

# MAYDAY!

Strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe



## **The DRIVE project “Differentiation for Refugee Identification and Vulnerability Evaluation”**

Led by ICMC Europe, in partnership with seven other non-governmental organisations: ACCEM, CEAR (The Spanish Commission for Refugee Aid), CIR (Italian Council for Refugees Foundation), ECRE (European Council on Refugees and Exiles), JRS Malta (Jesuit Refugee Service), PRAKSIS in Greece and Save the Children Italy, the DRIVE project was implemented from March 2010 to September 2011. DRIVE was co-funded by the European Commission through the European Refugee Fund 2008.

The DRIVE project has had two objectives. First, the project aimed to study actual procedures and practices responding to boat people at points of arrival in Greece, Italy, Malta and Spain, identify both good responses and important gaps, and formulate related policy and programming recommendations. Secondly, DRIVE aimed to initiate and strengthen networking and capacity-building among NGOs, local service providers, international and national institutions engaged with boat people.

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# FOREWORD

The cry of “boat people” we know. It is a cry heard in Europe and in Africa, in the Americas, Asia and Australia; a cry of despair in the pursuit of hope, a cry amplified by the media without resulting in solutions, a cry beyond borders that calls for responsibilities to be taken up at both ends of these troubled sea journeys, and internationally.

In the first months of 2011 alone, more than 2,000 migrants have died crossing the Mediterranean Sea. More than 2,500 unaccompanied children arrived just on Italian shores. Tragic, chronic figures like these are urgent and continuous reminders of the need for another approach to human mobility that goes far beyond simple enforcement and fundamentally recognises the rights to life and protection for all.

It is not so much the arrivals of migrants and refugees that should be put to question, but rather the response mechanisms which very often fail as much in the fields of prevention and rescue as in the processes deciding where and how people are permitted to move, disembark, stay or return. Protection today is provided only for a limited number of boat people who need it, and governed by systems of access and identification that are far too limited. Correct identification, differentiation and referral systems are needed for all migrants in distress and from the very moment of their arrival, not only because they are human beings, but also because such approaches reflect the quality of our societies.

Questions on how to implement adequate assistance to boat people upon arrival invited the International Catholic Migration Commission (ICMC) to collaborate with other Church groups including the Jesuit Refugee Service in Malta and ACCEM in Spain, with NGOs such as Save the Children, the Spanish Commission for Refugee Aid (CEAR), the Italian Council for Refugees (CIR), and PRAKSIS in Greece, and with regional and international organisations such as the European

Council on Refugees and Exiles (ECRE), the UN High Commissioner for Human Rights and the International Organization for Migration. Co-funded by the European Commission, ICMC’s DRIVE project (Differentiation for Refugee Identification and Vulnerability Evaluation) fully reflects the conviction of all of these organisations—and many others—that the response to boat people has been too ad hoc, inconsistent and under-resourced; that we all can do much better.

This report is about gaps but also about recommendations to overcome these gaps. We welcome DRIVE’s emphases on understanding and applying the wealth of law that already exists, in sharing good practices and procedures already being implemented, and on building practical, cooperative networks of responders in governments, inter-governmental agencies and civil society at all levels. We welcome in particular the report’s clear analysis of the obligation of states under international and regional law to proactively identify refugees and asylum seekers, children, victims of human trafficking and survivors of torture in particular for specific protection and assistance.

Emphatically, DRIVE points to building more human responses not only to refugees but to the full range of migrants crossing borders in distress, not only to boat people, but to those crossing land borders as well, not only in Europe but everywhere. Thinking, collaborating and better organising in more effective governance of human mobility, with protection and assistance where truly it is needed, is one of the most important challenges of our times. May we rise to that challenge together.

Johan Ketelers  
Secretary General  
International Catholic Migration Commission

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# INTRODUCTION

MAYDAY!—the universal distress call, broadcast by those on ships or planes in mortal distress, and urgently in need of assistance.

MAYDAY! From the French “Venez m’aider”: come help me! This is the call of boat people today, and those in governments, civil society and humanitarian actors at all levels concerned that the times, the facts, the laws, and the practical responses to boat people and other migrants travelling and arriving in distress require examination and improvement.

Indeed these are times of change and challenge. The year 2011 will forever be remembered for transformation and turmoil: epic change in North Africa and economic chaos in the industrialised world. Across the Mediterranean that connects countries struggling with both phenomena, people clamouring for freedom and work, so long suppressed, were suddenly eager to pursue those possibilities. From small numbers in 2009, the amount of boat people arriving in certain countries of Southern Europe rose to and, already by mid-year surpassed previous full-year highs.

And yet, while the number of boat people arriving is only a fractional percentage of the number of migrants arriving in either regular or irregular status and movements, the distinct images and reports of boat people arriving to any country—be it Italy, Malta, Australia, Canada, Thailand or the US, and be it 2011 or the 1980s—automatically provoke disproportionate media, public and political reaction. And that reaction often hides in these situations—at times, wilfully ignores—the kind of human suffering and human rights that these countries and whole regions like Europe have built their values, laws and systems to respect.

The portrayal of today’s boat people as a monolith of economic invaders makes us forget that people have always migrated for a range of reasons: to escape war, famine, persecution, catastrophe, economic despair; to rejoin family members as well as to search for better opportunities. From east to west and north to south, from the beginning of recorded history, Europe itself has been built on successive movements of migrants, both in and out of the region—for the most part sharing in common the same need or reason to move across the Mediterranean or other waters and land borders.

## Mixed migration

In present times, however, groups of migrants are increasingly comprised of people with different motivations or circumstances driving their migration. In recent years, the term “mixed migration” has come to describe movements in which different people motivated by different reasons or circumstances are moving together, either within or across international borders.



Depending on the urgency of their movement and the availability or (more often) not of legal migration channels, “people will migrate legally if they can, illegally if they have to,” as António Guterres, the UN High Commissioner for Refugees has said. But regardless of how they migrate, a growing body of international and regional laws stipulate a range of obligations towards the migrants on the part of the countries through or to which they migrate—offering a mosaic of protection mechanisms linked to specified motivations, personal situations or circumstances of migration. Whether the person is fleeing persecution by a state entity, whether he or she is a child; whether he or she is fleeing torture or has fallen victim to human trafficking for example, all give rise to specific rights and protection regimes, imposing specific obligations upon authorities and the international community. When groups are “mixed” of different people with different personal traits or circumstances to their migration, the challenge is to sort through, to “unmix the mix”, in order to identify, differentiate and respond appropriately to the migrants’ legitimate claim for respect of their basic human rights.

Moreover, mixed migration is a dynamic process in which a migrant’s situation, needs and certain related rights may change during his or her travel. Making the challenge even more complicated, groups of migrants and their “mix” also change frequently, especially when crossing several borders, when the migration journey is made in different stages and over long periods of travel. An example that is not uncommon: a child begins his migration journey hoping to rejoin family members in the country to which they had migrated earlier, is subjected to violence and torture when arriving in country B, becomes victim to human trafficking in country C, and finally arrives—just having turned eighteen years old—in country D. Along each stage, he has travelled in different groups, but constantly in irregular movement within and across borders. While always the holder of universal human rights, a key question is: what further rights under international or European Union legislation, i.e., offering specific protection and assistance, does he also have, and at which stages of his journey? What corresponding obligations do states and the international community have towards him each time—and how are those rights and obligations discerned and respected when he is mixed within a group that has just arrived?

These specific rights and obligations—for refugees, for victims of trafficking or torture, for children—underscore, without limiting, whatever humanitarian responses non-government organisations (NGOs) and church groups, the Red Cross, village, municipal authorities and other government authorities may offer to them. Only recently however, has there been concerted movement at international and regional levels to formally identify and connect these rights and obligations in an organised manner and offer on-the-ground humanitarian and protection responses to groups of migrants in distress.

As described in this report, the work of ICMC’s project “DRIVE” (“Differentiation for Refugee Identification and Vulnerability Evaluation”) has been to strengthen a framework of practical, cooperative response, including multi-actor networks of responders, to boat people arriving in Greece, Italy, Malta and Spain: human beings in dire need of assistance and protection, raising the international distress call, “MAYDAY!”

## Scope of this report

Gathering the results of nearly a half thousand surveys of first responders and other actors as well as the migrants themselves, this report examines what happens—or does not happen—to identify migrants in need of protection and assistance upon their arrival in Europe. In particular, it sheds light on the mechanisms developed, and gaps both in practice and in policy in responses to boat people and other migrants arriving in mixed migratory movements in four countries at Europe's Southern door: Greece, Italy, Malta and Spain.

Although rescue at sea at one end and voluntary or enforcement-related return at the other are highly relevant topics and areas of research per se, DRIVE has focused on the situation of migrants at point of arrival. As such, the project and this report look at first responses in the phase immediately upon and surrounding arrival, and then to identification, differentiation and referral mechanisms for legal protection and/or further assistance in subsequent phases following arrival.

The principal focus of the project was on boat arrivals, but the shift in routes in Greece during the project period and the sharp increase in land border crossings there compelled reflection upon responses to migrants crossing land borders as well as those arriving by sea. While the project maintained its focus on arrivals by sea, one of its findings is that most of the laws, policies, procedures and responses applicable to boat people pertain equally to those arriving across land borders—in particular, steps on identification, differentiation and referral for protection and assistance.

The DRIVE project set out to promote protection of the rights of all migrants in these situations, especially the most vulnerable, regardless of their immigration status. Nevertheless, the project has highlighted four groups whose members have come to be defined to a varying extent as having specific rights or special needs under international and European legal instruments: asylum seekers, victims of human trafficking, children, and victims of torture. It merits emphasising however, that other migrants also

have special needs because of particular vulnerabilities, notably people with serious health problems, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to or witnessed torture, rape or other serious forms of psychological, physical or sexual violence.

## Structure of this report

The report is composed of four main parts, plus annexes:

### Part 1: Building policy responses to boat people and others arriving in mixed migration flows

Within this first part, Chapter 1 provides a brief history of the policy evolution and the organisations involved in the area of mixed migration. Chapter 2 gives an overview of legal obligations relating to the rights of the migrants composing these arrivals. The third chapter provides an analysis of the EU policy and legal framework with regards to mixed migration arrivals at its borders.

### Part 2: A focus on post-arrival identification, differentiation and referral for assistance and protection

The first chapter explains what is meant and implied by “identification, differentiation and referral” in mixed migration contexts, the concept at the core of the DRIVE study. The second chapter seeks to focus on the legal obligations of member states to conduct identification of people in need of protection at the border, with in-depth legal analysis of the rights and state obligations that international and EU law articulate for asylum seekers, children, and victims of human trafficking and torture.

### Part 3: What happens to people arriving irregularly by boat in Greece, Italy, Malta and Spain?

The first chapter gives a snapshot of the trends and figures of arrivals in the Mediterranean

region. In Chapter 2, the summaries of the four country reports (each presented in its entirety in an annex) then provide a look at the procedures and practices on the ground for first reception, identification and referral. The third chapter presents the results of the extensive migrants surveys that the DRIVE project conducted in the four countries in an effort to give voice to the beneficiaries themselves. Chapter 4 concludes with a comparative analysis identifying the main gaps and challenges in those countries.

## Part 4: Conclusions and recommendations

The focus on the four countries enabled consideration of practices and procedures which could either improve the quality of the process or prevent people from accessing protection and assistance. Recommendations therefore seek to address how identification, differentiation and referral can be improved in the Mediterranean, including how the international and European legal and policy framework can address this question in a more comprehensive manner.

### Annexes:

Detailed mapping of the situation in Greece, Italy, Malta and Spain are attached in the annexes, as well as a presentation of some relevant tools and guidelines.

## Methodology of the project and report

The project centred upon country surveys and migrant interviews in Greece, Italy, Malta and Spain, as well as a series of national and regional meetings with partners and other actors.

**1. Country analysis:** In a first phase of the project, field trips were carried out in all four countries to traditional points of arrival (Puglia in Italy, Andalusia in Spain, Samos in Greece and in Malta). National stakeholder meetings were held in the respective countries to discuss the system in place in each country: from arrival at entry points to referral

to services or protection mechanisms. The meetings also made a first attempt to identify efficient practices and formulate recommendations around the country situation.

**2. Migrant and stakeholder interviews:** Between July 2010 and January 2011, DRIVE partner organisations interviewed 401 migrants, including women and unaccompanied children, with the objective of hearing their voice on their own experience. The results of the surveys were then analysed with the University of Leuven (part 3, chapter 3). In parallel, 30 qualitative interviews were conducted with identified key stakeholders. All interviews revolved around procedures in place and services available at arrival.

In conducting the country studies, interviews and related research, the following points were specifically examined for each of the Mediterranean countries:

- What are the procedures for migrants arriving by boat?
- More specifically, are there any procedures in place to identify asylum seekers, children, trafficking victims and other vulnerable groups?
- If so, are there legal procedures or ad-hoc practices?
- Which stakeholders are included in the identification and referral process? What is the place of NGOs?
- Does identification lead to appropriate referrals both in terms of legal protection and services?

**3. Regional workshop:** In May 2011, a regional workshop in Catania, Italy gathered representatives of governments, international organisations, NGOs and local authorities who were able to share experiences, exchange good practices and tools, and strengthen cooperation between different stakeholders. The individual country reports (annexes 1-4) were reviewed by the country delegations.

The following report has profited as well from in-depth research involving consultants specialised in European legal framework, refugee law and child protection.

# Part 1: Building policy responses to boat people and others arriving in mixed migration flows

“When Europeans, North Americans, and Australians see images of ragged and thirsty refugees crossing deserts and seas, it must be hard to see us as individuals, each with our unique life histories.”

Tarek, a refugee from Eritrea<sup>1</sup>

## A. The building of a formal policy response

Much of the international policy focus of the late 1990s and early 2000s was framed as a discussion of the “asylum-migration nexus,” with an emphasis directed almost entirely to refugees. Towards the middle of the last decade, the policy approach began to shift towards the development of a more flexible framework open to substantially more comprehensive and inclusive protection responses, encompassing migrants arriving with other vulnerabilities and claims to rights, protection and assistance. Even the terminology of the debate itself transformed, from examining the “asylum-migration nexus” to more broadly considering “mixed migration.”

In recent years, the term “mixed migration” has come to describe movements in which different people, motivated by different reasons or circumstances, are moving together either within or across international borders.

For the most part national, regional and international actors have focused their attention primarily upon mixed migration movements across international borders, and more specifically, on irregular movements across borders, where those moving do not have legal papers or permission to enter the country into which they are crossing.

<sup>1</sup> Tarek Brhane is now a cultural mediator working with Save the Children in Lampedusa, Italy, for his story go to: <http://www.thedailybeast.com/articles/2011/04/16/libya-refugee-crisis-my-harrowing-escape.html>

## 1. UNHCR and the 10 Point Plan

Mixed migration policies at the international level were strongly shaped by UNHCR with the release, in June 2006 of “Addressing Mixed Migratory Movements: A 10 Point Plan of Action.” Initially directed to the southern coastline of Europe, the plan was revised in response to comments and requests for clarification and then re-released in January 2007 for broader application as “Refugee Protection and Mixed Migration: A 10 Point Plan of Action” (hereinafter referred to as the “10 Point Plan”).

As illustrated below, the 10 Point Plan provides a framework for UNHCR, states and other actors to respond to the phenomenon of mixed movements in an organised manner in ten areas.<sup>2</sup>

### At a glance: UNHCR 10 Point Plan for Refugee Protection and Mixed Migration

1. Cooperation among key partners: Creating an appropriate forum for the exchange of information and the establishment of terms and conditions for cooperation and coordination on mixed migration (between countries of origin, transit and destination as well as international organisations and NGOs).
2. Data collection and analysis: Improving collection, analysis and exchange of data about the characteristics of mixed movements.
3. Protection-sensitive entry systems: Ensuring that border control measures do not prevent refugees and asylum seekers from gaining access to asylum procedures, and are sensitive to other persons with special needs.
4. Reception arrangements: Ensuring that the basic human needs of all persons are met on arrival (including shelter, food and healthcare).

<sup>2</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, available at: <http://www.unhcr.org/4742a30b4.pdf>.

5. Mechanisms for profiling and referral: Differentiating between categories of persons making up mixed flows, by informing and counselling, gathering basic information, establishing a preliminary profile for each person and referring people on to differentiated processes for further assistance.
6. Differentiated processes and procedures: Ensuring availability of a range of processes and procedures (including asylum procedures) to meet the needs of persons travelling in mixed flows.
7. Solutions for refugees: Providing a range of protection-based, durable solutions for persons found to be refugees, including legal migration options.
8. Addressing secondary movements: Establishing a strategy that balances the legitimate concerns of States in terms of irregular onward movement and the rights and well-being of people concerned.
9. Return arrangements for non-refugees and alternative migration options: Finding solutions for non-refugees, which could include return in safety and dignity, and in some cases alternative temporary or longer term migration options.
10. Information strategy: Information strategies in countries of origin, transit and destination could alert people to the dangers of irregular movement and highlight alternative options.

UNHCR devoted its inaugural High Commissioner's Dialogue on Protection Challenges in December 2007 to the subject of mixed migration broadly, even if under the rubric "Refugee Protection and Durable solutions in the context of international migration." Illustrating how these challenges had captured the attention of international, regional and national actors alike, the two-day dialogue brought together actors not regularly engaged together in such open discussion, including more than a dozen national Red Cross societies as well as the Special Representative for migration of the International Federation of Red Cross

and Red Crescent Societies (IFRC), states, international organisations including the International Organization for Migration, the European border enforcement agency FRONTEX, and NGOs. Participants roundly endorsed a vision and commitment to improve protection and assistance in situations of mixed migration. Along with clear support for the approach of UNHCR's 10 Point Plan, there was wide consensus that the challenges of mixed migration could not be addressed by states, international organisations or other actors acting alone. Rather, to address the multiple needs and rights of the range of migrants travelling and arriving in mixed movements, it was imperative for state and non-state actors to coordinate actions and work together.<sup>3</sup>

In the follow up to the launch of UNHCR's 10 Point Plan, a series of expert round tables and regional meetings engaging relevant stakeholders was coordinated by UNHCR around the world, regularly co-organised with or involving IOM, IFRC and the office of the UN High Commissioner for Human Rights. As a further outcome, in 2011 the UNHCR published a compilation of practices relevant to the implementation of the 10 Point Plan, under the title "Refugee Protection and Mixed Migration: The 10 Point Plan in action."<sup>4</sup>

## 2. Other policy actors

In addition to UNHCR a number of other international and regional organisations have also been active in developing policies in the area of mixed migration, notably:

- The International Organisation for Migration (IOM). In 2007, IOM's strategy underlined that the organisation would support "States, migrants and communities in addressing the challenges of irregular migration" and would "provide migration services in other emergency or post-crisis situations as appropriate and as relates to the needs of individuals, thereby contributing to their

<sup>3</sup> UNHCR, *Report on the High Commissioner's Dialogue on Protection Challenges*, December 2007, available at <http://www.unhcr.org/47fe0e532.html>

<sup>4</sup> <http://www.unhcr.org/refworld/docid/4d9430ea2.html>. The publication is the outcome of a three year project funded under the Thematic Programmes by the European Commission, entitled "UNHCR's 10 Point Plan in Central America, Western Africa and Asia".



protection.”<sup>5</sup> Although IOM does not have a strict protection mandate, a Discussion Note in 2008 underlined that all migrants, regardless of their status, are entitled to the protection of their human rights.<sup>6</sup> The paper acknowledged that “the vast majority of migrants in mixed flows do not fit any particular label or established (legal) category, such as that of a refugee or trafficked person. Such persons may nevertheless have humanitarian and other needs.” IOM has increasingly been collaborating with UNHCR and other organisations on identifying and providing protection and assistance to trafficking victims, and offering “Assisted Voluntary Return Services” to stranded migrants wanting to return home.

