bill

In October 2014 the Gender Identity Bill was opened for consultation and presented in Parliament. The bill

<sup>34</sup> Chapter 530 of the Laws of Malta

<sup>35</sup> Article 3(2) provides that: Registration of a partnership as a civil union shall be permissible between two persons of the same or of different sex.

<sup>36</sup> Chapter 255 of the Laws of Malta

<sup>37</sup> Article 9

<sup>38</sup> Chapter 16 of the Laws of Malta

<sup>39</sup> Chapter 255 of the Laws of Malta

provides for recognition, protection and registration of a person's gender as well as regulating changes to gender, which do not require surgical or hormonal treatment. Most importantly, it gives individuals the decision-making power in bodily integrity and physical autonomy, and safeguards the privacy of individuals in requesting changes to documentation in order to reflect and represent the individual's gender identity.

The Bill's provisions, which include both the right to recognition of gender identity as well as personal development based on that identity, goes further to enshrine the right of self-identification, to request a change in recorded gender and name in order to reflect one's own gender identity. This includes the ability of a change in gender identity as stated on official documentation without proof of surgical or hormonal processes, and without the need for psychiatric, psychological or medical treatment.<sup>40</sup> In the case of children, the Bill provides for two possibilities. The first

is the non-declaration of gender until the child attains 14 years of age. By this point, the gender of the child must be provided by public deed. In the case of a change in gender identity, an individual with parental authority may file an application for such a change, before the court of voluntary jurisdiction.

Whilst the rights associated with recognition and identity are extended to citizens and those habitually resident in Malta, the right to request a change in identity on official documentation is reserved to those who are Maltese citizens. The bill was positively received overall, although a number of organisations and entities have the opposition has stated that a number of issues remain unresolved, including the lack of a requirement of psychological support when applying. LGBTI Rights organisations have also lauded the bill, whilst making a number of suggestions on how the provisions therein can be strengthened or clarified.<sup>41</sup>

<sup>40</sup> Article 3(4)

<sup>41</sup> See for instance: ADITUS: Gender Identity, Gender Expression and Sex Characteristics

## 10. Human Trafficking

Assistance and support for trafficked persons will be strengthened under a new bill currently being discussed in Parliament. Over the course of 2014 a new action plan was developed for 2015-2016. Despite the actions proposed in the action plan the budget allocated to anti-trafficking was considerably reduced. A toolkit was developed to support stakeholders in implementing anti-trafficking measures including the publication of the standard operating procedures. A case of multiple counts of alleged human trafficking was discovered and court cases ensued.

### 10.1 Protection of Trafficked Persons

The Victim's Rights Bill is discussed elsewhere in this report however a significant part of the bill involves the transposition of the victim support provisions of the 2011 Anti-Trafficking Directive. The bill provides that a trafficked person shall be entitled to receive assistance and support before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable him to exercise the rights set out in the Anti-Trafficking Directive and Framework Decision.

Moreover, such assistance and support is not be conditional on the victim's willingness to cooperate in the investigation or criminal proceedings. One notes that the assistance and support is centred on the criminal proceedings and the bill does not repeal the Residence Permit for Victims of Human Trafficking who collaborate with the authorities regulations. The latter make the issuance of a residence permit for trafficked persons conditional on their ability and willingness to cooperate with the authorities. This means that whilst assistance and support is to be provided irrespective of one's

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Act: Public Consultation input, available at:  
[http://aditus.org.mt/Publications/GIBillinput\\_281114.pdf](http://aditus.org.mt/Publications/GIBillinput_281114.pdf)



willingness to cooperate with the authorities, a trafficked person who does not otherwise have a right to be in Malta is still required to cooperate in order to secure status in Malta.

The bill describes the assistance and support measures as including at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services. Such services are to be provided on a consensual and informed basis. Information to be provided to trafficked person is to include information about the possibilities enshrined in national and EU law for a reflection period and residence permit (in case of cooperation) and to apply for international protection.

Beyond the immediate assistance and support, a trafficked person is given access to legal advice and this should be provided free of charge if the victim

does not have the required resources. As regards trafficked minors, an advocate is to be appointed in the interests of a minor and where relevant, the person can be issued a care order, placing him/her under the protection of the Minister.

