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UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
*Regional Office
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VERENIGDE NATIES

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Background Note on the Protection of Asylum Seekers and Refugees in Malta

Legal Background

Malta – signatory to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol since 1971 – has officially lifted its geographical reservation on 13 December 2001, in Geneva, at the Ministerial Meeting of the State Parties to the 1951 Convention on the Status of Refugees and its 1967 Protocol. On the same occasion, Malta also announced the lifting of 14 additional reservations out of 17 which had been maintained till then. Malta has maintained its reservation to article 23 (on access to public relief), which “shall not apply to Malta” and to articles 11 (on refugee seamen) and 34 (on facilitation of naturalisation) of the Convention which “shall apply to Malta in compatibility with its own special problems, its peculiar position and characteristics”. This means that a number of Convention rights and benefits are not provided to recognised refugees. Malta has, however, indicated that also these reservations will be lifted on the date of the accession of Malta to the European Union. Through a referendum held in April 2003, the majority of the Maltese people agreed to their country joining the European Union. As the other nine acceding countries, Malta is expected to become formally a European Union member State on 1 May 2004. Hence, it is also expected that the remaining reservations will be lifted by that day.

A Refugee Act in Malta was approved by the Maltese Parliament on 25 July 2000. The Act has entered into force on 1 October 2001 and all connected subsidiary regulations on 26 October 2001.

The Refugee Act falls short of some European and international standards and the gaps should have been addressed through the adoption of a series of implementing regulations – rather than an immediate law revision process. The following areas of the asylum legislation would need improvement to fully comply with international and European standards:

- For persons who do not fulfil the criteria for refugee status under the 1951 Convention, and yet are in need of international protection because they face a risk of torture or inhuman or degrading treatment or punishment if returned to their country of origin, or because they have fled indiscriminate violence arising from war or conflict, or because they cannot be returned for humanitarian reasons, the Refugee Act only provides for an undefined “**humanitarian protection**” status, which grants leave to remain in Malta until such time when the person concerned can return safely to his/her country of origin or otherwise resettle safely in a third country. This status, however, does not entail any rights and benefits, and this may be problematic if persons have to stay for a longer period in the asylum country. In view of the potentially grave consequences of wrongly deciding on an application as “manifestly unfounded” in an accelerated procedure, UNHCR has suggested the inclusion of a provision that the asylum-seeker be given an adequate opportunity to rebut the presumption that his or her application is manifestly unfounded.

- Article 2 of the Act includes a definition of “**safe third country**”. UNHCR has advocated for the Act to include the consent of the third country to readmit the asylum-seeker as well as guarantees on access to the asylum procedure of the third country, and has suggested that implementing guidelines be drafted to include these additional safeguards.
- Although the Act does include a provision concerning the extension of refugee status to family members of recognised refugees, it is not clear whether, and at what conditions, visas will be granted for the purpose of **family reunion**. Moreover, the “family” definition is limited to the nuclear family, i.e. the spouse and minor children, without making provision for adult children or other members of the family who are dependent on the applicant, or unmarried partners living in a durable relationship with the applicant.

Institutional Background and Practice

Until the entering into force of the Act, UNHCR in Rome was conducting the refugee status determination procedure with the support of a domestic non-governmental organisation, the Emigrants Commission. However, following the entry into force of the Refugee Act, a Refugee Commission (first instance body) and a Refugee Appeals Board (review / appeal body) have become operational.

During the year 2002, Malta received 350 asylum applications (474 persons). In addition, approximately 280 cases (about 350 individuals) had expressed the intention to seek asylum but their applications were never formally registered.

The asylum applications were processed through the Refugee Commission, and were mostly from Eritrea, Iraq, Liberia and Somalia. In the year 2002, 18 (22) were granted Convention Refugee status, 76 (111) humanitarian status, 207 (282) were rejected, others were pending decision.

As for the year 2003, a total of 123 applications (188 persons) were received by Malta between 01 January and 31 March 2003. While 13 cases (17 persons) were recognised as Convention refugees, 22 cases (24 persons) were rejected and 52 cases (110 persons) were granted humanitarian status. There were also 5 cases (6 persons) that withdrew their applications prior to completion of the procedure. There are still 83 cases pending.

The first instance is conducted by the Refugee Commission, which is staffed with only three officers including the Refugee Commissioner. In view of the staff constraints the backlog has been increasing rapidly and by the end of 2002 it was estimated there were between 300 and 400 asylum seekers still awaiting to be interviewed.

It should also be noted that the Refugee Appeals Board systematically confirms first instance decisions appealed by asylum seekers. In addition it does not re-interview them for a proper reconsideration of the merits of the claim (as per the law the interview is only made optional).

It is to be stressed that the asylum seekers who enter Malta illegally – regardless of sex and age and including pregnant and lactating women with their newly born babies - are automatically detained till completion of the refugee status determination procedure. Upon positive conclusion of the procedure, they are freed. If the outcome of the asylum procedure is negative the rejected asylum seekers remain in detention until they are sent back to their country of origin.

Specific Issues

During the continuous transition period the European Commission, the Maltese authorities and UNHCR must maintain close contact to monitor the Refugee Act implementation process in order to ensure compliance with international and European standards. This period is useful to identify gaps which need to be addressed by adopting implementing rules and regulations as well as measures to enhance institutional and practitioner capacity. In this context at the end of 2002, UNHCR conducted a

training activity aimed at 12 lawyers / legal operators due to be employed as eligibility officers by the Refugee Commission.

Implementing rules and regulations should address the situation of **groups with special needs**, such as unaccompanied minors, female asylum-seekers and victims of torture or sexual violence. It is understood that the need for such guidelines is under discussion among the competent administrative bodies, and UNHCR hopes that they will be adopted shortly.

Concerning the treatment of asylum seekers, the Refugee Act stipulates that asylum-seekers and refugees have a number of rights and benefits, including access to education and training as well as health care. Yet, as a result of Malta's reservations to the 1951 Convention, the Act does not provide for **access to the labour market**, or **access to social assistance**, and, hence, does not meet all requirements of the 1951 Convention and the related EU standards. However, a Social Act passed in March 2002 has de facto lifted this reservation as it extends the right to access to the labour market and to social assistance to non-Maltese citizens legally residing in the country and therefore also to refugees.

Main Points for Consideration

- Noted with satisfaction that the Government has committed itself to lift **all** reservations to the 1951 Convention upon full accession to the European Union;
- Need to address the gaps in the present legislation through the adoption of a series of implementing regulations;
- Close monitoring of the implementation process of the Refugees Act with a view to developing good practices;
- Support the establishment of a full operational asylum system through the provision of targeted training to administrative and judicial practitioners;
- Strong recommendation to discontinue the practice of automatic detention of asylum seekers, in particular women and children asylum seekers as well as other vulnerable cases.

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