- The International Federation of Red Cross and Red Crescent Societies (IFRC)<sup>7</sup>, and national societies of the Red Cross/Red Crescent, in Europe and West Africa for example, have long provided humanitarian assistance and services to migrants on the ground. However, the terms “migrants” and “migration” were not previously mentioned in the statutory language of the organisation. In 2007 however, the International Conference of the Red Cross and Red Crescent recommended that, in line with its mission, the whole Movement should take an inclusive and humanitarian approach towards migrants. In 2009 IFRC endorsed a strategic framework on the humanitarian dimension of migration emphasising that: “The approach of the Movement to migration is strictly humanitarian and based on the recognition of each migrant’s individuality and aspirations. It focuses on the needs, vulnerabilities and potentials of migrants, irrespective of their legal status, type, or category.”<sup>8</sup>

- A range of structures of the Council of Europe, and in particular, its European Committee on Migration (CDMG), Parliamentary Assembly (PACE), Congress of Local and Regional Authorities of Europe and Conference of International Non-Governmental Organisations have advocated strongly for the respect of human rights of undocumented migrants in Europe, especially in the context of boat arrivals in the Mediterranean. For example, PACE resolution 1637 (2008)<sup>9</sup> called on European governments to guarantee access to procedure and fundamental rights for migrants arriving irregularly by boat, to respect reception standards, to allow monitoring of open and closed reception centres and to follow the protection principles outlined in the UNHCR 10 Point Plan. Following news reports that urgent appeals for rescue by migrants in distress on the high sea—i.e., “MAYDAY calls”—have been ignored, PACE launched an inquiry in June 2011 into who was responsible for the hundreds of boat people perishing monthly in the Mediterranean trying to reach European soil from North Africa.<sup>10</sup>

Other international agencies have also been working in the area of mixed migration. The UN Office on Drugs and Crime (UNODC) has developed guidelines under the two international protocols on human trafficking and smuggling.<sup>11</sup> The International Labour Organization (ILO) has been actively involved in advocating for the rights of migrant workers, including those in irregular status. In a joint effort, the Global Migration Group,<sup>12</sup> including UNHCR, IOM, UNODC, the ILO, the office of the UN High Commissioner for Human Rights, the UN

5 IOM, *IOM Strategy*, 2007, available at: [http://www.iom.int/jahia/webdav/shared/shared/mainsite/about\\_iom/docs/res1150\\_en.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/docs/res1150_en.pdf)

6 IOM, *International Dialogue on Migration 2008: Challenges of Irregular Migration: Addressing Mixed Migration Flows*, Discussion Note, MC/INF/294, p 2, available at [http://www.iom.int/jahia/webdav/shared/shared/mainsite/about\\_iom/en/council/96/MC\\_INF\\_294.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/96/MC_INF_294.pdf).

7 The International Federation of Red Cross and Red Crescent Societies (IFRC) is the world’s largest humanitarian organisation, providing assistance without discrimination as to nationality, race, religious beliefs, class or political opinions.

8 IFRC, *Policy on Migration*, 2009, available at: [http://www.ifrc.org/PageFiles/89395/Migration%20Policy\\_EN.pdf](http://www.ifrc.org/PageFiles/89395/Migration%20Policy_EN.pdf)

9 <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1637.htm>.

10 [http://assembly.coe.int/Main.asp?link=/Communication/MigrantsAfriqueDuNord/default\\_EN.asp](http://assembly.coe.int/Main.asp?link=/Communication/MigrantsAfriqueDuNord/default_EN.asp). Latest figures state that about 2000 people have died so far in 2011 while trying to cross the Mediterranean.

11 United Nations Convention against Transnational Organized Crime and its Protocols.

12 Created in 2006, the Global Migration Group is an attempt to bring together inter-governmental agencies with activities in the field of migration. In 2010, it grew to 16 organisations, <http://www.globalmigrationgroup.org>.

Development Programme and UNICEF<sup>13</sup> adopted a landmark statement in 2010 expressing “deep concern regarding the rights of international migrants in an irregular situation” and recalling the “fundamental rights of all persons, regardless of their migration status.”<sup>14</sup>

NGOs have been active bringing to the discussion wide experience on the ground and a range of presence and practice in situations of mixed migration worldwide<sup>15</sup>. Particularly engaged in the policy debate have been the Danish Refugee Council (DRC), active in operationalising the 10 Point Plan in the Horn of Africa; the European Council on Refugees and Exiles (ECRE), Médecins Sans Frontières (MSF)<sup>16</sup>, Save the Children and the International Catholic Migration Commission (ICMC). Much of this experience and practice is recorded throughout this report.

## B. Rights relating to specific categories of migrants

### 1. Introduction

Under international law, all migrants have rights, regardless of their immigration status or any terminology used, i.e., whether they are referred to as “illegal migrants”, “irregular

13 Other members are UNESCO, the UN Department of Economic and Social Affairs (UN-DESA), UN Women, the World Bank, the UN Institute for Training and Research (UNITAR), the UN Population Fund (UNFPA), WHO, the UN Conference on Trade and Development (UNCTAD) and the UN Regional Commissions.

14 This was endorsed by the UN Secretary General Ban Ki-moon, on 9 December 2010, in a message for International Migrants Day: “I support the call of the Global Migration Group to promote and protect the fundamental rights of all persons, regardless of their migration status, as guaranteed by international law”. <http://www.un.org/News/Press/docs/2010/sgsm13308.doc.htm>.

15 See for example, the several joint NGO statements to the UNHCR Standing Committee, calling for better responses to migrants and refugees in distress within mixed migration movements, e.g., NGO Statement on UNHCR’s activities in relation to the asylum-migration nexus, UNHCR Standing Committee 39th Meeting, 25-27 June 2007, at <http://www.icva.ch/doc00002078.html>, and NGO Statement on International Protection: The High Commissioner’s Dialogue on Protection Challenges, UNHCR Standing Committee 41st Meeting, 4-6 March 2008, at <http://www.icva.ch/doc00002746.html>.

16 [http://socialsciences.scielo.org/scielo.php?pid=S1806-64452008000100013&script=sci\\_arttext](http://socialsciences.scielo.org/scielo.php?pid=S1806-64452008000100013&script=sci_arttext)

migrants”, “undocumented migrants”, “economic migrants”, “boat people” or “overstayers”, and regardless of whether they have entered the territory in a clandestine manner, by boat, by land, using forged documents or valid visas which then expired. By virtue of being human, all migrants are accorded protection by multiple international human rights instruments.

At the core of much debate on the rights of irregular migrants crossing borders is the tension between notions of state sovereignty and obligations under international human rights law. And yet there is considerably less of a gulf between state sovereignty and migrant rights than is commonly supposed.

Firstly, states have ratified international and regional conventions in a voluntary, deliberate exercise of their sovereignty. By ratifying these conventions they recognise an array of basic rights for men, women and children including migrants, as well as accepting restrictions and taking on obligations enumerated in those conventions.

One of the fundamental principles of international law, cross-cutting and underpinning virtually all of the nine core international human rights instruments<sup>17</sup>, is non-discrimination: the principle that states must ensure the basic human rights of everyone within their jurisdiction, without regard to differences such as nationality or immigration status.<sup>18</sup> Nor is the obligation limited to the state’s national territory. Jurisdiction extends to territory or per-

17 In order of the year adopted, the nine core international human right instruments are: the Convention on the Elimination of All Forms of Racial Discrimination (ICERD, adopted in 1965), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the International Covenant on Civil and Political Rights (ICCPR, 1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), the Convention on the Rights of the Child (CRC, 1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, 1990), the International Convention for the Protection of All Persons from Enforced Disappearance (CPED, 2006), and the Convention on the Rights of Persons with Disabilities (CRPD, 2006). (ICCPR). Article 2.

18 See for example Article 2.1 ICCPR; Article 2.1 CRC; Article 7 ICRMW; Article 1 ECHR; Article 1.1 American Convention on Human Rights (ACHR); Article 3.1 African Charter on Human and People’s Rights (ArCHR).



sons under the state's effective control as well as to actions of agents operating on behalf of the state. This extra-territorial accountability is extremely important in the context of migrants and refugees in transit, e.g., in interception, detention or other acts of custody by agents of the state, even outside the state's borders.

A growing body of regional instruments in Europe, such as the Council of Europe Conventions and the EU directives, offer further scope to extend or clarify migrants' rights. Moreover, a number of specific rights accorded to individuals under both international and European law are linked to distinct legal organisations. In particular, the DRIVE project has highlighted four groups whose members have come to be defined as having specific needs and rights under international and European legal instruments: refugees/asylum seekers, victims of human trafficking, children and victims of torture.<sup>19</sup>

The following section will provide a brief overview of the general and particular rights of each of these categories of migrants.<sup>20</sup> The section begins with a focus on the rights to which all migrants are entitled, regardless of any additional category they may belong to. Subsequent sections go into greater depth regarding specific additional rights that arise out of their particular categorisation, examining critical linkages between the two. Particular attention will be devoted to the paramount importance of identification and differentiation among the different migrants and these more specific rights. For example, the identification of an irregular migrant (with general human rights) as also belonging to a more specific group of people, such as victims of torture (with additional specific rights) is essential for her to be offered access to differentiated procedures and services specifically for survivors of torture.

19 This list is by no means exhaustive, it does not cover even the totality of categories of people recognised in law as being in need of protection. A notable example would be people with disabilities, whose specific circumstance and rights are covered by an international convention defining them as a particular group with special needs.

20 In practice, there are frequent overlaps among the groups and some individuals fit into more than one category.

Of course, the existence of rights in international or regional frameworks—or even in national policy—does not guarantee their implementation on the ground. Substantial gaps remain with regard to the effective implementation of the rights prescribed by the law. In practice, countless migrants continue to face situations where their basic rights are being denied at points of arrival and in the period after arrival in the EU. This is evidenced in the DRIVE surveys of migrants and refugees arriving in Greece, Italy, Malta and Spain (see Part 3), as well as in interviews with NGO partners, international organisations and government authorities. The reasons for this are various, and can even be quite technical: certain rights themselves might be conditional on other factors<sup>21</sup>; the individual might be in a country which has not ratified a particular convention that provides the right(s) denied<sup>22</sup>, or is in a country which has not properly transposed an EU directive. However, even where a right or rights clearly exist, there is often a lack of awareness by the individual of which – if any – rights he or she is entitled to.

*“It took us six days to arrive from Libya to Sicily. The journey was terrible. I was 20 years old when I arrived and 8 months pregnant. The police officers were very kind and took me to the hospital. In the hospital they examined me and told me that my baby had died, probably because of the journey conditions. They gave me some medication to induce labour and delivered the dead baby. After two days at the hospital I was transferred to centre in Pozzallo. The centre was very crowded. I was in pains and told the personnel at the centre but was only given some painkillers. I did not get any other medical or psychological support.”*

**Nura, from Eritrea**

21 Refer to Article 35 of European Charter: “Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.”

22 The ICRMW can be taken as an example. Such a convention has not been ratified by a number of countries such as the Australia, Canada, the United States or any of the EU member states.

## 2. Human rights of all migrants, regardless of immigration status

Core human rights treaties together with the Universal Declaration of Human Rights enumerate a set of fundamental rights for all, such as the right to life and freedom from torture, and rights which are of a social, cultural and economic nature. The principle of non-discrimination, one of the cornerstones of international law, obliges states to ensure the applicability of basic rights equally to “all individuals within its territory and subject to its jurisdiction”<sup>23</sup>. This includes migrants broadly, whether in regular status or not.

However, with one exception, none of the core human rights treaties explicitly names irregular migrants as holders of rights. This is problematic in that the ability of migrants to access rights depends on a clear awareness of those rights and the recognition of the rights in national and/or local law and practice.

This omission was one of the principal motivations for states to draft and adopt the International Convention on the Protection of the Right of All Migrant Workers and Members of Their Families in 1990 (the Migrant Workers Convention). This Convention clearly defines and includes under its scope migrant workers in undocumented or irregular situations, as well as their family members. Thus for example the Convention specifies that undocumented or irregular migrant workers and members of their families have the right to receive urgent medical care (Article 28). While none of the EU countries has signed the Migrant Workers Convention to date, many of the rights it accords are nonetheless covered by other international and regional human rights conventions that the countries have ratified and are bound by, as well as by their own national laws.

### European Convention on Human Rights

The European Convention on Human Rights (ECHR) contains a list of rights, some of them non-derogable (such as the right to life and freedom from inhuman or degrading treatment) and clearly applicable to anyone in the territory of the state concerned, regardless of immigration status. The advantage of the ECHR has been its wide ratification and the existence

<sup>23</sup> (ICCPR). Article 2.

of a judicial mechanism—the European Court of Human Rights—to oversee its implementation. Among other things, the Court has clarified that the Convention can apply to States in relation to extra-territorial activities.

### The Charter of Fundamental Rights of the EU

The Charter of Fundamental Rights of the European Union<sup>24</sup> which codified the human rights obligations of member states, gained the same legal value as the EU treaties and became legally binding when the Lisbon Treaty came into force in December 2009. This is important because the rights contained in the Charter are recognised as pertaining to everyone, independent of their citizenship or legal status. Therefore they apply to all migrants, unless the relevant legal instrument expressly excludes them from the personal scope of application. The crucial rights in this regard are:

- the right to family life (Article 7 of the Charter)
- the right not to be subject to torture or inhuman and degrading treatment (Article 4). This right might be relevant when assessing detention conditions
- access to health care (Article 35). This right has been stressed by the ruling of the European Social Committee on Social Rights No. 14/2003: “Legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter.”

The Stockholm Programme<sup>25</sup> (see the next chapter) refers to the EU Charter of Fundamental Rights in the “Promoting citizens’ rights” section. The Action Plan of the Stockholm Programme has further promulgated a “Zero Tolerance Policy” concerning violations of the Charter.

## 3. Rights relating to specific categories of migrants

### a. Refugees and asylum seekers

The right to seek asylum is enshrined in Article 14.1 of the Universal Declaration of Human Rights which states “everyone has the right to seek and enjoy in other countries asylum from persecution”.

<sup>24</sup> Charter of Fundamental Rights of the European Union, (2010/C 83/02).

<sup>25</sup> The Stockholm Programme— an Open and Secure Europe Serving and Protecting Citizens, (2010/C 115/01).

Article 1A.2 of the 1951 Convention relating to the status of Refugees (the “Refugee Convention”)—ratified by all EU member states, including the four Mediterranean states engaged in this DRIVE project—provides a definition of who is a refugee and further contains rights and entitlements that follow recognition. The Convention defines a refugee as:

“A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>26</sup>

A central component of the Refugee Convention is the prohibition on refoulement<sup>27</sup>, which applies not only to those recognised as refugees but also to asylum seekers.<sup>28</sup>

The right to asylum depends critically on whether an individual actually has the opportunity in practice to make a claim for asylum. Access to an asylum processes is thus an obvious and essential precondition to the realisation of the further substantive rights accorded to asylum seekers, once their claim has been recorded and they have been registered as such.

Despite the development of laws and directives, the issue of meaningful access to an asylum process is a contested one and has proved especially problematic when migrants arriving by boats are intercepted at sea.

A number of EU Directives adopted in furtherance of the Common European Asylum System provide for minimum standards that must be

<sup>26</sup> 1951 UN Convention relating to the Status of Refugees, Art. 1(A).

<sup>27</sup> Non-refoulement is a principle laid down in the Refugee Convention according to which “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (Article 33 (1) and (2), Geneva Convention Relating to the Status of Refugees, 1951.)

<sup>28</sup> Refugee Convention, Art. 33(1).

accorded to asylum seekers in all EU member states. In particular Council Directive 2003/9/EC of 27 January 2003 lays down minimum standards for the reception of asylum seekers (the “Reception Directive”) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (the “Asylum Procedures Directive”). Applicants have a right to remain in the relevant member state pending an examination of their asylum application (Article 7 of the Asylum Procedures Directive) and they are accorded certain social rights. For example, the Reception Directive prescribes that asylum seekers should have access to necessary health care (Article 15.1; to include at least, emergency care and essential treatment of illness) and applicants with special needs should receive necessary medical or other assistance (Article 15.2).

Though all of these directives have been transposed into national legislation in all member states, including the four countries that the DRIVE project studied, there are significant gaps between the ‘minimum’ conditions prescribed and the reality on the ground. This is evident in the four countries and will be discussed in depth per country in Part 3, below.

### Proposal to amend the Reception and Asylum Procedures directives

In June 2011, the European Commission tabled proposals to amend (i.e., recast) both the Reception and Asylum Procedures directives, presenting several very positive steps to strengthen protection for asylum seekers.<sup>29</sup> Both proposals, currently being negotiated by the Council and the Parliament, include elements that several member states consider to be contentious.

The Recast Reception directive contains specific articles on the detention of asylum seekers, as well as explicit guarantees regarding their detention, such as the possibility to review periodically the detention order and the right to receive free

<sup>29</sup> Proposal for a Directive of the European Parliament and of the Council of 3 December 2008 laying down minimum standards for the reception of asylum seekers (Recast) [COM(2008) 815 final and Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) [COM(2011)319 final.

legal assistance and representation in case of appeal.<sup>30</sup> Moreover, it contains specific provisions regarding the conditions of detention as well as rules on the identification of and additional guarantees for vulnerable persons and children.<sup>31</sup>

The Recast Asylum Procedures Directive contains additional guarantees on access to the asylum procedure and special provisions for vulnerable categories. In particular it calls for the registration of asylum claims within 72 hours.<sup>32</sup> This can be extended to 7 days when a large number of persons arrive together and wish to apply for asylum simultaneously.

The proposed formulation of Article 8 of the recast, which concerns information and counselling at border crossing points, is also important.

#### Article 8: Recast Asylum Procedures directive

"1. Member States shall ensure that information on the possibility to request international protection is available in detention facilities and at border crossing points, including transit zones, at external borders. Member States shall provide interpretation arrangements to the extent necessary to facilitate access to procedure in these areas.

2. Member States shall ensure that organisations providing advice and counselling to applicants for international protection have access to the border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organizations in these areas and that such access is subject to an agreement with the competent authorities of the Member State."

“Legal advice is very important to have when you enter a country so you know your rights and what you can do so you know what your future will be.”  
Khaled, from Algeria (living in Greece)

30 Article 9, *Proposal for a Directive of the European Parliament and of the Council of 3 December 2008 laying down minimum standards for the reception of asylum seekers* (Recast) [COM(2008) 815 final.

31 Chapter IV, *Amended Proposal Reception Directive* (Recast).

32 Article 6, *Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status* (Recast) [APD], available at: [http://ec.europa.eu/commission\\_2010-2014/malmstrom/archive/1\\_EN\\_ACT\\_part1\\_v12%5B1%5D.pdf](http://ec.europa.eu/commission_2010-2014/malmstrom/archive/1_EN_ACT_part1_v12%5B1%5D.pdf).

#### b. Victims of human trafficking

*According to the UN Trafficking Protocol:*

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."<sup>33</sup>

The fight against human trafficking has gained increasing attention in recent years, both at the international and the European level. As further explained in Part 2, international and European legal norms oblige states to take steps to prevent and combat trafficking, investigate allegations of trafficking and protect the rights of victims.<sup>34</sup> However response has varied from a focus on criminalising trafficking and working to stop and prosecute traffickers, which is the most common response, to the more limited and much slower moving commitment to develop frameworks to identify, assist and protect the victims.