## 10.2 Combating Human Trafficking

A 2015-2016 action plan was adopted. It involves the continuation of most activities from the previous action plan as well as a focus on training of various groups, a review of the national indicators as well as of available statistics. The latter point is particularly welcome considering the lack of data currently available.

Despite the action plan, the approved budget for counter-trafficking efforts was cut to its lowest level ever - standing at 20,000 for 2015 compared to 25,800 for 2012 and 40,000 for 2014. This sharp decrease raised concerns from anti-trafficking specialists.

Over the course of 2014, the International Organisation for



Migration and the Ministry of Home Affairs and National Security developed a ‘Support tool for service providers on trafficking in human beings and standard operating procedures on identification and referral of (potential) victims of trafficking’. The aim of the support tool is to provide service providers in Malta with an easy to use tool to facilitate their work in identifying, assisting and referring trafficked persons. The tool is part of a series of actions undertaken by IOM and MHAS as part of the LIMES Project and in furtherance to the 2013-2014 National Action Plan on Human Trafficking.

The tool is an important step in strengthening Malta’s anti-trafficking framework. A number of shortcomings may be identified in the toolkit. In exploring the definition of human trafficking the tool relies on the definition elaborated in the 2000 Trafficking Protocol rather than the national definition of human trafficking as established in Sub-title VIII BIS of the Criminal Code, although this is briefly quoted later in the toolkit. Whilst the Protocol definition

is not an exhaustive one in terms of the forms of exploitation, the Maltese Criminal Code lists a number of forms of exploitation that are not explicitly mentioned in the Protocol including, for instance, activities associated with begging or other unlawful activities. The explanation of the definition fails to identify abuse of a position of vulnerability and abuse of power as a means of trafficking whilst also confusing the action and means of human trafficking listing threats, force, coercion, abduction, fraud and deception as the action and recruitment, transportation, transfer, harbouring or receipt of persons as the means. Related to this, the tool provides that the ‘actions’ are not necessary for child trafficking (referring to the means). The explanation also fails to elaborate on the lack of necessity of actual exploitation and the sufficiency of an intention to exploit, highlighting only that various forms of exploitation may be the purpose of the trafficking. Moreover, national legal provisions regarding the definition of terms including specific types of exploitation are not provided. When the Maltese



legal framework is explained the legal provision quoted is incomplete and does not include the means of ‘abuse of a position of vulnerability’ including the definition thereof.

A further section seeks to elaborate on what does not qualify as human trafficking and deals with migrant smuggling, addressing a concern about the conflation of the two issues within the Maltese context. The section does not however distinguish human trafficking from other issues and crimes including prostitution and pimping, and non-adherence to health and safety regulations. The distinction drawn between trafficking and smuggling fails to recognize the nuances of the issues even if it notes that the two phenomena are often interlinked. The toolkit also provides the standard operation procedures and an explanation thereof for any stakeholders to be able to identify trafficked persons. Whilst it refers to various entities, most notably the Prostitution and Anti-Trafficking Unit of the Malta Police force and Agenzija Appogg, it fails to provide direct contacts for individuals responsible, an

aid which would be beneficial considering the time-sensitive nature of first encounters with trafficked persons. The SOPs also refer to the referral of cases of trafficking through *Agenzija Appogg* to the police, however they do not clarify whether the consent of the person presumed to have been trafficked ought to be sought before such referral. It is very positive to note however that the police, on finding out about a case of trafficking are required to notify Agenzija Appogg - the social welfare services provider.

The standard operating procedures provide an open-ended list of entities that may come into first contact with trafficked persons. The list includes a number of critical actors but omits a number of others including detention services staff, churches, NGOs and migrant community organisations. These entities are presumed included under the broad umbrella of ‘other parties’. The identification of such actors is critical in order to ensure that they receive adequate training and attention in the development and

implementation of anti-trafficking efforts.