The UN Trafficking Protocol (entitled "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children", widely known as the "Palermo Protocol"), which was adopted in 2000 as a supplement to the UN Convention against Transnational Organized Crime, and the Council of Europe Convention on Action Against Trafficking in Human Beings (the CoE Convention), adopted in 2005, together constitute the key frameworks and obligations of EU member states to fight trafficking and protect victims. All four of the Mediterranean states participating in the research are parties to the Palermo Protocol; Italy, Malta and Spain have further ratified the Council of Europe convention while to date Greece signed (in 2005) but has not yet ratified it. This is a significant

33 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), Article 3(a).

34 *Rantsev v. Cyprus and Russia*, ECtHR, Application No. 25965.04, Judgment of 7 January 2010, para. 282.

omission as Greece is a key transit and destination country for victims of trafficking.<sup>35</sup>

The CoE Convention made an important contribution by shifting the emphasis from prosecution of traffickers to the protection of victims. The right to be identified as a victim is mentioned as a primary right of the trafficked person and the Convention further prescribes obligations binding upon states parties to protect and assist victims. For example, once the victims have been identified, the treaty requires States to assist them “in their physical, psychological, and social recovery”. A minimum standard of treatment is set, which includes secure accommodation, psychological and material assistance, emergency medical treatment, interpretation services, counselling and information on their rights<sup>36</sup>. Crucially, the protection measures prescribed are not conditional upon the victim’s willingness to cooperate with the authorities. The Convention provides for a “recovery and reflection period” of at least 30 days, so that the victim can “recover and escape the influence of traffickers and/or take an informed decision on cooperating with the competent authorities.”<sup>37</sup> During the reflection period no expulsion order will be enforced and emergency assistance will be granted to every victim. At the end of this period, state parties shall issue a renewable residence permit to victims whose stay is necessary in light of their personal situation and/or if it is necessary for their cooperation with the investigation or criminal proceedings.

This is a positive step forward from the original EU legal framework of Framework Decision 2002/629/JHA<sup>38</sup> adopted in 2002, and Council Directive 2004/81/EC of 29 April 2004 as both of these legal instruments aimed mainly at the prosecution of perpetrators and did not stress enough the necessity to provide assistance and protection to the victims of this crime. Assistance was dependent upon cooperation with law enforcement officials.

35 US Department of State, *Trafficking in Persons Report 2010*, June 14, 2010.

36 Council of Europe Convention on Action against Trafficking in Human Beings (2005) Article 12.1.

37 Ibid, Article 13(1).

38 Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings (2002/629/JHA), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>.

Moving from a criminal law approach to a more victim-oriented approach, many steps have been taken recently by the EU in the area of identification, assistance and protection of victims. The measures include :

- the adoption of a revised Directive on preventing and combating trafficking in human beings and protecting its victims, and replacing the Council Framework in April 2011. The new Directive includes a gender perspective and focuses on earlier identification of victims (Article 11) as well as detailing and enhancing measures for their support.
- the nomination of an EU Anti-Trafficking coordinator in December 2010.

It is now accepted that victims of trafficking may also qualify for refugee status when the requirements of the Refugee Convention are met.<sup>39</sup>

### c. Children

*According to the Convention on the Rights of the Child:*

“a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”<sup>40</sup>

*The Declaration of the Rights of the Child indicates:*

“the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”<sup>41</sup>

The international Convention on the Rights of the Child (CRC) remains the most widely ratified convention in the world, with all but two states being parties. A key principle in the Convention is that decision-makers should be guided by the “best interests of the child.” Though not expressly referred to in the Convention, children who are irregular migrants are indisputably entitled to the protection of the Convention. This has been directly affirmed by

39 UNHCR, *Human Trafficking and Refugee Protection: UNHCR’s Perspective*, 2009.

40 *The Convention on the Right of the Child* (1989), Article 1.

41 *Declaration on the Rights of the Child*, adopted by UN General Assembly Resolution 1386 (XIV) of 10 December 1959.



the UN Committee on the Rights of the Child,<sup>42</sup> which monitors compliance of the Convention by all states parties.

In European legislation, migrant children are accorded certain specific rights, but normally as a function of the children belonging to a legal category of persons to which such rights are expressly attached. For example, where children are asylum-seekers, the principle of the best interest of the child and related rights are mentioned in Article 18.1 of the Reception Directive. Access to the education system, equivalent to nationals, is guaranteed to asylum seeking children in Article 10 of the Reception Directive, for as long as an expulsion measure is not actually enforced. Access to rehabilitation services for asylum-seeking children who have been victims of abuse is prescribed in Article 18.2 and provisions for the representation of unaccompanied children by a guardian or an organisation is guaranteed in Article 19.1.

On the other hand, the rights of other immigrant children irregularly present in the EU territory are not specified in European legislation.<sup>43</sup>

An Action Plan on Unaccompanied Minors 2010-2014<sup>44</sup> was adopted by the European Commission and endorsed by the European Council in 2010. Although not legally binding, the Action Plan complements provisions referring to unaccompanied children in asylum and migration legislative instruments. It signifies the political willingness of member states to

progress in this field and provides a structured “road map” for their actions. It is based on ten principles to help guide EU institutions and member states in their future approach towards unaccompanied children and has three main strands for action: prevention of unsafe migration and trafficking; reception and procedural guarantees in the EU; and the identification of durable solutions. It is stated that the decision on the future of each unaccompanied child should be taken by competent authorities, preferably within six months from the moment the child is found on EU territory or EU borders.

#### d. Victims of torture

*According to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture):*

“ the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”<sup>45</sup>

Multiple international and European frameworks underscore the fundamental right of everyone—i.e., irregular migrants included—not to be returned to a country where they would likely be in danger of suffering torture or inhuman and degrading treatment. Article 3 of the widely ratified UN Convention against Torture, to which all four of the countries with which the DRIVE project engaged are party, prohibits states parties from returning, extraditing or refouling any person to a state “where there are substantial grounds for believing that he would be in danger of being subjected to torture”<sup>46</sup>. Moreover, the UN Committee against Torture has held that this danger must be assessed not just for the initial receiving state, but also for states to which the person

42 The Committee has stated in General Comment No. 6: *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6 (1 September 2005): “State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State’s jurisdiction while attempting to enter the country’s territory. Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness” ([http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/\\$FILE/G0543805.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/532769d21fcd8302c1257020002b65d9/$FILE/G0543805.pdf)).

43 PICUM, *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, 2008, p. 14.

44 Communication from the Commission to the European Parliament and the Council, Action Plan on Unaccompanied Minors (2010 – 2014) SEC(2010)534, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>.

45 Article 1(1).

46 *Convention Against Torture*, Article 3.1.

may subsequently be expelled, returned or extradited.<sup>47</sup>

The Convention however focuses primarily on the prohibition of torture and on prosecution of those responsible for the torture. Rights of torture victims are given only limited attention under the Convention.<sup>48</sup>

At the same time, rights of torture victims who have made an application for international protection are more developed. Article 9 of the EU Reception Directive specifies that member states should ensure necessary treatment of injury caused by torture, rape or other serious acts of violence.

For all of these reasons, protection to victims of torture is not normally considered on a stand-alone basis but together with a claim for international protection, either as a refugee or on a humanitarian basis.

## C. EU responses to mixed migration

Referring to the member states of the European Union, Thomas Hammerberg, the Commissioner for Human Rights of the Council of Europe said: “Their silence and passivity are difficult to accept. When preventing migrants from coming has become more important than saving lives, something has gone dramatically wrong.”<sup>49</sup>

The main focus of European migration policy is on the fight against illegal migration, integration of third country residents, protection of refugees and return of migrants. Over recent years, the EU has worked towards harmonising aspects

47 CAT *General Comment No. 01: Implementation of Article 3 of the Convention in the context of article 22*. UN OHCHR. 1997-11-21. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13719f169a8a4ff78025672b0050eba1?Op=endocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13719f169a8a4ff78025672b0050eba1?Op=endocument). Retrieved 2008-06-15.

48 Article 14(1) “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”

49 Council of Europe, press release (8/6/2011), available at: <http://human-rights-convention.org/2011/06/08/african-migrants-are-drowning-in-the-mediterranean/>.

of the migration and asylum framework, but for the most part taking a fragmented approach, broadly separating: migration from asylum; the fight against irregular migration at borders from guaranteeing fundamental rights and justice; and the internal EU frameworks from external migration and asylum cooperation with third countries. The European Commission’s division of responsibilities and the legal and financial instruments and the EU agencies maintain these divisions.

In general, a security-oriented approach has dominated, often failing to take into account the fact that persons arriving at the borders of Europe are entitled to immediate services and assistance to address their basic needs and may also be in need of protection. In the wake of the changes sweeping North Africa this year, the European Council stated that it is “also crucial to put in place a more long-term sustainable strategy to address international protection, migration, mobility and security in general”<sup>50</sup> which should direct comprehensive policies at both sides of the Mediterranean.

This section of the report sets out the competences and policy orientation of the EU in the aspects of migration and asylum relevant to dealing with irregular migrants arriving at European shores and borders and describes the role of the European agencies involved. It then outlines a number of EU initiatives designed to improve access to protection and assistance at the borders.

### 1. Basis of EU competences and policies in the field of migration and asylum

Migration and asylum are included within the EU area of Freedom, Security and Justice (FSJ), an area of shared competence between the EU and the member states. The guiding principles of the FSJ are solidarity and fair sharing of responsibility, including financial responsibility,

50 Council of the European Union, *Conclusions on the management of migration from the Southern Neighbourhood 3081st JUSTICE and HOME AFFAIRS Council meeting*, Luxembourg, 11 and 12 April 2011, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/121479.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/121479.pdf).



between member states.<sup>51</sup> For the countries at the southern border of the EU, this principle is a fundamental one.

The Treaty on the Functioning of the European Union (TFEU)<sup>52</sup> states that the FSJ area should be developed with respect for fundamental rights and the different legal systems and traditions of the member states. Member states, acting in the common interest of the EU, are primarily responsible for the control and surveillance of the external borders, as well as for asylum issues. However, member states must comply with EU law and can only act where the EU has not otherwise exercised its competences.

The EU Charter of Fundamental Rights, which codified the human rights obligations of member states, is also relevant. Since the entry into force of the Lisbon Treaty in 2009, the Charter has the same binding value upon member states as EU Treaties. The EU Charter has important consequences for the human rights of irregular migrants and for EU agencies, which now are accountable for violations while performing their mandates.

The legal instruments in the area of immigration and asylum pursue three main objectives, which are underlined in the TFEU:

1. the gradual introduction of an integrated management system for external borders (Article 77).
2. a common European asylum system (Article 78).
3. a common immigration policy (Article 79).

In order to bring coherence in this area and coordinate actions, several policy documents have set the framework for a common EU asylum and migration policy. Adopted by the European Council in 2009, the Stockholm Programme<sup>53</sup>, is the latest multi-annual programme which sets

<sup>51</sup> Article 80 TFEU.

<sup>52</sup> Treaty on the Functioning of the European Union [TFEU] as amended by the "Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community", signed at Lisbon, 13 December 2007, C306/1, entry into force December 2009., Art 67, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>.

<sup>53</sup> Council of the European Union, *The Stockholm Programme – An open and secure Europe serving and protecting the citizens*, Doc. 17024/09, Brussels, 2nd December 2009, available at: [http://www.se2009.eu/polopoly\\_fs/1.26419!menu/standard/file/Klar\\_Stockholmsprogram.pdf](http://www.se2009.eu/polopoly_fs/1.26419!menu/standard/file/Klar_Stockholmsprogram.pdf)

the EU in the area of Justice and Home Affairs for the period 2009 until 2014. It calls for:

- the Common European Asylum System (CEAS) to be achieved by 2012;
- setting up of a comprehensive response to unaccompanied minors;
- the need for an effective and sustainable return policy with full respect for the principle of non-refoulement, fundamental rights and freedoms as well as the dignity of individual returnees and
- reinforcement of cooperation with third countries of origin and transit, including legal migration possibilities.

The Stockholm Programme also promotes protection-sensitive border control policies, stating in paragraph 5 that: "The strengthening of border controls should not prevent access to protection systems by those persons entitled to benefit from them and especially people and groups that are in vulnerable situations. In this regard, priority will be given to the needs of international protection and reception of unaccompanied minors."<sup>54</sup> The need to ensure access to Europe for people in need of international protection and in vulnerable situations arriving at EU borders is therefore clearly stated as an important priority.

Turning explicitly to mixed migration, the Stockholm Programme:

- requests that the European Commission propose clear common operational procedures for FRONTEX (see section 2.1) to ensure protection to those in need who travel in mixed flows; and
- invites the European Asylum Support Office (EASO) (see section 2c below) to "develop methods to better identify those in need of international protection in mixed flows, and to cooperate with FRONTEX whenever possible."<sup>55</sup>

## 2. The role of EU agencies

Striking a balance between preventing illegal migration and guaranteeing access to international protection and respect for fundamental human rights is a challenge for the EU. Three EU

<sup>54</sup> Paragraph 5 of the *Stockholm Programme*, *ibid*.

<sup>55</sup> Paragraph 5.1. of the *Stockholm Programme*, *ibid*.

agencies, with different mandates and responsibilities, are charged with meeting these objectives.

#### a. European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)

Established in 2004, FRONTEX coordinates and supports the integrated management of the external land and sea borders of the EU. The Agency provides technical support and expertise to member states and the European Commission, and promotes solidarity between member states. FRONTEX is tasked with collecting information, conducting risk analysis and training as well as co-coordinating joint operations and joint return flights.

Upon request by a member state facing a situation of “urgent and exceptional pressure” e.g., from sudden and/or large influx of migrants, FRONTEX can deploy Rapid Border Intervention Teams (RABITs), comprised of seconded national experts, to assist that member state for a limited period of time. Such a team was deployed for the first time at the Greek-Turkish land border in the Evros River region of north-eastern Greece, between November 2010 and March 2011. The purpose of the RABIT deployment was to assist Greek border control authorities in conducting 24-hour joint surveillance of the land border with Turkey, assist in the screening of apprehended migrants to ascertain their nationality and identity and to gather evidence on the involvement of people-smuggling networks and trafficking rings.<sup>56</sup>

FRONTEX officials do not, however, have an express responsibility or role in identifying vulnerable persons and protection seekers and referring them to appropriate procedures and assistance mechanisms. Given FRONTEX’s constant encounter with migrants at points of arrival on land or at sea, many of them in situations of mortal peril and distress, this lack of systematic identification has exposed an important gap in protection. Potentially responding to that gap, the new FRONTEX Fundamental Rights Strategy, described in section 4b below, may lead to improvements, among other things with an enhanced role of seconded FRONTEX personnel in this field.

56 FRONTEX PRESS KIT – RABITs 2010 Deployment : [http://www.FRONTEX.europa.eu/download/Z2Z4L2Zy-b250ZXgvZW4vZGVmYXVsdf9tdWx0aW\\_xpc3RhX3BsaWtvdY8xMzY/rabit\\_2010\\_deployment.pdf](http://www.FRONTEX.europa.eu/download/Z2Z4L2Zy-b250ZXgvZW4vZGVmYXVsdf9tdWx0aW_xpc3RhX3BsaWtvdY8xMzY/rabit_2010_deployment.pdf).

To improve the workings of the agency, the European Parliament and European Council are considering a number of changes proposed within a Recast FRONTEX Regulation<sup>57</sup>. The Parliament has passed some major changes to the regulation in September 2011. The proposed regulation puts more emphasis on fundamental human rights and on solidarity for member states facing disproportionate pressures. An explicit reference to human rights and refugee law has been included and an obligation for border guards participating in FRONTEX operations to receive training in this area. Proposals include the creation of a “Consultative Forum” to assist FRONTEX’s director and management board on fundamental rights matters within FRONTEX. The Forum will be composed of representatives of EASO, the Fundamental Rights Agency (FRA, see below), UNHCR and “other relevant organisations”. It is also proposed that the agency must suspend operations, in whole or in part, if fundamental rights or international protection obligations are violated. It stipulates that special needs of vulnerable persons have to be addressed in the context of the operations. While stipulating that FRONTEX has full legal responsibility for acts committed during the operations that it coordinates, wherever they take place, the regulation does not provide for a clear division of roles between member states and FRONTEX. Furthermore, the agency’s mandate still does not include ensuring access for those who claim asylum.

#### b. European Agency for Fundamental Rights (FRA)

Established in 2007, the FRA helps to ensure protection of rights through collecting evidence and providing advice about how to improve situations involving risks to and violations of human rights. While FRA has no mandate to intervene in cases of human rights violation, issue specific public statements or examine situations on the basis of periodic reporting, the protection of the fundamental rights of migrants has been a central focus for the agency. Amongst others, the agency has produced reports on the situation of persons crossing the Greek land border

57 The latest version approved by the EU parliament (the LIBE committee) on the 6th July to be submitted to final vote in September 2011, available: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-469.767+02+DOC+PDF+V0//EN&language=EN>.

in an irregular manner;<sup>58</sup> child trafficking in the European Union;<sup>59</sup> separated asylum-seeking children in EU Member States<sup>60</sup>, the asylum-seeker perspective on access to effective remedies and the duty to inform applicants.<sup>61</sup>

Of direct relevance to the DRIVE project, the agency has recently commissioned research into the “treatment of third country nationals at the EU’s external borders.”<sup>62</sup> Currently in its first phase, the research focuses on fundamental rights of irregular migrants at the southern maritime borders, paying particular attention to the interception of migrants at sea and immediate returns. The second phase will focus on procedures at land borders and airports.

FRA seeks continuous dialogue with civil society, notably through the creation of its Fundamental Rights Platform.

“Staying in detention for such a long time is mistreatment in itself.”  
**Yusef, an asylum seeker from Ethiopia, in detention for 11 months in Malta at the time of the interview.**

### c. European Asylum Support Office (EASO)

Established in 2010 and based in Valetta, Malta, the EASO’s role is to assist in the development and implementation of the Common European Asylum System as well as contribute to the strengthening of all forms of practical cooperation between member states in the area of asylum. The agency will also be involved in the collection and dissemination of “reliable and objective” country of origin information. The agency seeks to engage in dialogue with civil

58 FRA, *Coping with a Fundamental Rights Emergency: The Situation of persons crossing the Greek land border in an irregular manner*, 2011, available at: [http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011_EN.pdf)

59 FRA, *Child Trafficking in the European Union Challenges, perspectives and good practices*, 2009, available at: [http://fra.europa.eu/fraWebsite/attachments/Pub\\_Child\\_Trafficking\\_09\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/Pub_Child_Trafficking_09_en.pdf)

60 FRA, *Separated, asylum-seeking children in European Union Member States, Comparative report*, 2010, available at: [http://fra.europa.eu/fraWebsite/attachments/SEPAC-comparative-report\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/SEPAC-comparative-report_EN.pdf)

61 FRA, *The asylum-seeker perspective: access to effective remedies and the duty to inform applicants*, 2010, available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2010/pub\\_asylum-seekers\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_asylum-seekers_en.htm)

62 For more information, refer to ICMPPD’s website: <http://research.icmpd.org/1486.html>.

society organisations and relevant stakeholders in the field of asylum policy, exchange of information and pooling of knowledge. The regulation establishing its creation provides for the creation of a Consultative Forum including UNHCR as ex officio member.<sup>63</sup>

An important area of EASO’s work is to coordinate support actions for member states subject to “particular pressures” on their asylum and reception systems. To this aim, the agency deployed “Asylum Support Teams” to Greece in May 2011 to support the country in the reforms as part of the Greek Action Plan (See part 3). The experts assist Greece in areas such as training, backlog management, and providing expertise for response to vulnerable groups.

### d. Coordination between FRONTEX, the Fundamental Rights Agency and the European Asylum Support Office

Coordination between these three agencies is an important requirement and several actions have been undertaken in this regard:

1) With the aim of mainstreaming fundamental rights, FRA and FRONTEX signed an agreement in May 2010<sup>64</sup> outlining areas of collaboration, mainly on collecting information and training of FRONTEX staff. The agreement mentions specifically the need to strengthen “the capacity to collect data and information on the situation at the border, including an appreciation of the likely protection and assistance needs of vulnerable individuals and groups, particularly as regards unaccompanied minors and other children at risk, victims of trafficking and persons in need of international protection.”<sup>65</sup>

2) The EASO Regulation also provides for cooperation between the other two EU agencies as well as with international organisations.<sup>66</sup>

63 Article 51, Regulation (EU) No 439/2010 of the European Parliament and the Council of 19 May 2010 establishing a European Asylum Office, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF>.

64 Cooperation Agreement between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and the European Union Agency for Fundamental Rights, 26th of May 2010, [http://fra.europa.eu/fraWebsite/attachments/Cooperation-Agreement-FRA-Frontex\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/Cooperation-Agreement-FRA-Frontex_en.pdf).

65 [http://fra.europa.eu/fraWebsite/attachments/Cooperation-Agreement-FRA-FRONTEX\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/Cooperation-Agreement-FRA-FRONTEX_en.pdf).

66 Article 52, EASO Regulation.

3) The latest amendment of the FRONTEX regulation (the Recast), also mentions cooperation and exchange of information between FRONTEX, EASO and FRA, as well as with international bodies such as UNHCR. Cooperation with NGOs however, is not specifically mentioned.

### 3. Relevant financial instruments

The current structure of EU financial instruments concerning migration and asylum follows the main focuses of European migration policy: the fight against illegal migration, integration of third country residents, protection of refugees and return of migrants.

The principal financial programme is “Solidarity and Management of Migration Flows” (SOLID) and consists of four funds: the European Refugee Fund (ERF) the European Integration Fund, the External Borders Fund (EBF) and the Return Fund (RF). The issue of trafficking in human beings is covered by another programme, namely “Security and Safeguarding Liberties.”

For the years 2014 - 2020, the Commission will simplify the structure of EU funding and reduce the financial programmes to a Migration and Asylum Fund (€ 3.4 billion) and an Internal Security Fund (€ 4.1 billion). While this constitutes a positive evolution, it maintains the divide between border control and asylum/migration funding.

In the course of the following months, the Commission will make further proposals to provide additional emergency financial assistance to one or more member states confronted by a sudden inflow of third country nationals. In line with the new legal bases provided by the Lisbon Treaty<sup>67</sup>, it “will draw lessons from the situation in Greece, particularly at the land border between Greece and Turkey, and the crisis in the Southern Mediterranean; it will include possible ad hoc measures to be resorted to in case of particular temporary pressure on one or several Member States, as well as more

<sup>67</sup> Articles 80 and 78 paragraph 3 of the Lisbon treaty & Article 78 par. 3 of the TFEU.

structural means of ensuring solidarity, both financial and in the form of practical cooperation and technical assistance (e.g. via FRONTEX, EASO, joint operations).”<sup>68</sup>

## 4. Ensuring protection at borders

A number of initiatives have been developed by the EU to provide more protection-sensitive border control. Some of these initiatives are outlined below.

### a. Schengen Border Code: Respect for human rights at borders

The “Schengen Border Code”<sup>69</sup> is legally binding and directly applicable in all EU Member states and refers to international protection obligations, also providing EU member states with the option to waive normal entry requirements. The Code:

- obliges border guards to respect human dignity when carrying out border checks, and to fully respect human dignity and not to discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 6);
- includes a safeguard clause to ensure that the application of the code respects the rights of asylum-seekers and refugees (Article 3);
- allows for exceptions to the prescribed entry conditions based on humanitarian grounds or international obligations (Article 5); and
- underlines that refusal of entry needs to comply with the “right to asylum and to international protection” (Article 13(1)).

In March 2011, the Commission proposed a number of amendments to the Schengen

<sup>68</sup> Communication from the Commission to the EP, the Council, the Economic and Social Committee of the regions, Communication on migration, 4/5/2011, [http://ec.europa.eu/home-affairs/news/intro/docs/1\\_EN\\_ACT\\_part1\\_v11.pdf](http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v11.pdf).

<sup>69</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R0562:EN:HTML>.

Borders Code.<sup>70</sup> One of the amendments (Article 15) concerns the training of border guards. The article specifies that training curricula shall include specialised training for detecting situations of particular vulnerability involving unaccompanied minors and victims of trafficking.

#### **b. FRONTEX Fundamental Rights Strategy (FRS)<sup>71</sup>**

The management board of FRONTEX endorsed a “Fundamental Rights Strategy” in March 2011. The strategy is the product of a consultative process that saw FRONTEX exchanging views with the member states, IOM, UNHCR, the EU Anti-Trafficking Coordinator and the FRA. While this text is not legally binding, it constitutes an important step towards the protection of fundamental rights at EU external borders. An Action Plan will follow the strategy.

Key elements of the Fundamental Rights Strategy:

- FRONTEX risk analyses and joint operations shall specifically take into consideration the particular situation of persons seeking international protection, and the particular circumstances of vulnerable individuals or groups in need of protection or special care (e.g. separated and unaccompanied children, women, victims of trafficking, and persons with medical needs)(Art 14).
- FRONTEX will put in place an effective reporting system to ensure that any incidents or serious risks regarding fundamental rights are immediately reported by participating officers or FRONTEX staff member and can be acted upon.

With respect to identification of protection needs, FRONTEX will also seek advice from its external partners on the relevant instructions

or guidelines for officers taking part in FRONTEX activities. These instructions or guidelines, which should form an integral part of each operational plan, could relate to methods for better identifying people seeking international protection, proper treatment of vulnerable groups including potential victims of trafficking or fundamental rights monitoring of operational activities.

<sup>70</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement, available at: <http://ec.europa.eu/home-affairs/news/intro/docs/SBC%20amendment%20EN.pdf>

<sup>71</sup> FRONTEX, *Fundamental Rights Strategy*, 31 March 2011, [http://www.frontex.europa.eu/download/Z2Z4L2Zy-b250ZXgvZW4vZGVmYXVsdF9ha3R1YWxub3NjaS8zM-S8xMDUvMQ/fx\\_fund\\_rights\\_strategy\\_endorsed\\_by\\_mb\\_31.03.2011.pdf](http://www.frontex.europa.eu/download/Z2Z4L2Zy-b250ZXgvZW4vZGVmYXVsdF9ha3R1YWxub3NjaS8zM-S8xMDUvMQ/fx_fund_rights_strategy_endorsed_by_mb_31.03.2011.pdf).



# Part 2: A focus on post-arrival identification, differentiation and referral for assistance and protection

## A. A framework on identification, differentiation and referral

### 1. Framework elaborated under UNHCR's 10 Point Plan

UNHCR's 10 Point Plan urges the international community to address mixed migration in a more coherent manner, among other things with new or improved systems "that are able to identify new arrivals with international protection needs and which provide appropriate and differentiated solutions for them, side by side with such other solutions as need to be pursued for other groups involved in mixed movements."<sup>72</sup>

The current international framework for such identification and differentiation is elaborated under points 4, 5 and 6 of the 10 Point Plan. The points interrelate and should be read jointly.

#### Point 4: Reception arrangements

"Appropriate reception arrangements are needed to ensure that the basic human needs of people involved in mixed movements can be met. Such reception arrangements should also enable new arrivals to be registered and provided with temporary documentation. Especially in situations where a high percentage of the new arrivals are refugees or asylum seekers, UNHCR could facilitate the putting in place of appropriate arrangements, or be otherwise involved on a temporary basis, together with the principally responsible party."<sup>73</sup>

UNHCR's 2011 publication 10 Point Plan in Action further elaborates that reception arrangements in the immediate period following arrival are to:

- address basic material and psychosocial needs of all arrivals, (e.g., accommodation, food, clothing and medical services)
- distinguish among various categories of persons, including persons seeking international protection and those with specific needs.<sup>74</sup>

#### Point 5: Mechanisms for profiling and referral

"Once new arrivals have been registered and provided with temporary documentation, an initial determination will have to be made with regard to who they are, why they have left their own country and where their intended destination is. Counselling provides an opportunity to establish whether they wish to seek asylum and to identify other options available to them, including return, regularization or onward migration. This channelling arrangement would not constitute a refugee status determination. Rather its role is to give a good indication of a person's motives for departure and to ensure the person's situation is met with the most appropriate response. [...]"<sup>75</sup>

The 10 Point Plan uses the term 'profiling and referral' defined as "a non-binding process that precedes any form of status determination procedures and aims to identify the needs of, and differentiate between, categories of persons travelling as part of mixed movements as soon as possible after they arrive in the host State."<sup>76</sup> Profiling and referral activities include providing information to new arrivals, information-gathering through questionnaires<sup>77</sup> and informal interviews, establishing preliminary profiles for each person, counselling and referring individuals to the authorities or procedures that best meet their needs and manage their cases. Counselling provides an opportunity to establish whether persons wish to seek asylum and to identify other options available.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid. p. 126.

<sup>77</sup> See UNHCR/IOM Joint Profiling questionnaire, available at: <http://www.unhcr.org/4ae581f29.pdf>.

<sup>72</sup> UNHCR *The 10 Point Plan in Action*, op.cit., p. 10.

<sup>73</sup> Ibid. p. 12.

Profiling and referral procedures can be more or less elaborate depending on the complexity of the caseload and the human and financial resources available. Where more resources are needed, entry officials can be assisted by experts, or even expert teams, from international organisations and NGOs.

**Point 6: Differentiated processes and procedures**

“With respect to asylum claims, those which appear to be relatively simple (because they are well-founded or manifestly unfounded) could be assessed in an expedited procedure. Other and more complex claims normally will require a more detailed assessment. Different processes outside the asylum arrangements should address the situation of people with specific needs which are not refugee related, including victims of trafficking not in need of international protection, as well as persons who are seeking to migrate [...]”

While UNHCR is likely to be a principal partner for states in relation to refugee status determination procedures, NGOs, lawyers and civil society institutions should also have a role to play in this component of the Plan of Action. In relation to other processes, UNHCR will be minimally, if at all, involved. The likely partners will depend on the situation in the specific country and on which organisations are present and willing to act as partner.<sup>78</sup>

Accordingly, flowing from the first profiling assessment described under Point 5, migrants are to be referred towards and undergo specialised full-fledged procedures for specific categories—categories that are not mutually exclusive and can overlap. The 10 Point Plan is clear that differentiated processes and procedures are necessary in order to address needs in various categories. Although the Plan itself does not expressly describe processes beyond the references to asylum arrangements and processes relating to trafficked persons, UNHCR has since elaborated further that such “procedures can include inter alia:

- asylum procedures for persons seeking international protection;
- special protection mechanisms for trafficked persons;

<sup>78</sup> UNHCR *10 Point Plan*, op. cit. p.12

- child protection systems;
- family tracing;
- procedures to identify women and girls at heightened risk;
- support for persons with physical and mental disabilities, individuals who have experienced torture or trauma, and elderly persons;
- avenues for regularisation in the host country or migration options that facilitate the onward movement of persons in search of economic opportunities and those who wish to join their families abroad;
- assisted voluntary return (AVR) for those who are neither in need of international protection nor have compelling humanitarian reasons to stay in the host country and who wish to return to their countries of origin; and
- compulsory return for persons without international protection needs as a measure of last resort.<sup>79</sup>

In order to ensure that the most appropriate response and solution is available to each person, well-functioning referral systems are needed between different processes and coordination between all relevant actors: national and local government agencies, international organisations, health care providers and social services, legal services, etc.

**2. Identification, differentiation and referral in the DRIVE project**

In line with the 10 Point Plan, the DRIVE project converged on the following understandings of “identification”, “differentiation”, and “referral”:

- **identification:** gathering information on the person. This corresponds to the official registration phase and bio data (e.g., establishment of age, nationality and identity).
- **differentiation**<sup>80</sup>: a two-way interaction with the person, aiming at establishing a preliminary profile, assessing specific needs, and informing them about rights and services available.
- **referral:** orienting the person towards the appropriate procedures and services.

<sup>79</sup> *The 10 Point Plan in Action*, op.cit, p. 149.

<sup>80</sup> In the context of the DRIVE project, the term “differentiation” was chosen over “profiling” since the latter term was considered to commonly connote enforcement activities.



Throughout the DRIVE project it was clear that there is not, nor should there be, a strict separation between identification and differentiation. In practice, the actual processes of identification almost inevitably overlaps with differentiation. Accordingly, for protection-sensitive border systems to be built, both processes should be deemed equally important—and linked—by the national authorities and other actors. That is, reasonable efforts at differentiation should be compulsory within the identification process. Dissociating the two processes brings the risk that information collected is lost, rights are disregarded and that police or border officers conceive their role as being purely security-oriented.

Indeed, it is clear that basic and often evident “prima facie” information on the person, be it age, nationality, or physical condition can already point quickly towards certain needs or potential protection profiles, e.g., potential asylum seekers, trafficking victims and children. Even when conducting security screenings or establishing bio data at entry points, the authorities themselves should actively identify and to the extent possible, differentiate people in need of protection and assistance so that they can be referred as quickly as possible to the relevant procedures.

The importance of this approach is confirmed by the results of the DRIVE project research, which showed that the predominantly security-centred approach adopted by authorities, especially at points of entry, frequently creates obstacles in accessing protection procedures, with the result that important protection needs of many people are not identified at this stage but only later—if at all, once they are already present on the territory.

Furthermore, the DRIVE project’s migrants survey have shown that, according to most legal provisions as well as in practice, migrants are required to self-identify in order to have access to a relevant procedure, especially in the case of asylum seekers. Instead, it should be understood that, for a variety of reasons, individuals may not always be forthcoming with information or self-identify with any particular category or group. Furthermore, they often experience difficulties in communicating with their interlocutors or

may be scared or ashamed to talk about their situation. This is especially problematic for people who have experienced torture, trauma, and sexual abuse, and where there are differences of ethnicity, culture and gender between the person in need and those responding.

*“I wish I had known I was able to ask for asylum on the day or the week after my arrival. I didn’t know my situation was that of a refugee. My situation is very critical and I wish there was more help.”*

**Sidibe, from Senegal (living in Spain)**

In fact, there is an affirmative obligation on states to take proactive steps to identify those among the people arriving in mixed flows who may have claims to specific rights, protection and assistance, namely refugees and asylum seekers, victims of human trafficking, children and victims of torture. An in-depth legal analysis of this obligation is presented in section B below.

### 3. Setting up partnerships to respond effectively to mixed migration arrivals

The collaborative approach, underlined at point 1 of the 10 point plan promoting multi-stakeholder cooperation, has proven essential for advancing practical protection responses in the context of mixed movements. The complexity of mixed migration arrivals and the multiplicity of stakeholders involved underline the necessity to set up clear and formal coordination mechanisms.

While national authorities remain primarily responsible for the process and have legal obligations to respect, NGOs, lawyers and civil society institutions can and should be involved in the process in varied ways and forms. The exact partners will depend on the situation in the specific country, which organisations are present and willing to act as partners, and the financial means available.

As demonstrated in the DRIVE surveys, the roles that NGOs assume in identification, differentiation and referral vary depending on the will of the public authorities to involve them in the process as well as the expertise they have

developed. In practice, NGOs often engage in identification while providing legal, medical, cultural mediation and other services at border points, - in reception centres or during outreach activities.

In the course of implementing the 10 Point Plan, a number of projects were set up, including the UNHCR border monitoring project in Central Europe<sup>81</sup> and the “mixed migration task force” in Yemen<sup>82</sup>. One of the most relevant projects is the “Praesidium project” implemented in southern Italy. This project is considered to be unique in that it presents a comprehensive operational model to respond to mixed arrivals. The project includes humanitarian assistance, provision of information to those who have arrived, counselling to all migrants upon arrival, identification of children, victims of trafficking, asylum seekers and vulnerable categories, and referral to appropriate legal and administrative procedures.

#### **The Praesidium project: an example of a multi-agency approach**

The multi-agency approach promoted in the 10 Point Plan is the hallmark of the Praesidium project. With EU funding, Praesidium was initiated in 2006 by the Italian Ministry of Interior

81 In order to ensure all asylum-seekers have access to safe territory and fair and efficient asylum procedures UNHCR has established border management projects in six countries of Central Europe: Bulgaria, Hungary, Poland, Romania, Slovakia and Slovenia. The projects are based on tripartite agreements (available online) between the countries’ government authorities, NGOs) and UNHCR. As participating partners in the framework of the project, NGOs regularly visit border crossing points and detention centres to evaluate the access of asylum-seekers to territory and asylum procedures. The projects also include training of the border police and NGOs. In addition, several hundred information dispensers are placed at key locations along the external borders in various languages to inform new arrivals of their right to seek asylum and to provide them with local contacts for legal advice. More information is available at: <http://www.unhcr-centraleurope.org/en/what-we-do/monitoring-the-border/border-management.html>.

82 The Yemen mixed migration task force works to ensure a comprehensive and coordinated response by all concerned stakeholders to the protection and humanitarian needs of refugees, asylum seekers and migrants arriving on Yemen’s shores from the Horn of Africa. It is jointly chaired by UNHCR and IOM. The Danish Refugee Council holds the secretariat for the group. INTERSOS, the Society for Humanitarian Solidarity (SHS), UNICEF, the World Food Programme, Save the Children Sweden, the Yemen Red Crescent, Care International and the Government of Yemen are all current members. More information is available at: <http://www.mmyemen.org>.

to respond to the large influx of migrants arriving by boat on the island of Lampedusa.

The project brings together the Italian Ministry of Interior, UNHCR, IOM, the Italian Red Cross and, since 2008, Save the Children Italy. The current phase of the project (Phase 6) covers Sicily, Puglia, Calabria, Campania and Marche, though not all actors are present everywhere.

The role of the project partners is defined as follows:

- Italian Red Cross: providing assistance and monitoring conditions of reception, focusing on first aid, and emergency health services.
- UNHCR: Providing information on the right to ask for asylum and special care for asylum seekers at arrival, monitoring access to legal assistance for asylum seekers (mainly at arrival and in CARA<sup>83</sup>) and identification of individual vulnerable cases.
- IOM: Identifying/profiling of victims of trafficking and other vulnerable cases at arrival and provision of information. Monitoring detention centres for illegal immigrants and activities related to trafficking (seasonal workers). Providing general counselling and assistance to specific vulnerable cases in CIE,<sup>84</sup> especially victims of trafficking and asylum seekers.
- Save the Children Italy: Assisting children after their arrival; ascertaining that children are identified and that family unity is maintained; providing information to children about their rights; conducting profiling and providing legal assistance in the centres for migrants and in residential care facilities to which unaccompanied minors are transferred; monitoring the identification procedure and the conditions of reception.

Given the complexity of arrivals by sea and the overlap of the needs and profiles of the migrants, the four organisations developed Standard Operating Procedures (SOPs) to better coordinate their actions. While their respective roles were defined in cases of joint interventions, it was agreed that they could be interchangeable in case of absence

83 Centre for asylum seekers.

84 Centres for identification and expulsion.

or overwhelming burden of the other(s). This was particularly important during arrivals at night or critical situations, with high numbers of migrants and/or of vulnerable cases. The objective was to guarantee the presence of operators at all arrival points and in all reception centres.

To work effectively, the Praesidium team had to work closely with a wide range of other stakeholders involved in boat arrivals in Italy, including the Coast Guard, police, local governments etc. The members of the Praesidium project have however indicated some difficulties in setting up the project, especially in new locations where the police are not used to working with international organisations or NGOs. Time is needed to gain trust from the local authorities. In several occasions in 2010, these organisations were not called by the authorities to intervene when a boat arrived.

Furthermore, it is important to note that the project's action is not embedded in law and has to be renewed every year through a MoU with the Italian Ministry of Interior.