Whilst the SOPs provide that ‘the process of return should be voluntary and safe and that individuals who have been trafficked should be given the opportunity to express whether, when and how they would like to return home, the SOPs do not mention possibilities of status beyond that provided to persons cooperating with the authorities (and which end when the cooperation ends) and does not require or suggest a referral to the national asylum system. Information about such a referral is however required under the Victim Protection Bill as discussed above.

The tool remains an important component of the national anti-trafficking framework and the first publication of its kind available to a variety of stakeholders. Greater awareness of the SOPs is required in order to ensure that anyone coming in contact with trafficked persons knows where and to whom to report whilst ensuring the protection of the presumed trafficked person involved.

### 10.3 Leisure Clothing Case

2014 also saw the opening of investigations into a potential human trafficking case by the Chinese Government owned firm Leisure Clothing after reports of human trafficking appeared in media. The company is a subsidiary of the China Chongqing International Corporation for Economic and Technical Cooperation and has been operating in Malta for 23 years. There have also been various allegations of corruption within the police force, specifically the Immigration Department, as well as the Chinese Ambassador knowing of the circumstances and not taking any action. Reports claim that this trafficking situation has been ongoing for many years and includes individuals who have since left their positions.

Four Chinese individuals were detained trying to flee Malta with false documents claiming that they were smuggled in to the country and were now trying to escape the horrible conditions they had been subjected to. They were promised a job with a

monthly wage of €600, which is lower than the current minimum wage in Malta (€717.95). However in practice, they were only paid tens of Euros. Once in Malta they were confronted with tough and illegal working conditions and living conditions which were below acceptable standards. These included long hours at the factory and tiny shared residential rooms. They were informed that money is deducted from their wage for their housing, food and visa costs. These deductions contributed to thousands of Euros in loans they took to obtain their visas for Malta.

After gathering of evidence including an onsite enquiry, Magistrate Carol Peralta found enough *prima facie* evidence for the case to continue against the Directors of Leisure Clothing. The two Directors are charged with human trafficking and the exploitation of Chinese and Vietnamese individuals working for Leisure Clothing, as well as misappropriating employees' wages, failing to pay employees their wages, overtime and allowances, and failing to comply with employment

conditions. Initial inspections of the housing facilities at Hal Far were reported as 'substandard,' especially the sanitary facilities. The accused are both pleading not guilty.

### 10.4 The TIP Report

As with previous years, Malta was ranked on Tier 2 of the TIP Report meaning that the government does not fully comply with the minimum standards but is making significant efforts to bringing themselves into compliance with the same.



The TIP report noted positive developments in terms of identification of trafficked persons but commented on delays in prosecution and failure to convict, despite increments in possible penalties provided in the Criminal Code. The report also referred to the sharp decrease in the amount of money dedicated to counter trafficking efforts.

## 11. Children

In 2014 there were a number of significant developments in the area of children's rights in Malta. Amendments to the Criminal Code increased the age of criminal responsibility of children from 9 to 14 years, Malta ratified the third Optional Protocol to the Convention on the Rights of the Child and a Child Protection Bill was presented in Parliament that would result in a significant overhaul of the way child protection issues are addressed. The Prime Minister declared that undocumented children would no longer be detained, whilst significant attention has been given to improving conditions and integration of unaccompanied minors by the government, international organisations and NGOs.

### 11.1 The Child Protection Bill

The Child Protection Bill, presented to Parliament in 2014, aims to widen the protections afforded to children by replacing the Children and Young Persons (Care Orders) Act, and to establish a number of additional and special care and protection arrangements for children removed and separated from their parents and placed in care outside of the home. The act introduces child protection orders and establishes Child Court Services.

The bill introduces mandatory reporting, that is, the responsibility of

any individual to make a report to Child Protection Services or the Police if they have any reason to believe that a child is in actual or potential harm, or needs care and protection. Individuals who encounter such circumstances in the course of their work, whether paid or voluntary, are liable to prosecution punishable with imprisonment or a fine if they do not make a report without delay and not later than 2 days after such an observation is made. Such reports themselves are received by Child Protection Services, which makes a decision as to whether and how to make a report to the police, or to



request that the court issue protection orders.