Outside the framework of the 10 Point Plan, the Red Cross, Médecins Sans Frontières and other actors in the field have each developed responses to mixed arrivals, depending on their mandate and the country. Part 3 of the present report will describe some partnerships developed in the DRIVE project countries.

However, the drive research has shown that multi-agency stakeholder responses are rare, and when they do exist they are fragmented—often set up in an ad-hoc manner to respond to sudden emergencies. Moreover NGOs are often considered as mere sub-contractors rather than as partners to be engaged with in a coordinated and regular manner.

## **B. In-depth legal analysis: Obligations of EU member states for the Identification of the four target groups of the DRIVE project arriving**

## **at the border in mixed migratory movements: refugees/asylum seekers, victims of human trafficking, children (minors) and victims of torture<sup>85</sup>**

### **1. Introduction**

Once a migrant has been identified as a minor, a victim of trafficking, a victim of torture, an asylum seeker or an applicant for another form of international protection, he or she can assert the rights recognised respectively to these categories of people, by the various relevant legal instruments.

The identification of a migrant as a person belonging to one or more of these categories is essential since he becomes entitled to specific protective legal provisions. Thus, for instance, a migrant qualified as an asylum seeker benefits from the implementation of the EU directive on reception conditions for asylum seekers<sup>86</sup>, according to them<sup>87</sup> the right to health care, the right to access the labor market, the right to material reception conditions (housing, food, clothing and daily allowance), etc.

This identification raises the question of the legal responsibility of the member states, that is whether under any international regional or community<sup>88</sup> standard they have a “pro-active obligation” to carry out investigations to define the irregular migrant’s “profile” – whether he belongs to one of the categories mentioned above - upon

<sup>85</sup> This analysis and the underlying research were conducted for the DRIVE project by Laurence De Bauche, consultant, coordinator of projects and studies for the Odysseus Academic Network.

<sup>86</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the member states. Hereinafter referred to as the Reception Directive.

<sup>87</sup> Some of these rights are conditional, limited or subject to conditions.

<sup>88</sup> The national laws of the member states are excluded from the analysis.

his arrival at their borders.<sup>89</sup> This “pro-active obligation” to conduct investigations is particularly relevant when neither the migrant nor any person or organisation providing him assistance has asserted a claim to such a categorisation to a member state.

The issue will be discussed successively for each of the categories considered: victims of trafficking (section 2), asylum seekers or applicant for another form of international protection (section 3), minors (section 4) and victims of torture (section 5). A brief discussion will be devoted to the European Council Decision of 26 April 2010 supplementing the Schengen Code (Section 6), before drawing a general conclusion on the overall issue of the obligation to identify these groups arriving in Europe (Section 7).

## 2. Identification of victims of trafficking

### a. The Palermo Protocol<sup>90</sup>

In Section 3, “*Prevention, cooperation and other measures*”, Article 10 of the Palermo Protocol is devoted to “*Exchange, information and training*.”

This article imposes on law enforcement, immigration or other relevant authorities of the States Parties a duty to cooperate with one another by exchanging information, in order to enable them to determine whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons (§ 1, a).

It sets an obligation for the States Parties to provide or strengthen training for these officials in

<sup>89</sup> The specific case of interception at sea is not covered by this section. The Council Decision of 26 April 2010 2010/252/UE, supplementing the Schengen Borders Code as regards the surveillance of the external sea borders in the context of operational cooperation coordinated by FRONTEX (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), will be briefly discussed infra in Section VI. Hereinafter referred to as the Council Decision of 26 April supplementing the Schengen Borders Code.

<sup>90</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Under Article 1, unless otherwise specified, the Protocol applies to human beings when organized criminal group is involved and where the offense is transnational in nature.

the prevention of human trafficking. This training should focus on methods used in “*preventing such trafficking*”, on taking into consideration “*the rights of the victims*” and “*child and gender sensitive issues*” and promote cooperation with NGOs, other relevant organisations and other elements of civil society<sup>91</sup> (§ 2).

The enumeration of government authorities concerned, especially the express reference to law enforcement and immigration authorities, and the fact that this list of authorities is purely illustrative – note the words “*other relevant*” – are important. The obligations on these authorities and their agents are just as important. On the one hand, they must work in collaboration to “determine” whether a person entering the territory of the State concerned is a “victim of trafficking”, on the other hand the agents must be adequately trained to ensure the prevention of trafficking. These positive obligations require that state parties take an active role in identifying victims (or potential victims) of trafficking, and can justify the implementation of concrete measures to enable such identification. However the scope of these positive obligations remains undefined. Do states parties have to routinely check that any person crossing or attempting to cross their borders is not a victim (or a potential victim) of trafficking only if a general context and/or special circumstances exist<sup>92</sup>?

In a decision dated January 10, 2010, the European Court of Human Rights hereinafter ECtHR<sup>93</sup>, held<sup>94</sup>:

- The Cypriot police had an obligation to investigate, so as to make it possible to identify whether the Russian national, Ms Rantsev, presented by her employer, was a victim of trafficking.
- In this case, the police had failed in this duty. The Court stressed that the police had neither interviewed the applicant nor collected evidence.

<sup>91</sup> Other provisions in the Protocol mention the prevention of trafficking.

<sup>92</sup> These investigations would, at least, imply asking questions and providing information relevant to the purpose of these investigations, that is identifying victims, or potential victims of trafficking.

<sup>93</sup> ECtHR, *Rantsev v. Russia and Cyprus*, Application No. 25965/04, Judgment of 7 January 2010, hereinafter, ECtHR, Rantsev.

<sup>94</sup> ECtHR, Rantsev, §§ 294-298.

The Court conclusions are based on:

- 1 Article 10 of the Palermo Protocol;
- 2 a notorious general context of trafficking, particularly affecting nationals from the former Soviet Union, in Cyprus and,
- 3 the special circumstances of the case, in which a sufficient number of indicators, well-known by the police, creating a credible suspicion that Ms Rantsev was a victim of trafficking or subject to a real and immediate risk of trafficking.

Should we infer from this case that there is a requirement of a general context (point 2° of the Court conclusions) and / or special circumstances (point 3° of the Court conclusions) to impose on States the obligation to take the initiative to check the possibility that a migrant was a victim of trafficking or not?

A positive answer to this question does not seem convincing. The obligations, set out by Article 10 of the Palermo Protocol and referred to by the Court, seem to impose on States Parties to carry out at least one interview of any irregular migrant, in order to properly check whether the circumstances and conditions of the migrant's departure from his country of origin, his travelling and his arrival in a member state can make it almost *credible* - in the words of the Court - that it is a case of human trafficking. Not to carry out any investigation in the absence of a specific context and/or special circumstances would amount to giving no practical effect to the requirement of training for the prevention of trafficking.<sup>95</sup>

#### b. The Convention of the Council of Europe on Action against Trafficking in Human Beings<sup>96</sup>

In Chapter III, Article 10 entitled "*Identification of the victims*", States Parties have the same obligations as the ones established by Article 10 of the Palermo Protocol. However, the wording of the Convention of the Council of Europe goes further, since it refers to the obligation

<sup>95</sup> The obligation of national authorities to exchange information to determine whether a person crossing or attempting to cross an international border is a victim of trafficking is required when the person is in possession of travel documents belonging to other persons or without travel documents (Article 10 § 2).

<sup>96</sup> Unlike the more limited scope of the Palermo Protocol, the Convention applies to all forms of trafficking in human beings, whether national or transnational, whether or not related to organised crime (Article 1).

of States to have people trained "*in identifying victims of trafficking*" at their disposal (Article 10, § 1<sup>97</sup>) and to adopt legislative or other measures to "*identify the victims*" (Article 10, § 2). Following this demand, § 2 mentions that when the competent authorities consider that "*there are reasonable grounds to believe that a person is a victim, they will not remove the person from the territory of the receiving states*". In this case, the States Parties must ensure that the person is not removed from their territory "*until the identification process*".

These provisions<sup>98</sup> undoubtedly involve an obligation of States Parties to take the initiative to carry out investigations in order to determine whether or not migrants are victims (or potential victims) of human trafficking.

#### c. Human trafficking Directive 2011/36/ of 5 April 2011 UE<sup>99</sup>

Article 11, § 4 of the Directive states: "Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organizations". Article 11, § 2 sets that Member States shall ensure assistance and support to the person "as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected" to trafficking.

Article 18, § 3 establishes that "*Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings*".

A "pro-active obligation" to search for victims or potential victims of human trafficking undoubtedly results from these provisions. Although, Article 18, § 3 mentions that member states shall only "*promote*" and not provide the training of

<sup>97</sup> The Title of the article is "*Identification of the victims*".

<sup>98</sup> Other provisions of the Convention sets out the obligation of States Parties to prevent human trafficking.

<sup>99</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. The transposition of the directive into national law must occur no later than April 6, 2013.



officials likely to come into contact with victims and potential victims, to lack initiative in doing so would be legally inconsistent with this provision and would make it insubstantial. Moreover, it results from the explicit stipulation “to create appropriate mechanisms for early identification of victims”.<sup>100</sup>

#### d. Conclusion on the identification of victims of trafficking

The legal framework mentioned above requires member states to ensure that the migrant is not a victim or potential victim of trafficking without any general context and / or special circumstances being required, in any useful way, including the training of the officials. The assessment on whether the competent authorities have regard for this obligation remains a question of fact. Minimum investigations are required in a systematic way, but their extent seems to have to be limited course. In case of a general context and / or any special circumstances, further investigations may be required whether or not this context-and / or circumstances result from the initial investigations.<sup>101</sup>

100 It seems more uncertain legally, but not totally out of the question, to maintain that the Council Directive 2004/81/EC of 29 April 2004 on the residence permits issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities may also be referred to justify a “pro-active obligation” of the States to check that the migrant is not a victim (or a potential victim) of trafficking in human beings. Indeed, Article 5, the only relevant provision, states that when the competent authorities of the Member States take the view that a third-country national may fall into the scope of this Directive, they shall inform the person concerned of the possibilities offered under this Directive. If Article 5 clearly implies that the national authorities have the obligation to inform the “alleged” victim of trafficking, on the one hand, the wording leaves a discretion as to the assessment of this “presumption” to the national authorities, and on the other hand, allows doubts about the “pro-active obligation” of the authorities to search for victims, or potential victims of trafficking.

101 In the ECtHR decision *Rantsev v. Russia and Cyprus* mentioned above, the specific general context and special circumstances did not result from minimal initial investigations since the competent Cypriot Authorities had not carried out any investigation—indeed, not even interviewed the person concerned.

### 3. Identification of asylum seekers or applicants for another form of international protection

#### a. The Practical Handbook for Border Guards (Schengen Handbook)<sup>102</sup>

In Section 1 of the Schengen Handbook, dedicated to “Border check procedures”, Title 10 is “Asylum-seekers/applicants for international protection”. It states that a “third-country national must be considered an applicant for asylum/international protection if he/she expresses in any way fear of suffering serious harm if he/she is returned to his/her country of origin or former habitual residence. The wish to apply for protection does not need to be expressed in any particular form. The word “asylum” does not need to be used expressly; the defining element is the expression of fear of what might happen upon return. In case of doubt on whether a certain declaration can be construed as a wish to apply for asylum or for another form of international protection, the border guards must consult the national authority(-ies) responsible for the examination of applications for international protection.”

These recommendations are essential. They do not imply that the state should take the initiative to systematically interview each migrant, in order to ensure that he is not a potential asylum-seeker or a potential applicant for another form of international protection. However, on the one hand they request that national authorities consider the migrant as an asylum-seeker or an applicant for another form of international protection when a “*fear of what might happen upon return*” is clear from his statements, regardless of how he expresses this fear. And on the other hand, the recommendations require national authorities to carry out further investigations to ensure that the migrant is not a potential asylum-seeker or a potential applicant for another form of international protection when a doubt remains, for instance on the seriousness of the violations.

Of course, despite the use of mandatory language (note “*must*”) in these recommendations, the Schengen Handbook is an instrument of soft

102 European Commission Recommendation of 6 November 2006, establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” to be used by member states’ competent authorities when carrying out the border control of persons, C (2006) 5186 final.

law.<sup>103</sup> At the same time, while its content is not legally binding, this does not mean it is devoid of any legal value. The Schengen Handbook exudes authority from its originating mandate, its use in day-to-day operations and its considerable interpretative value.

#### b. The principle of non-refoulement

##### The 1951 Refugee Convention and the European Convention on Human Rights

This section addresses the question: does the principle of non-refoulement, which arises, among others, from Article 33, § 1 of the Geneva Convention relating to the Status of Refugees<sup>104</sup> (hereinafter the Geneva Convention) and from Article 3 of the European Convention on Human Rights<sup>105</sup> (hereinafter the ECHR) require Member States to take the initiative to carry out systematic investigation in order to ensure that migrants are not asylum seekers or applicants for another form of international protection.<sup>106</sup>

##### Article 33 of the Geneva Refugee Convention

It is agreed that, despite the use of the term refugee, the principle of non-refoulement enacted in Article 33, § 1 of the Convention is not limited to the migrants officially recognised as refugees but it applies also to any person “seeking asylum” that is, to all asylum seekers<sup>107</sup> which implies that the person has made a request in this regard.<sup>108</sup> However, the principle of non-refoulement applies not only in cases of a single migrant’s arrival but in cases of mass influx of refugees or asylum seekers<sup>109</sup> as well.

In the EU, massive influx of displaced persons is governed by Council Directive 2001/55/EC of 20

July 2001,<sup>110</sup> which allows for granting a special temporary protection to the persons concerned. The notion of “displaced persons” is defined by the directive as “third-country national or stateless persons who have had to leave their country or region of origin, or have been evacuated, [...] and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

- (i) persons who have fled areas of armed conflict or endemic violence;
- (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;<sup>111</sup>

‘Mass influx’ means “arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided...”<sup>112</sup>

In fact, nothing requires that the persons concerned express their wish to receive refugee status<sup>113</sup>. Only the situation in the country of origin or in the country from which they have been evacuated, and the number of people displaced, are at the centre of the definition.

It is clear that, according to Article 5, the persons concerned will benefit from the protective measures only after the Council has adopted a decision on the massive influx of displaced persons and as long as they are included in the specific groups identified by the Council in its decision.

However, with regard to the question of whether there exists a “pro-active obligation” of states to ensure that a migrant is not an asylum seeker, it seems that outside the scope of application of the temporary protection itself, the states would be bound by this obligation as soon as it is established that the country of origin is in

103 See the Recommendation and recital (5) of the preamble.

104 “No Contracting State shall expel or return in any manner whatsoever, one to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership a particular social group or political opinion (...)”

105 “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

106 In the latter case, only Article 3 of the ECHR is concerned.

107 La protection des réfugiés en droit international, edited by Erika Feller, Volker Türk et Frances Nicholson, UN-CR, Larcier 2008, particularly pages 147 and seq.

108 For the wording of this application see point 1 of Section III above.

109 La protection des réfugiés en droit international, op.cit., pages 151 to 153.

110 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in case of mass influx of displaced persons and on measures promoting a balance between the efforts of Member States in receiving such persons and bearing the consequences thereof.

111 Article 2, c) of the Directive.

112 Article 2, d) of the Directive.

113 For the wording of this application see point 1 of Section III above.



a notorious situation that may “ fall within the scope of Article 1A of the Geneva Convention (...) ”<sup>114</sup> even if the migrant has not applied for refugee status<sup>115</sup> and he is not part of a massive influx of displaced persons. It can be the case, for instance, when it is established that the migrant is from a tribe well-known to be subjected to persecution in his country of origin. In such a case, in order to not violate the principle of non-refoulement enacted in Article 33, § 1 of the Convention, the states have to take the initiative to carry out investigations in order to make sure that the migrant is not a potential asylum seeker and to allow him to make an application for asylum, when needed.<sup>116</sup>

An important parallel can be drawn with the intervention of the UN High Commissioner for Refugees - hereafter UNHCR - before the ECtHR in the pending case *Hirsi and Others v. Italy*.<sup>117</sup> The UNHCR argues a violation of the principle of non-refoulement under Article 33, paragraph 1 of the Convention (and Article 3 ECHR). The main elements of the case put forward by the UNHCR are:

- The Italian government carried out several “push-back” operations by intercepting mainly Sub-Saharan nationals (including Somalis, Eritreans and Nigerians) on the high seas and returning them to Libya.<sup>118</sup>
- These operations were conducted although none of these citizens had been interviewed and no identification process had been conducted.<sup>119</sup>
- The situation in Libya exposes these removed nationals to a risk of serious harm. This consideration is largely developed and argued in UNHCR’s argumentation<sup>120</sup>.

114 Article 2, c) of the Directive.

115 For the wording of this application see point 1 of Section III above.

116 These investigations should, at the least, consist in asking the migrant questions and providing him with information relevant to the purpose of these investigations.

117 Submission by the Office of the United Nations High Commissioner for Refugees in the case of *Hirsi and Others v. Italy*, Application n° 27765/09.

118 In this case these operations took place on the high seas. However this particular circumstance does not affect the UNHCR’s considerations and conclusions. They could equally be defended if the “push-back” operations had taken place at the border. The Council Decision of 26 April 2010 2010/252/UE supplementing the Schengen Borders Code (see Section VI) was not adopted at the time of the writing of the UNHCR’s intervention.

119 See Section 2 of the intervention of UNHCR Interception and Return at Sea: “Push-back” Practices of Italy, in particular point 2.2.4.

120 Ibid, Section 3.

Therefore, for UNHCR, by returning these people to Libya without conducting a proper assessment of their need of international protection, the Italian authorities have not adequately addressed the potential risk of refoulement - including an indirect refoulement - and the other violations of human rights existing for these people on their return to Libya.<sup>121</sup>

The position argued by UNHCR is legally defensible. It will be interesting to see in which measure this position will be or not followed by the Court.

### Article 3 ECHR

The scope of Article 3 of the Convention has expanded over time in the jurisprudence of the ECtHR. Indeed, the principle of non-refoulement extends to any measure of extradition, expulsion or removal. Unlike Article 33 of the Geneva Convention, Article 3 ECHR prohibition is absolute and non-derogable.<sup>122</sup>

On several occasions the Court has noted that the violation of Article 3 requires substantial grounds for believing that the person, if removed, encounters a real risk of being subjected to torture or to cruel, inhuman or degrading treatment in the country of destination.<sup>123</sup> The personal position of the person concerned regarding the risk must be reported as well, since a generalised situation of violence in the country of destination is not sufficient in this regard.

Given these elements, it is legally defensible to transpose the considerations regarding the application of Article 33, § 1 of the Geneva Convention to the application of Article 3 of the ECHR. Even when the migrant has not

121 Ibid, Section 5.

122 Article 33, § 2 of the Geneva Convention provides for exceptions to the principle of non-refoulement enacted in § 1, particularly in case of “*danger to the security of the country*”. Such an exception would not justify a denial of the application of Article 3 ECHR. On the absolute and non-derogable character of Article 3 see in particular the two following judgments: ECtHR, *Soering v. the United Kingdom*, Application no. 14038/88, Judgment 7 July 1989 and ECtHR, *Chahal v. the United Kingdom*, 70/1995/576/662, Judgment 15 November 1996.

123 Or, a country of subsequent destination, if there is a risk of such torture or treatment and a potential that the first “destination” country to which the migrant has been returned will transfer him there, violating the principle of non-refoulement in a roundabout way (ECtHR, *Soering v. the United Kingdom*, Application no. 14038/88, Judgment 7 July 1989).

directly expressed a wish to claim international protection,<sup>124</sup> the States would nonetheless be compelled to carry out a “pro-active” investigation when the risk of a potential violation of Article 3<sup>125</sup> could be presumed to result from the notorious specific general context and the well-known link between the individual and the context.

So, what is the obligation of a member state in the case of an Afghan migrant, arriving from a region where torture and violations of human rights are well-known and widespread, when he has made no clear request<sup>126</sup> regarding an application for protection?

It can be argued that such a situation would also require the State to conduct investigations, on the one hand, in order to ensure that there is no risk of potential violation of Article 3, which could be a ground for a claim for international protection other than asylum, and, on the other hand, to enable the migrant to apply for asylum, with full knowledge of the facts, and if needed.<sup>127</sup>

Beyond the existence of a pro-active obligation when there is a notorious specific general context and a well-known link between the migrant and the context, it seems also defensible to argue that the principle itself of *non-refoulement* in Article 3 implies such a pro-active obligation.

Indeed, this principle puts on states a positive protective attitude which is not to return a person (not necessarily a refugee or an asylum seeker such as in Article 33 of the Geneva Convention) to a territory where he/she could undergo treatments which would fall within the scope of Article 3.

How could a state claim to respect this positive obligation if it does not have to systematically conduct at least minimal investigations?

Carrying out such investigations is a core element, without which the principle of non-

124 In the sense of Section III, § 1, see above.

125 As for Article 33, § 2, the “pro-active obligation” would be conditional and not systematic.

126 In the sense of Section III, § 1, see above.

127 These investigations should, at the least, consist in asking the migrant questions and providing him with information relevant to the purpose of these investigations.

refoulement in Article 3 would be rendered meaningless.

The fact that Article 3 ECHR prohibition is absolute and non-derogable is likely to reinforce this position.

### c. Conclusion on the identification of applicants for international protection

Four considerations seem compelling:

- The assessment of a migrant’s application for international protection has to be carried out in an extremely flexible way by the Member States.
- In the presence of a notorious specific general context, and a connection between this context and the migrant, a “pro-active obligation” of identification is imposed upon the States, to avoid the risk of violation of the principle of *non-refoulement* such as it ensues from Article 33 of the Geneva Convention. In the absence of such elements, this obligation is more uncertain, though still arguable.
- Nevertheless, the principle of non-refoulement imposed by Article 3 of the ECHR requires member states to systematically initiate at least minimal investigation in order to reasonably assess that by removing a migrant they will not expose him/her to treatment which could fall within the application of Article 3.
- On no account can migrants be “pushed-back” without the authorities having “contact” with them. Indeed, the three previous considerations necessarily imply a requirement of contact with the person. So, for instance, it is evident that the existence of a notorious specific general context and a connection between this context and the migrant could only be revealed if migrants are not “pushed-back” without having any contact with the authorities.

## 4. Identification of children (minors)

### a. Protection tied to age

In international, regional and European community law, minors—and unaccompanied minors even more—benefit from many protective provisions. Without examining here whether each of those provisions requires states to under-

take the identification of minors (or children)<sup>128</sup>, it suffices to observe that the issue arises only when it is difficult to determine whether someone is over or under 18.<sup>129</sup> Thus, it appears legally untenable, in the presence of a young child, for a State to assert an absence of a “pro-active obligation” to carry out the identification to justify the non-application of a protective measure in his favor.

However, the issue is relevant when it is difficult to determine whether someone is over or under 18 given the circumstances, in which case, the national authorities must reasonably and inevitably think twice about the fact that he is a minor or not.

#### **b. Broad international and regional legal bases supporting the obligation to identify minors**

At least three legal instruments can be invoked to support the thesis of a “general” “pro-active obligation” for EU member states, to carry out the identification of minors in the context of arrival of migrants at the border: the UN Convention on the Rights of the Child, the Charter of Fundamental Rights of the European Union and the International Covenant on Civil and Political Rights (ICCPR).

Article 3, § 1 of the Convention on the Rights of the Child states that “In all actions concerning

<sup>128</sup> This is for example the case for Article 10 of the Convention of the Council of Europe on Action against Trafficking in Human Beings. Article 10, §3 explicitly requires that the states identify trafficking victims, including children and sets out that while children need special protection measures, it is sometimes difficult to determine whether someone is over or under 18. Paragraph 3 consequently requires Parties to presume that a victim is a child if there are reasons for believing that to be so and if there is uncertainty about their age. Until their age is verified, they must be given special protection measures, in accordance with their rights as defined, in particular, in the UN Convention on the Rights of the Child. This provision aims at primarily identifying victims of trafficking. Therefore, it cannot be drawn from this provision that there is a “general” “pro-active obligation” to identify minors in the context of migrants arrivals at the border. The same applies to Article 17 of the directive on reception conditions for asylum seekers which requires the identification of minors and unaccompanied minors among the asylum seekers, in order to assess their potential needs.

<sup>129</sup> In general, protective provisions for minors (or children) define them as anyone under the age of 18. Some texts, however, provide another rule, such as the UN Convention on the Rights of the Child. Thus, Article 1 of the Convention provides that a child means “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

This principle is also enshrined in Article 24 § 2 of the Charter of Fundamental Rights of the European Union. This provision states that “In all actions relating to children, whether taken by public authorities or private institutions, the child’s interest must be a primary consideration.”

Article 24, § 1 of the ICCPR states in turn that “Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, [...]”. The Directive ‘on common standards and procedures in Member States for the return of illegal staying third country nationals’ (commonly called the Return Directive) must also be mentioned in the present context.<sup>130</sup>

Under Article 2, § 2, a), EU member states may decide not to apply the Return Directive when third country nationals “are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State [...]”. If the States make use of this option, it nevertheless follows from Article 4, § 4, a) of the Directive that they can waive some of the provisions of the Directive.

Indeed, Article 4, § 4, a) states that:

“With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2(2)(a), Member States shall: (a) ensure that their treatment and level of protection are no less favourable than as set out in Article 8(4) and (5) (limitations on use of coercive measures), Article 9(2)(a) (postponement of removal), Article 14(1) (b) and (d) (emergency health care and taking into account needs of

<sup>130</sup> Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for the return of third country nationals illegally staying. Hereinafter referred to as the Return Directive.

vulnerable persons), and Articles 16 and 17 (detention conditions) (...)."

Thus, member states must, in any case, comply with the articles referred to in article 4, § 4, a). Among those articles, two provisions have to be underlined with regard to the "general" "pro-active obligation" for the member states to carry out the identification of minors in the context of arrival of migrants at the border: Article 14, § 1, d) and Article 16 § 3.

Under Article 14, § 1, d) " (...) as far as possible in relation to third-country nationals during the period for voluntary departure granted in accordance with Article 7 and during periods for which removal has been postponed in accordance with Article 9 (...) special needs of vulnerable persons are taken into account."

Similarly under Article 16, § 3, in case of detention, "Particular attention shall be paid to the situation of vulnerable persons."

According to Article 3, § 9 of the Return Directive "vulnerable persons" means among other minors, and unaccompanied minors.<sup>131</sup>

Consequently, those two specific protective provisions in favour of vulnerable persons, among whom minors and unaccompanied minors are expressly included, necessarily implies a "pro-active obligation" to identify them.

Regarding the detention of minors and unaccompanied minors, two important judgments of the ECtHR<sup>132</sup> must be mentioned as well. In these cases the Court does not lay down the principle of the prohibition itself of minors' detention. Rather, the judgments imply that if states place minors in detention, it can only be in structures that have been specifically designed

to accommodate children.<sup>133</sup> Compliance with this obligation necessarily entails an obligation for the national authorities to conduct "proactive" identification of minors, as well.

### c. Consequences and conclusions regarding the identification of minors

In our view, although neither the four legal instruments, nor these two judgments, have promulgated expressly a "pro-active obligation" to identify minors, nevertheless the protective provisions, above mentioned, clearly and necessarily imply such an obligation for member states dealing with a migrant who, under the circumstances, the national authorities must reasonably and inevitably think twice whether he is a minor or not. Any other position would necessarily lead to deprive the protective provisions of any useful effect.

## 5. Identification of victims of torture<sup>134</sup>

### a. Relationship with Section III of this study

The identification of victims of torture has a connection with Section 3 of this study, regarding the identification of asylum seekers and applicants for another form of international protection. Under the conditions outlined in Section 3, § 3, a "pro-active obligation" to identify such applicants has been asserted. Clearly, such identification could assert that the migrant has been subjected to torture or other inhuman or degrading treatments, as well. It could but not necessarily since the principle of non-refoulement, requires not to return a person to a country where he or she reasonably fears being exposed to serious harm. It does not require that the person has been subjected to torture or inhuman or degrading treatment nor does it require to establish such facts.

Therefore, it is important to examine independently whether, under any international, regional or European community legal instrument—in particular those dedicated specifically to the prevention and fight against torture, and

<sup>131</sup> Article 3 § 9 of the Return Directive sets out that "vulnerable persons" means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence."

<sup>132</sup> ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03, Judgment of 12 January 2007 and ECtHR, *Muskhadzhiyeva v. Belgium*, Application No. 41442/07, Judgment of 19 January 2010.

<sup>133</sup> However, it should be noted that in both cases, the unaccompanied minor (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*) and minors accompanied by their mother (*Case Muskhadzhiyeva v. Belgium*) were young and very young children : five years for the unaccompanied minor, seven months, three and a half, five and seven years for accompanied minors.

<sup>134</sup> Or inhuman or degrading treatment.

inhuman and degrading treatment, the Member States are bound by a “pro-active obligation” to identify migrants victims of such acts. This issue is analysed in the following points 2 to 4.

### **b. Statement of the fundamental prohibition of torture and any inhuman or degrading treatment in general and specific legal instruments**

Many instruments set out the principle of the prohibition of torture and other inhuman or degrading treatment.<sup>135</sup> Among these are the International Covenant on Civil and Political Rights,<sup>136</sup> the European Convention on Human Rights,<sup>137</sup> the Charter of Fundamental Rights of the European Union,<sup>138</sup> the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the UN Convention against Torture and other Cruel, Inhuman or Degrading treatment.<sup>139</sup>

As has already been shown in Section 3, from the prohibition against such torture and treatment flows the obligation of States to ensure that the return of the migrant will not expose him/her to such acts, in the same conditions as defined in Section 3.

On the other hand, it does not seem justified to conclude that over and above the obligation of non-return in such circumstances, there is also a “pro-active obligation” to identify victims of torture or inhuman or degrading treatment among migrants arriving at the border.

### **c. The specific legal instruments on torture**

The main specific and relevant legal instruments are the UN Convention against Torture<sup>140</sup> and the European Convention for the Prevention of Torture.

135 In the limited context of this study, only the major relevant instruments will be discussed.

136 Article 7 ICCPR.

137 Article 3 ECHR.

138 Article 4 of the Charter.

139 Article 3 of the Convention

140 In this respect, the provisions of the Convention which refer to victims of torture (Article 5, c, 14, 21 c and 22 § 1 and § 5, b) no more than the provision that mentions education and information regarding the prohibition against torture (Article 10) justify such a requirement. The same for Article 14 which deals exclusively with acts of torture committed in any territory under the jurisdiction of the State concerned. In fact, subject in particular to Article 3, the main objective of the Convention is the prevention and criminalisation of acts of torture due to State officials concerned and not to other States agents.

### **The UN Convention against Torture**

The Convention does not set any obligation, nor mentions anything that can be interpreted as such, for the States Parties justifying a requirement of “pro-active” investigations to identify victims or possible victims of torture among migrants.

The UN Committee against Torture, established under Article 17 of the Convention, has made two general observations concerning the application of the Convention. The first concerns the application of Article 3,<sup>141</sup> the second the application of Article 2.<sup>142</sup> However, none of the considerations, set out by the Committee in its observations, posits a “pro-active obligation” of States to identify victims of torture or inhuman or degrading treatment among migrants arriving at the border.

Regarding the comment on Article 2, it must be noted again that it pertains primarily to the obligation to prevent and criminalise acts of torture, whether by State officials or not, when the acts are committed within the jurisdiction of the concerned State (with special attention to places of detention as well as for vulnerable groups). In accordance with Article 12 of the Convention, recital 18 of the observation of the Committee reiterates an obligation to support investigation of the state when there are reasonable grounds to believe that acts of torture were perpetrated.

### **The European Convention for the Prevention of Torture**

The purpose of the Convention is the establishment of a European Committee for the Prevention of Torture, whose mission is to conduct visits to places of detention in order to make comments for States, even public statements. None of its provisions is such as to justify a “pro-active obligation” of identification, as set forth before.

In the Standards Manual (non binding) issued by that Committee<sup>143</sup>, there is a recital<sup>144</sup> under Section IV, “Immigration Detention”, on the

141 CAT, Sixteenth session (1996), General comment N°1, Implementation of article 3 of the Convention in the context of article 22 (Refoulement and communications).

142 CAT, Thirty-ninth session (2007), General comment No. 2, Implementation of article 2 by States parties.

143 CPT/Inf/ (2002) 1, Revision 2010.

144 Recital 29, in fine.



training of the personnel of detention centres for foreigners. It states that staff “should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.”

#### d. The EU Directive on Reception Conditions<sup>145</sup> and the Return Directive<sup>146</sup>

##### The Reception Directive

If a migrant has been identified as an asylum seeker, he benefits from the provisions of Articles 17, 18 and 20 of the Reception Directive.<sup>147</sup> In that case there is clearly a (reasonable) “pro-active obligation” for members states to identify victims—adults and children—of torture or any other serious forms of violence among the asylum seekers.

##### The Return Directive

Even if the States exercise, as permitted, the option not to apply the directive at the border,<sup>148</sup> they may not derogate from the obligation to pay special attention to vulnerable people, including any people—adults and minors—who have been victims of torture, rape or other serious forms of psychological, physical or sexual violence, under the conditions of application of Article 14 § 1 of the return Directive<sup>149</sup> and, in case of detention (article 16, § 3).<sup>150</sup> Such an obligation necessarily imposes to proceed with the identification of these people, so as the provisions are not deprived of protective effect.

To conclude, if the specific instruments do not establish a general “pro-active obligation” for the member states to identify, at the border, victims

145 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the member states.

146 Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for the return of third country nationals illegally staying.

147 Article 17 is central. It states the “general principle” of the member states obligation to take into account the specific situation of vulnerable asylum seekers (including victims of torture) and to carry out their identification. Articles 18 and 20 set out specific standards for protecting “minors” “victims of any form of abuse” (Article 18) and “Victims of torture or violence” (article 20).

148 See Section IV on children.

149 See development on article 14, § 1 of the Return Directive in Section IV, point 2.

150 See development on article 16, § 3 of the Return Directive in Section IV, point 2.

of torture or possible victims among migrants, the relevant provisions of the Reception Directive and Return Directive can justify such a requirement within the application of the articles respectively mentioned above.

#### The Council Decision of 26 April 2010 supplementing the Schengen Borders code

Although this decision, relating to interception at sea, is not fully examined in this study, two main provisions could affect the answers given above.

In Part I of Annex 1,<sup>151</sup> under Section I, “General Principles”, §1.2 and 1.3 set out:

*“1.2. No person shall be disembarked in, or otherwise handed over to the authorities of, a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle. Without prejudice to paragraph 1.1152, the persons intercepted or rescued shall be informed in an appropriate way so that they can express any reasons for believing that disembarkation in the proposed place would be in breach of the principle of non-refoulement.”*

*“1.3. The special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection and other persons in a particularly vulnerable situation shall be considered throughout all the operation.”*

Paragraph 1.2 refers to the principle of non-refoulement in contexts of disembarkment, etc., and its requirement for the persons to be “informed in an appropriate way” logically implies that, on the one hand, the questioning of people about their country of origin, the circumstances of their departure or any other element will enable the authorities to avoid refoulement, as set out in the first sentence. On the other hand, it also implies that intercepted

151 Part I of Annex 1 includes binding rules, while Part II contains the non-binding rules and guidelines.

152 This paragraph sets out that “Measures taken for the purpose of the surveillance operation shall be conducted in accordance with fundamental rights and in a way that does not put at risk the safety of the persons intercepted or rescued as well as of the participating units.” It follows from this that paragraph 1.2 could not be applied when security units participating in the surveillance would be threatened, for instance.

or rescued people are in a position to understand and explain the potential risks of serious harm they would run if they were disembarked at the proposed location.

As a practical matter, the obligation to take into account the special needs of persons, mentioned in paragraph 1.3, also calls for identification of these people, since otherwise, this provision would become meaningless.

**It is worth considering that if these principles shall be applied at sea borders operations coordinated by FRONTEX, what could justify that they would not also be applicable in operations carried out at other borders, or the same borders even if not coordinated by FRONTEX?**

## 6. General Conclusions

When irregular migrants arrive at the border, there is a “pro-active obligation” for Member States to identify refugees/asylum seekers, victims of human trafficking, children (minors) and victims of torture, i.e., the four target groups of the DRIVE project. As analysed in this study however, the scope and applicability of this requirement differ according to each group.

The training of national officials<sup>153</sup> is undoubtedly a key element in ensuring compliance with these state obligations and the fulfillment of the rights of these vulnerable individuals and groups.

Beyond this cross-cutting requirement of identification, a crucial question is the monitoring of the respect for this obligation by Member States. The borders are not the areas of Member States where access to third parties (lawyers, NGOs, UNHCR, etc.) is the widest; far from it. Effective respect for the rights of these individuals and groups necessarily involves providing increased access to borders to third parties competent in these subject areas and practice.

<sup>153</sup> See especially Section 2, point 1.

# Part 3: What happens to people arriving irregularly by boat in Greece, Italy, Malta and Spain?

## A. General context

### 1. Trends and routes in the Mediterranean

Southern Mediterranean EU countries have been experiencing wild fluctuation in the number and routes of boat people in recent years. The arrival of the boats is not a new phenomenon but changes to migration routes have been rapid and often unpredictable.

There are no exact figures but official estimates and extrapolations abound. Year-to-year comparisons provide a glimpse of the wild swings in movement in recent years: from 32,000 migrants arriving by boat to Greece, Italy, Malta and Spain in the first ten months of 2009, to only 8,000 in 2010 (down 72.5%) to over 44,000 by the beginning of July 2011, in Italy only over half Tunisian nationals.

The year to year bounce was most significant for Italy, which saw boat people arrivals jump from 4,406 recorded arrivals in 2010 and Malta, which jumped from 47 arrivals in all of 2010 to 1,530 just between March and the beginning of June.<sup>154</sup>

Irregular and mixed migration routes to Europe, have been changing rapidly, influenced by events in countries of origin as well as by the measures to deter the arrivals taken by the member states individually, often in collaboration with the EU, through FRONTEX.

The main routes currently being used and where dramatic changes have been observed are:

- the central Mediterranean route<sup>155</sup> (via North Africa, mainly Libya) – this is currently the main sea crossing used by migrants to enter the EU. Since February 2011, following the uprising in Tunisia<sup>156</sup> and subsequently in Libya, a large number of migrants have been travelling from North Africa this way, arriving mostly at the Italian island of Lampedusa.
- the eastern Mediterranean route<sup>157</sup> (via Turkey) - this remains a main entry route into the EU with over half the detections of irregular border crossing being made here (not including recent arrivals into Lampedusa). However in early 2011 detections along the Greek-Turkish land border dropped by 60%.
- the Western African route<sup>158</sup> to the Canary Islands – arrivals decreased by 96% from 2009 to 2010, due to bilateral agreements signed by Spain with Western African countries (Mauritania, Senegal and Mali) and the intensive patrolling of the African coast coordinated by FRONTEX (Operation Hera). However, in the last quarter of 2010 and the first quarter of 2011 there has been a slight increase in the arrival of Moroccan nationals.

155 The Central Mediterranean route refers to irregular migration from northern Africa to Italy and to Malta. From 2008-2010, Libya has been a nexus point where migrants from the Horn of Africa and Western African routes and a small proportion of Asian nationals met before embarking.