The court, under the bill, is empowered to issue a number of orders intended to ensure the protection of the child, including emergency orders, supervision orders, parental treatment orders, care orders or an order to remove the perpetrator or violence against the child from the house. Care orders are to be issued where the child is not receiving care and protection as a good parent is reasonably expected to give.

The Bill also obliges the court to ensure that the needs of each child are examined and taken into account when assessing the care required and means to respond. This is partly done through the assistance of two members of the Child Care Advisory Group to the judge, and the provision of a Child Advocate who represents the wishes of the child when a child is appearing in court.

The Bill also regulates child protection mediators, and sets out the requirements for, and obligations of, guardians, and provides that that they

must be appointed from among the panel of experts nominated by the Family Court, and must be impartial, mature, of good repute, have at least ten years of experience with children and are able to communicate with and assess children in stressful situations and in their attachment with others. The Bill further provides for the possibility of permanent foster care, in the case where foster care has been ongoing for over four years. The Court may also decree that a child who has been placed under a child protection order may be freed for adoption. The application for the freeing of a child for adoption shall be served on the parents who have the right to oppose such proceedings. The Court may grant a decree to free the child for adoption if evidence is brought to show that the parent or parents are unlikely to be able or are unwilling to provide the child with appropriate care and the Court has ascertained that freeing the child for adoption is in the child's best interests. Where a child has been removed from the care of the parents and placed in out-of-home care, the State has a responsibility to ensure that the child receives special care and

protection for his/her well-being. That responsibility shall be vested in the guardian whilst the State undertakes a number of additional responsibilities.

Overall, the bill proposed a number of very significant changes to the current child protection model including; moving the responsibility of issuing care orders from the relevant Ministry to the Family Courts; enhanced planning, enforcement and an appeals procedure; mandatory reporting; a child protection register; and permanent foster care. Other welcome initiatives in terms of children's rights was the creation of a Child Protection Service, a child advocate, a child protection mediator and a guardian.<sup>42</sup>

## 11.2: Age of Criminal Responsibility

Act III of 2014 provided for an increase in the age of criminal responsibility from 9 to 14 years of age providing that 'a minor under fourteen years of age shall be exempt from criminal

responsibility for any act or omission'. The amendment also provides that 'minor under sixteen years of age shall also be exempt from criminal responsibility for any act or omission done without any mischievous discretion' and where mischievous discretion is proven, the punishment for 16-18 year olds should also be reduced by one or two degrees. With regards to children under the age of 14, the amendment gives the court the power to bind those enjoying parental responsibility to watch over the conduct of the minor under penalty for non-compliance of between one hundred euro and two thousand euro. If the fact committed by the minor is an offence punishable with a fine, the court may award the punishment against the parent or other person charged with the upbringing of the minor, if the fact could have been avoided by his/her diligence.

On the issue of care orders, an amendment to Article 4 of the Children and Young Persons (Care Orders) Act<sup>43</sup>

<sup>42</sup>[http://www.maltatoday.com.mt/news/national/39633/child\\_protection\\_bill\\_proposes\\_mandatory\\_reporting\\_child\\_protection\\_register#.VNtjevlQMut](http://www.maltatoday.com.mt/news/national/39633/child_protection_bill_proposes_mandatory_reporting_child_protection_register#.VNtjevlQMut)

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<sup>43</sup> Chapter 285 of the Laws of Malta



provides for the right to request the Juvenile Court to review an order confirming the issuance of a care order. The request is to be made to the Director who shall bring it to the court within 7 days and the court than has 21 days within which to give its decision.

## 11.2 Other legislative

### Changes

Act XIII of 2014 amended the Malta Armed Forces Act<sup>44</sup> raising the minimum recruitment age from 17 and a half years to 18 years. This is further to a number of concerns raised about this issue from various quarters including the committee on the rights of the child.

Act XVI of 2014 creates, for the first time in Maltese electoral history the right for persons aged 16 to vote in elections of the Local Councils and of the Administrative Committees. The right does not extend to general elections.

<sup>44</sup> Chapter 220 of the Laws of Malta

<sup>45</sup> Eurostat 2014, "Asylum and asylum applicants by citizenship, age and sex".

2014 also saw the formal recognition of the youth worker as a profession regulated by law and for which an individual requires a warrant to practice.

## 11.3 Unaccompanied Minors and Refugee Children

As mentioned earlier, the percentage of irregular migrant arrivals who claimed to be children stood at 29% for 2014, representing an increase of 4% from 2013 and further continuing the trend of an increasing numbers of arrivals claiming to be children. In 2013, 14.9% (335 applicants) of asylum applicants claimed to be unaccompanied minors (UaMs) out of a total of 2245 asylum applications,<sup>45</sup> represented a significant increase in the number of asylum when compared to 2012. In 2012, out of 2080 asylum applications, 105 applicants claimed to be unaccompanied minors when arriving in Malta (5% of all applicants).<sup>46</sup> The rise in the number of irregular migrants claiming to be

<sup>46</sup> Ibid.



children, especially UaMs is a cause for concern due to their greater vulnerability. Authorities need to undertake reforms and being implementing new procedures to address the higher numbers of children reaching Malta's shores. Amongst the reforms needed are an increase in human resources capable of dealing with an increase in application, improved financial capabilities and more work on the reception and housing of unaccompanied minors.

Whilst the Child Protection Bill provides for very positive developments with regards to the protection of minors, it fails to address the needs of unaccompanied minors (migrants) in any detail. Indeed the term is not defined in the bill whilst measures specific to their needs are also not addressed including issues around age assessment procedures, representation at status determination proceedings and family reunification. A number of these issues are addressed within the refugee law framework.

<sup>47</sup> IOM-UNHCR report, 2014, "Unaccompanied Migrant and Refugee Children: Alternatives to Detention in Malta"

### 11.3 IOM-UNHCR report

A joint IOM-UNHCR report "*Unaccompanied Migrant and Refugee Children: Alternatives to Detention in Malta*" was launched in October. The report summarizes the situation of UaM and refugee children who arrive in Malta, the institutional responses, and the gaps in the Maltese system for providing care and protection to UaMs and makes a number of recommendations. Although stating that "Malta does have entities and systems in place to respond to mixed migration and asylum challenges" there was a clear need for "further enhancement and strengthening of its reception framework."<sup>47</sup> The report highlights the inadequacies of the detention facilities and the fact that minors are sometimes placed in adult centres especially while they are being identified. A key priority is to establish a national reception model which would include a separate track for the identification, assessment, reception and care of unaccompanied migrant and refugee children in accordance



with the best interests principle as provided for in the Convention on the Rights of the Child and reflected in the EU asylum *acquis*.

The report also gave specific recommendations such as improving institutional coordination, strengthening early identification and first reception, reinforcing contingency planning, solutions support with family reunification and family tracing, cooperation with third countries, capacity building, research and training, and identifying external support and funding sources. The report also mentions the positive measures that the government was undergoing, with the draft *Child Protection Act* and Prime Minister Joseph Muscat's statement on ending the detention of children.

The Prime Minister's statement received a positive response from both local NGOs and international

organisations such as the UNHCR and Human Rights Watch. In his short speech on Freedom Day on the 31<sup>st</sup> of March, Dr. Muscat stated that children should not be kept in "prison."<sup>48</sup> In an address a few days later to Labour supporters in Zurrieq, he reiterated his claims, promising to end the detention of unaccompanied minors "in the coming weeks."<sup>49</sup> Developments in this regard, also implementing some of the suggestions from the IOM-UNHCR Mission report started to be implemented in early 2015.

## 11.4 Female Genital Mutilation (FGM)

Amendments to the Criminal Code were adopted in January 2014.<sup>50</sup> The general provision included in article 251 E, par. 1) of the Criminal Code provides up to nine years of imprisonment for whoever commits the act, clearly stating that

<sup>48</sup> See

[www.timesofmalta.com/articles/view/20140331/local/Migrant-children-should-not-be-in-prison-PM.512887](http://www.timesofmalta.com/articles/view/20140331/local/Migrant-children-should-not-be-in-prison-PM.512887)

<sup>49</sup> See

[www.maltatoday.com.mt/news/national/377](http://www.maltatoday.com.mt/news/national/377)