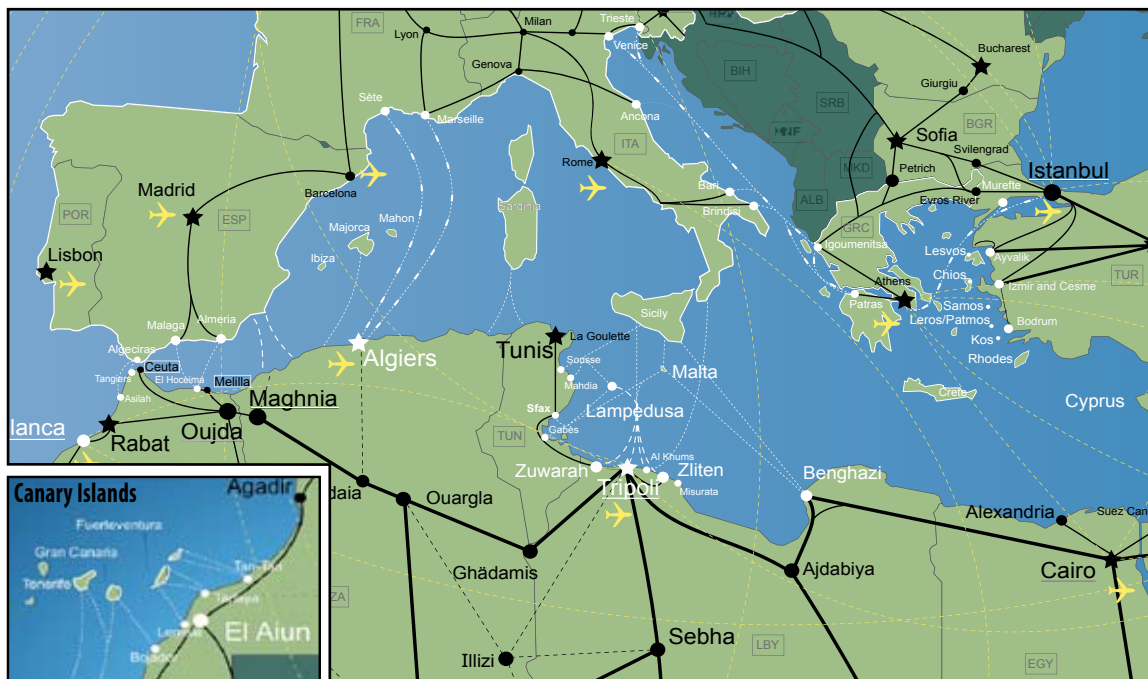
156 On 5th April 2011 a bilateral agreement was signed between Tunisia and Italy, resulting in the decrease in arrivals from Tunisia.

157 The Eastern Mediterranean route is the route taken by irregular migrants transiting through Turkey and entering the EU through eastern Greece, southern Bulgaria or Cyprus. Turkey, due to its geographical position near the EU, is the main nexus point on this route. From Istanbul, irregular migrants may reach the Greek islands in the Aegean Sea, or cross the land borders to Greece or to Bulgaria.

158 The Western African route is primarily through Western African countries to Spain via the Canary Islands. The main embarkation points are in Senegal and Mauritania and the main countries of origin are Mali, Mauritania, Guinea Conakry and Senegal.

154 <http://migrantsatsea.wordpress.com/2011/06/13/42000-migrant-landings-in-italy-in-first-5-months-of-2011/>.

## Irregular Migration Routes in the Mediterranean



ICMPD, the MTM Map on Irregular and Mixed Migration Routes

The routes used have become increasingly perilous and migrants travelling by irregular boats are at enormous risk, leading to a very high death toll. Press reports suggest that between 1988 and 2010, at least 17,317 people died along the European borders, the majority (12,554) trying to cross the Mediterranean Sea and north-Atlantic.<sup>159</sup> 2011 estimates suggest that 1,931 immigrants have lost their lives in the Mediterranean Sea during the first 7 months of the year.<sup>160</sup>

*“I paid 1,500 dollars to go from Morocco to Spain by boat. When I arrived at the beach I saw the boat was a ‘patera’ [a small fishing boat]. Everything I had was stolen in Morocco. We were lost at sea and called the Red Cross for help. When we arrived in the Spanish coast the Red Cross was there, together with the police and some journalists.”*

**Heron, from Senegal**

Since the FRONTEX's establishment in 2005, a substantial part of its operations has focused on the Southern Mediterranean countries to implement the EU concept of Integrated Border Management (IBM). FRONTEX has been carrying joint missions with all the countries involved, except Malta, which has refused to host operations since March 2010 (see Annex for full country report of Malta).

<sup>159</sup> Information from Fortress Europe, <http://fortresseurope.blogspot.com/2006/01/fortress-europe.html>.

<sup>160</sup> Fortress Europe (3.8.11), available at: <http://fortresseurope.blogspot.com/2006/02/nel-canale-di-sicilia.html>.

Between 2007 and 2011, Greece, Italy, Malta and Spain have shared between them over half of the one billion Euros allocated by the EU to the External Borders Fund for control of the common borders. Spain receives of 20.66 % of the EU External Borders Funds, Greece receives 13.7%, Italy 12.99% and Malta 3.9%.<sup>161</sup> The money allocated to national programmes as part of the External Borders Fund will be increased by 35% in 2012 compared to 2011 because of the “recent events in the Mediterranean region, which have prompted large numbers of people to flee the region, some of them towards Europe”. Italy, which is currently receives the largest number of migrants, will have its allocation increased from €32 million in 2011 to €52 million in 2012. Malta, Spain, and Greece, as well as Cyprus and France, will also have their allocation increased.<sup>162</sup>

However, it appears that the majority of these migrants regard the Southern Mediterranean countries as countries of transit rather than countries of destination. It has been observed that some migrants wish to remain undetected and unregistered in order to try to reach another destination in Western or Northern Europe, without having the Dublin II Regulations applied to them.

<sup>161</sup> Table No.1 (20.6.11) European Commission Home Affairs, ‘Figures on allocations by EU State for each Fund’, available to download on [http://ec.europa.eu/home-affairs/funding/borders/funding\\_borders\\_en.htm](http://ec.europa.eu/home-affairs/funding/borders/funding_borders_en.htm).

<sup>162</sup> Press release, 5.8.2011, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/953&format=HTML&aged=0&language=EN&guiLanguage=en>.

The overall social and economic context in Europe is also pertinent. The countries in question have all been affected by the international economic crisis, most significantly in Spain and Greece. Unemployment and cuts in public services are widespread. This has an effect not only on services available to migrants but also on the ability of migrants to obtain a job and earn a living. The harsh economic climate is also having an impact on public attitudes towards migrants with a documented rise in anti-migrant sentiment and extremist political parties. NGOs, often providing essential front-line support and services to migrants, are also suffering budget cuts, which may even jeopardise their very existence. Indeed, some of the DRIVE project partners are facing uncertainty about the future of some of their projects.

## 2. Official figures

It remains a challenge to provide estimates on the numbers of irregular migrants arriving in the Mediterranean countries. Official figures on the number of migrants intercepted and deported vary and are often not systematically collected nor disclosed. The fact that some migrants remain undetected obviously means that they are not accounted for.

In relation to the four groups of migrants identified as having protection needs, figures are systematically collected and made public by EUROSTAT - as well as UNHCR - only on the number of asylum applications lodged in the countries involved. Figures for unaccompanied children and victims of trafficking are almost nonexistent or somewhat unreliable. Data on the number of other vulnerable migrants, such as victims of torture are not collected.

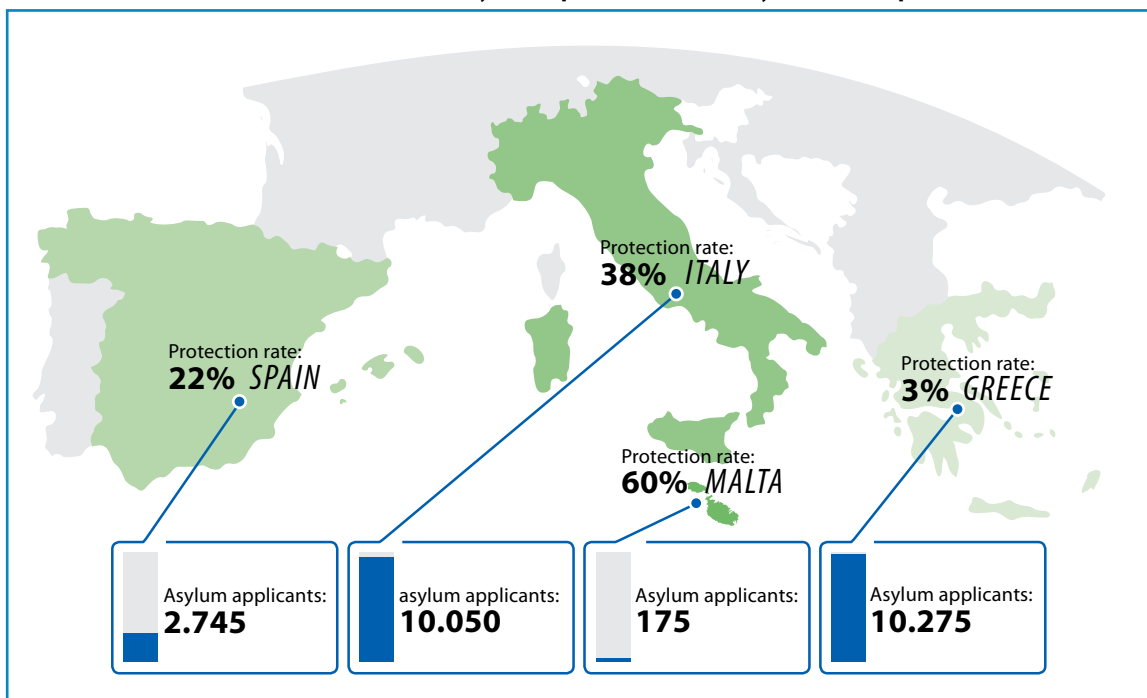
### a. Asylum Seekers

The Mediterranean has seen wide fluctuations in the number of asylum seekers over recent years. In 2010, the 27 EU member states registered 235,900 claims, a 5% decrease from 2009. The largest decrease in annual asylum levels was reported by the eight southern European countries, which received 33,600 asylum requests during 2010, a 33% decrease from in 2009. For the DRIVE countries, the following decrease was noted: Malta (-94%), Italy (-53%) and Greece (-36%).<sup>163</sup>

The nationalities of migrants arriving in the four countries differ, mainly in accordance with the route taken and also affected by other factors such as historic links between the country

163 UNHCR, *Asylum Level and Trends in Industrialized Countries 2010*, (March 2011), available at: <http://www.unhcr.org/4d8c5b109.html>

Protection rates and number of asylum requests in Greece, Italy, Malta and Spain in 2010



Source of figures: Eurostat [http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database)



of origin and destination. Data is available with regard to the nationalities of those who make applications for asylum but generally not for those who do not.

#### Five main groups of asylum applicants 2010 (rounded figures)<sup>164</sup>

Greece		Italy	
Pakistan	2,750	Nigeria	1,385
Georgia	1,160	Pakistan	930
Bangladesh	985	Afghanistan	875
Albania	695	Turkey	855
China	545	BA	815
Malta		Spain	
Somalia	35	Cuba	405
Pakistan	15	Nigeria	240
Eritrea	15	Algeria	175
India	15	Guinea	165
Ethiopia	10	Cameroon	155

Recognition rates (meaning the number of claims granted out of the total claims lodged) and the type of status granted vary between countries. The table below presents the number of decisions made - in first instance - in the four countries and the outcome of those decisions. Recognition rates in Malta were the highest (60%) although the majority of applicants were granted subsidiary protection. In Italy 38% of decisions were positive and in Spain 22%. In Greece only 3% of decisions made in 2010 were positive. The average rate of positive decisions across the 27 EU countries was 25% in 2010.

#### First instance decisions by outcome 2010 (rounded figures)<sup>165</sup>

	Total Decisions	Total positive decisions	Refugee status	Subsidiary protection	Rejected
Greece	3,455	105	60	20	3,350
Spain	2,785	610	245	350	2,175
Italy	11,325	4,305	1,615	1,465	7,015
Malta	350	210	45	165	125

164 Table is based on figures presented by Eurostat (5/2011), Five main groups of asylum applicants in the EU27+EFTS countries, 2010, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-11-005/EN/KS-QA-11-005-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-11-005/EN/KS-QA-11-005-EN.PDF).

165 Table is based on figures presented by Eurostat (5/2011), Asylum applications and first instance decisions on asylum applications in 2010, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-11-005/EN/KS-QA-11-005-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-11-005/EN/KS-QA-11-005-EN.PDF).

#### b. Unaccompanied Children

Statistics on unaccompanied children are not widespread or consistent, with the most comprehensive and comparable data only on those who lodge an application for asylum. Italy is the only country where figures are systematically collected both by government agencies and NGOs.

In Greece, there is no reliable recent data, though the number of apprehensions of unaccompanied children reported by the Hellenic police in 2007 amounted to 6,031 and 8, 298 in 2008.

In Spain, there is no reliable official data on the number of unaccompanied children.<sup>166</sup> The most recent figure provided by the European Migration Network (EMN) national contact estimated that in December 2008 there were approximately 6,000 unaccompanied children being cared for in Spain.

In Malta, again no figures are available but a study undertaken by Medecins Sans Frontières in 2009 suggested that around 8% of all applicants are identified as children.

In Italy, the Italian Committee for Foreign Minors (CFM) reported that in June 2011 there were 5,806 foreign unaccompanied children registered in Italy. In 2010 the Italian Red Cross reported that 1,023 children arrived by boat in Italy, 686 of them unaccompanied.

#### c. Victims of Trafficking

Figures for victims of trafficking are even harder to find.

In Spain, according to figures by the Ministry of Interior, there were 1,300 identified victims of trafficking in 2009.

In Italy, it has been reported that in 2008, approximately 1,100 trafficking victims entered social protection programs. According to the Ministry of Interior, 810 victims received residence permits in 2009, following their cooperation with the authorities.

166 A study undertaken in 2010 by IRED, France Terre d'Asile and CIR. <http://www.i-red.eu/resources/publications-files/ftda-i-red-cir-minors10-2010.pdf>.

Greece is considered to be a key transit and destination country for victims of trafficking. Figures are being collected by the Ministry of Citizens Protection but are estimated to represent only a fraction of the problem. Official figures suggest that there were 125 victims identified in 2009 and 78 in 2008.

In Malta, it has been suggested by the authorities that trafficking does not constitute an issue, with only one migrant so far being identified as having protection concerns as a result of trafficking.

#### d. Other vulnerable groups

Figures are not collected with regards to other groups who may require a referral to special services and treatment, such as victims of torture, victims of sexual and gender-based violence, people with disabilities and other categories. All four DRIVE countries may grant, on a discretionary basis, humanitarian protection status to vulnerable migrants or people with special circumstances. While Italy granted some form of humanitarian status to 1225 people in 2010, for the same year Greece only granted 30, and Malta and Spain 15.<sup>167</sup>

## B. Overview of the situation in Greece, Italy, Malta and Spain



<sup>167</sup> Table is based on figures presented by Eurostat (5/2011), Asylum applications and first instance decisions on asylum applications in 2010, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-11-005/EN/KS-QA-11-005-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-11-005/EN/KS-QA-11-005-EN.PDF) Although applicants recognised for humanitarian reasons are not part beneficiaries of international protection as such they are counted for in official statistics in Eurostats. Humanitarian protection is usually accorded to vulnerable migrants or people with special circumstances in a discretionary manner.

## 1. Greece

### a. Key facts and figures

In recent years, Greece has been the main entry point for irregular migrants into the EU. According to FRONTEX, by the end of 2010, Greece was responsible for around 90% of all detections of irregular crossings at external EU land, sea and air borders. However, as a result of the crisis in North Africa, Italy has taken the lead in the number of illegal border crossings, through arrivals into Lampedusa.<sup>168</sup>

Figures by the Greek authorities suggest that the total number of arrests of irregular migrants at the Greek borders stood at 132,000 for 2010, a modest increase from the year before, when 126,145 migrants were arrested. While numbers remained relatively stable, routes of arrivals changed dramatically. Until 2010 the majority of arrivals into Greece were via the Greek-Turkish sea border, and onto the Islands of the Aegean Sea. However from 2010 onwards the majority of migrants were arriving via the land border with Turkey, mainly through the Evros region.<sup>169</sup>

Strongly hit by the economic crisis, Greece has been advocating for increased EU solidarity and burden sharing actions in the area of migration and asylum. In particular, Greece has asked the EU to intensify FRONTEX activities and conclude the EU readmission agreements and improve cooperation with countries of origin. Greece holds extensive joint operations with FRONTEX, both at land and sea borders, and has been hosting the first mission of "Rapid Border Intervention Teams (RABITs)" since November 2010 (see Part 1, chapter C).

It is estimated that most of those who cross Greece's borders irregularly see the country as a transit country from which they attempt to reach other EU Member States. The consistent failure of Greece to offer adequate protection to refugees and other groups in need of protection, alongside a failure to provide appropriate support mechanisms to migrants in need, has reinforced the position of Greece as a transit

<sup>168</sup> Frontex, Fran Quarterly, Issue 1, January – March 2011.

<sup>169</sup> According to Frontex report for the first quarter of 2011- At the Greek land border with Turkey, detections of illegal border crossings fell by 60% compared to the previous quarter, but still constituted more than half of illegal border-crossings elsewhere of Lampedusa.

country rather than a country in which migrants want to remain.

Following several reports and a landmark decision of the European Court of Human Rights (MSS v Belgium and Greece), most EU countries stopped returning asylum seekers to Greece under the provisions of the Dublin II Regulation. The Court has held that removal to Greece would expose a migrant to degrading detention and living conditions (that are in breach of Article 3 of the ECHR) and would put him or her at risk of indirect refoulement.

The Fundamental Rights Agency (FRA) has criticised Greece for the ill-treatment migrants receive at its borders, reporting specifically on extreme violations of human rights at the Evros region.<sup>170</sup> FRA has noted that the situation at borders in Greece is not conducive to identifying persons in international protection.<sup>171</sup> UNHCR described the situation in the Evros region as a humanitarian crisis, thus implying the need for an emergency response. However, no emergency situation was declared by the Greek government, which could have evoked the civil protection mechanisms to deploy equipment and humanitarian aid. Nor was there any evidence of a comprehensive emergency response to address the conditions in detention, despite the availability of EU funds for this purpose. Due to a lack of NGOs in the area only MSF deployed permanent teams to Evros in December 2010.

The Greek government has been taking steps to reform the asylum legislation and address the backlog of outstanding applications. In August 2010, the Ministry of Citizen Protection communicated to the European Commission a Greek Action Plan on Migration Management. As part of the changes, provisions were made for the creation of a separate asylum system as well as for the establishment of screening centres. Funds were also made available from the ERF to address the humanitarian situation at the borders.

170 The FRA report states that on 29 January 2011, the FRA counted 48 unmarked graves during its on site –visit at the make-shift cemetery on a hill about 500 metres from the nearest paved road near the village of Sidero.

171 FRA, Coping with a Fundamental Rights Emergency: The Situation of persons crossing the Greek land border in an irregular manner, 2011, available at: [http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011_EN.pdf).

## Greek Action Plan on Migration and Management and Asylum Reform

Greece has been categorised in the Stockholm Programme as a country facing “particular pressures”. The country is therefore receiving emergency funding for the implementation of its Action Plan as well as funds to be provided in the next 3 years for investment in infrastructures and services. The Plan sets out the strategy of the Greek government for managing migration. It was finalised following an intensive, one month consultation process at the end of 2009, with key stakeholders involved in migration and asylum issues in Greece.