[www.timesofmalta.com/articles/view/20140115/local/-Mutilation-needs-more-than-law-502677](http://www.timesofmalta.com/articles/view/20140115/local/-Mutilation-needs-more-than-law-502677)

<sup>50</sup> See

[www.timesofmalta.com/articles/view/20140115/local/-Mutilation-needs-more-than-law-502677](http://www.timesofmalta.com/articles/view/20140115/local/-Mutilation-needs-more-than-law-502677)

“whosoever, for non-medical reasons, performs an operation or carries out an intervention on a woman’s genitalia that damages the genitalia or inflicts upon them permanent changes, shall be guilty of enforced female genital mutilation shall be liable for punishment of imprisonment for a term from three to nine years”.<sup>51</sup> Section 2a i) and ii) specify that in case of death of the victim, as a direct consequence of the procedure, the perpetrator shall be liable to imprisonment for a term from six to twenty years if death ensues within 40 days since the procedure has been performed, or for a term from three to nine years in case death occurs 40 days after the intervention<sup>52</sup>. Moreover, paragraph 2b states that in case the death of the victim occurs as a result of a supervening accidental cause and not solely as a natural consequence of the procedure, the offender shall be liable to imprisonment for a term from three to nine years. Aiding and

abetting FGM/C shall also be considered a crime as stated in paragraph 6 of the same article.

The new law provides that anyone failing to seek to avert female genital mutilation, regardless of any kind of confidentiality duty, shall be liable to a fine of not less than Euro 1,000 and not exceeding Euro 5,000, or to imprisonment for a term of six months to two years or to both such fine and imprisonment.<sup>53</sup> It also establishes that consent from the person undergoing the procedure does not justify exemption from punishment for the perpetrator.<sup>54</sup> Furthermore, the MP Chris Fearne, who tabled the amendments to the Criminal Code, also expressed the need for specific training and guidelines, together with a legal and regulatory framework, in order to address the issue of FGM/C especially among migrant communities.

<sup>51</sup> Chapter 9, Art. 251 E, par. 1.

<sup>52</sup> Chapter 9, Art. 251 E, par. 2 i) & ii).

<sup>53</sup> Chapter 9, Art. 251 E, par. 4.

<sup>54</sup> Chapter 9, Art. 251 E, par. 3.



## 12. Victims of Crime

Victims of Crime have in the reporting period been the subject of much discussion and added protection mechanisms aimed primarily at redress following a crime. A Victims of Crime Bill was presenting developing additional measures to support victims of crime. A Sexual Assault Response team was also created.

### 12.1 The Victims of Crime Bill

A Victims of Crime Bill was published in October 2014 and is currently under consideration.<sup>55</sup> The Bill provides a number of rights for victims, amongst them, the right to understand and to be understood by the competent authority, to receive information including with regards to the type of support which may be obtained, and the possibility for a victim to make a complaint in a language other than Maltese and English when necessary.

The Bill also allows for a victim's entitlement to receive information about the case including regarding any decision not to proceed with the investigation or prosecution, the time and place of the trial, the nature of

the charges brought against the offender and any final judgment in the trial. A victim is also entitled to be notified without unnecessary delay when there is a risk of danger or harm as a result of the accused being released from custody.

The bill provides for the right to interpretation in situations where the victim does not understand the language in which the criminal proceedings are conducted or any evidence is presented.

Under this Bill, the Ministry of Justice or an entity it designates is to provide for the timely and individual assessment of victims of severe crimes, including bias motivated

<sup>55</sup> The bill is for an act “to make provision for the rights, support and protection of victims, and for matters connected therewith or

incidental thereto”. Available online at [www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26416&l=1](http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26416&l=1)

crimes and victims whose relationship to and dependence on the offender make them particularly vulnerable, such as minors and people with a disability, as well as victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, or exploitation or hate crime.

The bill makes provision for victim support services, or at the least the provision of information, advice and support relevant to the rights of victims. This includes information on accessing national compensation schemes for criminal injuries, and on the role of the victim in criminal proceedings, including, amongst others, preparation for attendance at the trial, information about referral to specialist services, emotional and psychological support, financial and practical advice relating to the crime, and advice on repeat and secondary victimization, intimidation and retaliation. The Act provides that these services are to be provided in a

confidential manner and free of charge, whilst any service provider must act in the interests of the victims before, during and for an appropriate time after criminal proceedings.

## **12.2 Sexual Assault Response Team**

Through a joint initiative between the Ministry for Family and Social Solidarity, the Ministry for Health, and the Ministry for Home Affairs and National Security and Victim Support Malta a Sexual Assault Response Team has been set up. The team operates on a 24 hour a day, 7 day a week on call basis from Mater Dei Hospital.

Victims of sexual assault can therefore call at hospital at any time in order to access a number of services including a medical check-up, police intervention and social work services. Following these services, individuals are also entitled to the use of free psychological services and free legal representation or consultation.

### 13. Conclusion

In 2014 Malta took major steps towards strengthening respect for equality and the safeguarding of human rights. Some key developments included constitutional protection non-discrimination on grounds of sexual orientation and gender identity, the adoption of the Civil Union Bill and the proposed Gender Identity Bill, statements on various human rights issues including child detention, broadening of anti-discrimination provisions, and proposals for a human rights act. However, other issues must be addressed. These include; the detention policy of immigrants and the conditions that they are kept in; the integration of migrants into the local community; the attitudes and perceptions of the locals towards immigrants; and more discourse at higher levels for national policies towards the implementation of positive changes.

A positive development that should persist is the discussion of policies on integration and migration. The Valenzia Report's publication has helped raise awareness of the deplorable situation that many asylum seeking immigrants find themselves in which should encourage both civil society and government authorities to work towards providing better conditions and upholding every individual's fundamental human rights. The Maltese authorities also need to take heed of Francois Crépeau's advice to utilize a human rights approach for issues related to irregular migration. This approach needs to be utilized towards various issues, not only irregular migration, and would be a positive step in challenging misconceptions and changing negative attitudes from society as a whole.

This responsibility will now be taken on by Minister Carmelo Abela who has already indicated how he intends to enact a holistic migration policy with the input of local human rights NGOs and other stakeholders. The commitment to adopt an integration policy by Minister Helena Dalli is also an important development set to materialize sometime in 2015.

As highlighted by the IOM-UNHCR Report on UaMs, there are clear gaps and problems that need to be addressed. Changes and discussions are underway to rectify these issues including the detention policy as well as the *Children's Protection Bill*. As children are a considerably vulnerable group, more actions need to be taken concerning their detention, care and overall well-being and we are looking forward to the implementation of the policy of non-detention of migrant children. This is ever more relevant with the increase in arrivals of irregular immigrants that is expected to occur in 2015 following the end of the *Mare Nostrum* mission and the ever-increasing number of unaccompanied migrant children that are reaching Maltese shores. All stakeholders must work together in order to ensure there are adequate facilities and systems in place.

The government's White Paper on Human Rights and Equality is another significant development that will hopefully come to fruition in 2015. The establishment of a Human Rights and Equality Commission will provide Malta with a significant institution that will increase and support equality while organisations such as the President's Foundation and the Platform of Human Rights Organisations in Malta are positive steps that can contribute towards the achievement of positive changes in Malta.

2014 saw a number of landmark steps taken through legal amendments and legislation, as well as through projects and campaigns on a civil society level. The process seems promising to continue in 2015 with significant developments including the final consultation on the White Paper on the Human Rights and Equality Commission Act, the adoption of the Child Protection Bill, the upcoming Integration Policy and further legal amendments to create an international standard of Human Rights in Malta. The positive signs and pledges from both Prime Minister Dr. Muscat and Minister for Home Affairs Dr. Abela regarding the detention policy, a major human rights issue at the moment, should provide cautious optimism that the reforms needed to safeguard the human rights of irregular migrants will be put in



place. This is especially important considering the high probability of arrival of further migrants who will avail of the systems as put into place.

With a framework of an empowerment and human-rights based approach, The People for Change Foundation is looking forward to making significant and ongoing contributions, both individual and in collaboration with other civil society actors and the relevant authorities, in the aforementioned fields both in Malta and the EU in 2015 and beyond.



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