### The Action Plan encompasses the following main actions:

1. The creation of first reception and screening centres and procedures for persons irregularly entering the country, ensuring a structured screening process. In this context it is envisaged establishing mobile screening centres as well as three permanent ones in Evros, the Dodecanese and Lesbos

2. The creation of a new independent Asylum service, independent of the police, and the complete restructuring of the Asylum system in Greece. The ultimate aim is to establish this new Asylum service, which will be staffed by civilian personnel, to take up its duties in October 2011.

3. The introduction of new procedures and support for vulnerable groups. This will be done by improving physical structures, as well as increasing support to services working with vulnerable groups. Existing buildings used as reception centres will be increased in space while alternative accommodation for these groups will also be sought. In this context the Ministry of Health and Social Solidarity will create a new body to co-ordinate all social assistance to such vulnerable groups.

4. The building of new exemplary pre-return, removal and detention centres with a capacity for at least 1000 persons (2 x 500)

5. Increasing the efficiency of the return of irregular migrants to their countries of origin: The Action Plan aims to do this through the conclusion of bi-lateral agreements with countries

from which a high number of persons illegally cross into Greece and repatriation projects with IOM

The Plan is implemented in close cooperation with UNHCR.

### **b. Procedures and practices in Greece when dealing with boat arrivals – key issues identified by the DRIVE project**

➤ **On arrival, there is no systematic humanitarian assistance and no framework in place to identify asylum seekers or other vulnerable migrants**

On arrival, NGOs such as PRAKSIS or MSF attempt to provide some medical and material assistance (see box below) in the absence of any systematic humanitarian assistance. Provision is grossly inadequate. All migrants are brought to a police station and initial registration is conducted focusing on bio data. An expulsion order is issued to migrants immediately after they are registered, although orders are not usually enforced. They are then immediately sent to either a detention centre or kept in crowded police cells as there is no other place to accommodate them.

During both the initial registration phase and detention there is no identification procedure in place for persons wishing to claim asylum, unaccompanied children, victims of trafficking or other vulnerable persons. Even persons who identify themselves as wanting to make a claim have difficulties in doing so due to lack of information, translators and other difficulties in accessing the procedure. Many migrants prefer not to seek protection at the borders in order to move on from Greece to other European countries. Even those who remain in Greece usually prefer to apply for asylum in Athens where their claim is more likely to be registered and where they are less likely to be detained. Those who are able to seek protection are usually only able to do so following the intervention and mediation of NGOs.

*“In theory, in a border station where there isn’t any other structure, the police are in charge. In reality, there is no one in charge. A basic screening process is done by MSF and other programmes.”*

**Tsakatara Vagia & Stelios Kampouridis, Hellenic Ministry of Health and Social Solidarity**

### **Praksis : Mobile Support Units – outreach services to address the needs of irregular migrants arriving at Greek Islands**

Since February 2011, Praksis has been operating Mobile Support Units providing emergency care to newly arrived migrants. The project is co-financed by the EU and the Greek Ministry of Health and Social Solidarity, under the Emergency Measures of the European Refugee Fund 2010.

The project is focused on deploying mobile units able to intervene at arrival and also conduct outreach activities in order to provide medical, social and legal support to the newcomers. The multi-disciplinary team working on the ground consists of: doctors, nurses, social workers, lawyers and translators.

The mobile units are currently deployed in the islands of Samos, Lesvos, Chios and in the North of Greece (Thessalonica – Promachonas).



© PRAKSIS

➤ **All migrants detected at the borders are detained. Most are held in detention in inhuman and degrading conditions**

*“Existing conditions at the detention centres are extremely difficult. All the newcomers are put at the same space, without separating the women from men. There is only one rest room and there are cases where a woman goes to the rest room and gets sexually harassed by men. Police know about that, but there is nothing they can do due to the existing conditions.”*

**Apostolos Veizis, head of programs at MSF Greece**

The conditions in detention centres in Greece have been widely reported as being grossly



inadequate. Some of the main concerns were that men, women, children and vulnerable people are all being held together, in overcrowded cells and inhuman conditions. There is no heating and the hygiene is poor and there are no adequate responses to the needs of particularly vulnerable groups, such as families, pregnant women and unaccompanied minors.<sup>172</sup> Detainees do not have access to outside space and are given no information about their rights. When information is provided it is usually by NGOs or UNHCR, though they are not always guaranteed access to the centres and their intervention is in the framework of specific and temporary projects. Those who have claimed asylum at the borders, as well as those who have stated that they are children, often remain in detention for longer periods.

*“While they are kept in the detention centres the most possible way to get information about their rights and services available to them is through nongovernmental organisations that are allowed to have access to the detention centre - but this is not the usual case.”*

**Elpida Nomikou, Social Worker, Hellenic Red Cross**

According to figures by the Greek Ministry of Citizen’s Protection, the number of new asylum applications lodged in 2009 was 10,270. The Greek authorities have limited capacity to register claims and NGOs suggest that the number of migrants wishing to claim asylum and unable to access the asylum procedure is far greater. In addition, it is estimated that there are approximately 50,000 claims for asylum outstanding from previous years.<sup>173</sup> Recognition rates are the lowest out of the four countries standing at only 3%: EUROSTAT figures reveal that out of 3,455 asylum decisions taken in 2010 only 105 were positive, figures include the granting of humanitarian status. Until now the police have had the authority to make decisions on asylum claims but the recent reform has led to the creation of an independent asylum system.

172 FRA, Coping with a Fundamental Rights Emergency: The Situation of persons crossing the Greek land border in an irregular manner (2011) available at: [http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/Greek-border-situation-report2011_EN.pdf).

173 Figures released by UNHCR at the beginning of 2010 report the presence of 48,201 asylum seekers, but the Ministry of Citizens protection estimated that there are approximately 52.000 pending claims (in both first and second instance).

➤ **Reception arrangements available to asylum seekers and other vulnerable migrants are poor at best and often non-existent**

Greece offers very limited reception arrangements to asylum seekers and other vulnerable migrants. According to figures provided by UNHCR in April 2011 there are only 780 reception spaces in total for both unaccompanied children and asylum seekers, in about 12 centres. Migrants, including children and vulnerable individuals, often live in destitution, sleep in the streets and try to support themselves by working in the black market. Children and victims of trafficking are at risk of further abuse and of being re trafficked.

➤ **NGOs attempt to address the protection and social assistance needs by providing essential services but they have limited capacity and resources**

*“What happens now in Greece is a situation out of control. The NGOs are called to do what the government should be doing and the government doesn't take any responsibility at all!”*

**Panos Christodoulou, Legal Counselling Management – Director, Greek Council for Refugees**

Due to the systematic failure of the authorities to provide medical services and accommodation to migrants, a heavy burden is placed on NGOs to fill the gap. NGOs however suffer from limited, project-based funding, and are struggling to meet the overwhelming demand. Services are not standardised and differ from place to place.

## 2. Italy



### a. Key facts and figures

In the first quarter of 2011 Italy had overtaken Greece in the number of irregular arrivals detected at EU borders, due to a large number of



migrants arriving from North Africa through the Italian sea border, specifically to Lampedusa.<sup>174</sup> At the end of June 2011 the Italian Coast Guard estimated that the number of arrivals by boat had reached approximately 44,000 since the start of the crisis.<sup>175</sup>

The increase in arrivals represents a dramatic shift in trends previously observed. Boat arrivals dropped sharply between 2009 and 2011 as a result of the Treaty on Friendship, Partnership and Co-operation that was signed with Libya in August 2008 and ratified in February 2009. In 2009, according to the Ministry of Interior, 9,573 persons arrived by boat in Italy, a decrease of about 90% from the previous year. In 2010, in former points of arrival (Lampedusa and Sicily) there was a further decrease of about 80% (a drop of 96% in Lampedusa). In the same year, arrivals on the Adriatic Coast (mainly to Puglia) increased considerably with migrants trying to reach Italy in small boats from Turkey or Greece. In the framework of its co-operation with Libya, Italy conducted “push-back” operations from May 2009, which consisted of returns to Libya of hundreds of persons who were detected or rescued by Italian authorities at sea. These “push backs” have placed Italy under severe criticism by various stakeholders, including UN agencies and NGOs and had raised concerns that migrants who potentially had claims for protection were being returned to a country where no protection was available and ill-treatment of migrants was common.<sup>176</sup>

## b. Procedures and practices in Italy when dealing with boat arrivals – key issues identified by the DRIVE project

➤ **Italy has set up mechanisms to identify asylum seekers, children and other vulnerable migrants on arrival. However, these mechanisms are not always utilised in an efficient and consistent manner.**

174 Frontex, *FRAN Quarterly Issue 1*, January – March 2011 (July 2011).

175 Information presented on 28 June by officials from the Italian Coast Guard, in a presentation before the Italian Parliament’s Schengen Committee, information reported in <http://migrantsatsea.wordpress.com/2011/07/01/italian-coast-guard-44000-migrants-reach-italy-by-boat-in-first-half-of-2011/>

176 For example, *Report to the Italian Government by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* (April 2010) <http://www.cpt.coe.int/documents/ita/2010-inf-14-eng.htm>

Italy has been experiencing regular arrivals of migrants by boats since the 1990s crises in the Balkans. Therefore the system implemented to deal with mixed migration flows is relatively well developed. In Italy attempts are made to identify and differentiate migrants at an early stage and route them to different procedures accordingly. Furthermore, Italy is the only country amongst the four examined where there are initial reception centres (CDA, CSPA)<sup>177</sup> specifically designed to identify people in need of protection and provide immediate assistance on arrival.

Nevertheless, procedures implemented for the identification and reception of migrants are not always harmonised nationally and differ considerably between points of arrival. Although provisions are in place, the management of new arrivals is often carried out in an ad hoc manner, leading to mistakes in the identification process and use of inappropriate reception facilities. While in law, there are different centres for different purposes and different groups, in practice people end up being housed in the centres that have places available locally.

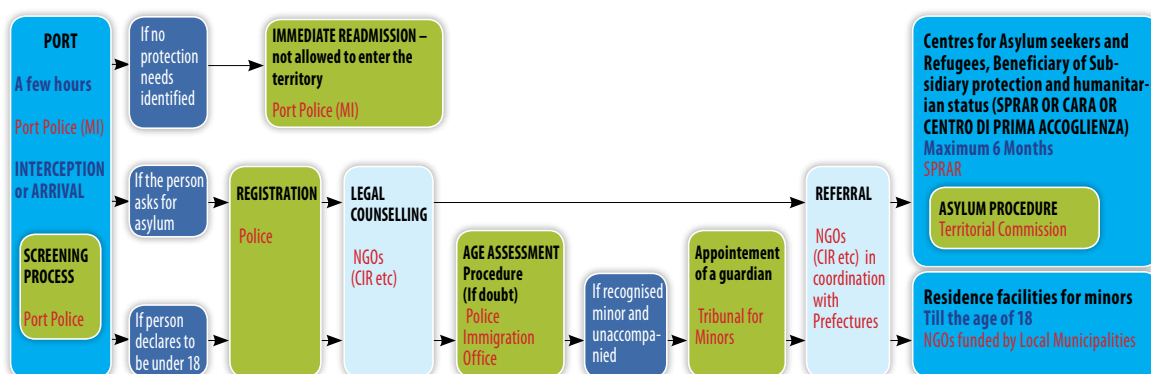
### Procedures followed on arrival differ between official and non-official points of entry

The following chart represents the procedure usually followed in dealing with migrants arriving by boats at official border points (ports) in Italy.

177 The Centres for first aid and reception (CSPA: Centri di Primo Soccorso e Accoglienza) were created in 2006 so that the first identification and emergency aid can be conducted before persons are transferred to other types of centres (CARA, CIE etc). Newly arrived migrants stay in this kind of centre for about 48 hours, although this period can be prolonged in case of large influxes of arrivals. To date, there are 3 CSPA in Italy: in Lampedusa (381 places), Pozzallo (170 places), Cagliari-Elmas (220 places). Most migrants housed in the Lampedusa centre are transferred to Sicily and are not meant to stay on the island.

The “Reception Centres” (CDA- Centri D’Accoglienza), first centres for foreigners in Italy, were created in 1995. These centres are geared towards receiving newly arrived migrants regardless of their legal status to guarantee initial support and accommodation. However, as underlined by MSF, migrants thus live in conditions not clearly regulated by law, but which usually take the form of detention. There is no time limit to the detention, nor authorisation required by a judge. These CDA’s are in Bari (774 places), Brindisi (128 places), Caltanissetta (360 places), Crotona (1166 places) and Foggia (778 places).

## PROCEDURES FOLLOWED FOR MIGRANTS ARRIVING AT PORTS IN ITALY (Official border points)



Arrivals at ports (considered ‘official’ border points) are not subject to the same procedures as arrivals at non-official points of arrival along the coast. When boats arrive at non-official border points,<sup>178</sup> procedures do not always follow a consistent pattern. The chart above therefore focuses on the regime for arrivals ports.

At official border points, NGOs usually are not allowed access to migrants immediately upon their arrival, for example, when they have been smuggled on ferries or in trucks. If the migrant makes a claim for asylum or declares that he/she is under age, he/she will be allowed entry to the territory. Other irregular migrants will be returned immediately on the boats on which they arrived. There are no procedures to identify other vulnerable categories of persons who may need protection or assistance, such as victims of trafficking. As NGOs do not have access to those refused entry, it is impossible to assess the potential impact on protection needs. However, once a migrant has been allowed entry to the territory, he/she will have systematic access to information and legal and social assistance centres operated by NGOs such as CIR, Caritas, Italian Red Cross, ARCI (Associazione Ricreativa e Culturale Italiana).

### Information Portals at Ports

On the basis of Italian immigration law, individual agreements are concluded every year between local government authorities and NGOs, such as the Italian Refugee Council (CIR). These relate to the setting up of “information portals” for asylum seekers at ports, airports and land bor-

ders.<sup>179</sup> The right to information on procedures for protection is grounded in Italian Law 28 and the Ministry of Interior funds services.

In the port of Ancona, for example, CIR provides:

- legal assistance both for newly arrived asylum seekers and those transferred to Italy on the basis of Dublin II Regulation;
- assistance to and orientation of unaccompanied children and first assessment of family links to prevent trafficking
- social assistance to asylum seekers and refugees who live in the region.

Interviews are jointly carried out by the Border Police and CIR officers, the latter identifying and referring asylum seekers and vulnerable people (unaccompanied minors, victims of trafficking, etc.) with special needs to the competent authorities and centres/services providers. Once migrants are defined as asylum seekers, unaccompanied children, victims of human trafficking or economic migrants to be re-admitted, they receive social and legal assistance through CIR.

“It is important to establish a reliable and cooperative relationship between the Border Police and NGO staff with respect to their roles. Without fluid and transparent cooperation, it would be impossible to make a common assessment and conduct proper identification in such a short period, especially for difficult cases.”

Maria De Donato, CIR

179 On the basis of the law (article 11 sub-section 6 of Immigration Law 286/98 as modified by law 189/02; Decree 2 May 2001), reception services aimed at giving assistance and information, if possible in transit zones, are to be made available to “the beneficiaries of the services are those who lodge an asylum application and foreigners who intend to stay in Italy for over three months.”

178 Points of entry outside established border points (official ports and airports). In the context of boat arrivals this refers to arrival at any point along the coast that is not established as a port.

At non-official border points a different regime applies. Migrants normally receive immediate medical and social assistance and are then transferred to different types of structures (CDA, CSPA, CARA), depending on what is available locally rather than on their needs. Staff members of the Praesidium project (see Part 2) are present in most points of arrival along the south coast (Puglia, Sicily, Lampedusa, Calabria, Marche and Campania). The team aims to collaborate in the identification and referral of asylum seekers, children, trafficking victims and other vulnerable migrants to appropriate services and procedures in the first phase of arrival. Despite the agreement signed with the Ministry of Interior, the organisations involved – IOM, UNHCR, Save the Children, Red Cross - still report certain difficulties in accessing migrants at points of arrival. However, it is estimated that the project has greatly improved the situation. However, it is important to note that the project is financed by the Ministry of Interior on a yearly basis and may cease at any time.

At locations where Praesidium personnel do not operate, it is reported that access to newly arrived migrants is dependent on the discretion of police authorities, as well as on the presence of NGOs in the region.

During initial registration, all migrants are, in theory, asked about their nationality and their reasons for leaving their country in an attempt to identify asylum seekers. Interviews normally take place in the presence of an interpreter. Since 2009, all irregular migrants are charged with the crime of illegal entry, sanctions are only suspended if the person asks for asylum or any other type of protection.

This registration process can be done in several places: at shore, in a port hangar, in a police station or in a first semi-open “identification and first aid” centre (CSPA, CDA) depending on what exists in the region and what systems have been developed.

Unlike the three other countries covered by DRIVE, in Italy migrants are not automatically sent to detention.

**Providing medical assistance to migrants at points of arrival: Médecins sans frontières**  
Medical assistance on arrival has been provided

by Doctors without Borders/Médecins Sans Frontières (MSF) in the framework of certain projects. The organisation has been working at landing points and in open settings to provide medical care and mental health support to arriving refugees, asylum seekers, and migrants from 2002 to 2009 and it has, since February 2011, restarted its activities in Lampedusa.

MSF works on the island of Lampedusa and the southern coast of Sicily, operating a mobile clinic managed by a team consisting of one doctor, one nurse and a cultural mediator. The mobile clinic was set up at the port of Lampedusa and equipped with all the medical equipment needed to provide initial medical care to migrants with health problems. MSF likewise provides new arrivals with basic necessities, such as hygiene materials and blankets. Parallel to this activity of “medical triage” and immediate assistance at arrival points, MSF conducted monitoring activities in reception centres. MSF’s work in Italy is defined by an MoU with the Ministry of Interior which states that it conducts both medical triage upon arrival and follow up of patients, in the centres they are referred to.

➤ **Different categories of migrants are referred to different types of reception centres, according to the initial identification process**

People identified as asylum seekers are usually referred to open reception centres (CARA) managed by the state or private service providers, pending the results of their application. In many cases however, CDA and CARA are used inter-changeably. They can then be referred to special small-scale integrated and adapted structures (SPRAR) which house both asylum seekers and beneficiaries of international protection. Identification of vulnerable asylum seekers, especially victims of torture, is usually done within these centres.

**Improving the physical, social, and psychological condition of victims of torture and preventing torture and ill-treatment in Italy**

Since 1996, the VI.TO project led by the Italian Council for Refugees (CIR) in partnership with the San Giovanni Hospital<sup>180</sup> (in Rome) has implemented activities to:

<sup>180</sup> In particular the Centre for the Study and the treatment of Post traumatic and stress pathologies.

- improve the standard of identification, care and legally valid certification, together with psychosocial and legal services to torture survivors in Italy;
- promote a process of exchange and capacity building on these issues in Italy;
- promote the prevention of torture through awareness raising and lobbying.

The project, among other activities, has identified and conducted training within 11 national Medical Psychological Centres (part of the National health system) in the Territorial Commissions for the Recognition of International Protection – in charge of conducting refugee status determination.

These training sessions have brought the creation of a network of medical centres all over Italy, able to identify, treat and certify victims of Torture (NIRAST<sup>181</sup>). This network of 10 medical centres works closely with reception centres for asylum seekers, commissions determining refugee status and local hospitals who refer cases to them. The network is also engaged in training of doctors and psychologists. It has also created a common database (of epidemiological, clinical, social, stream data) to monitor the situation of asylum seekers and refugee victims of torture.

However in these centres, places are very limited, especially for the vulnerable, with only 50 places in total. Beneficiaries of refugee status often remain without accommodation for much longer periods than foreseen.

Recognition rates in Italy are relatively high. According to data given by the National Commission for 2008, of almost 22,000 applicants evaluated, 49% were granted some form of protection. More specifically 8% of claimants received refugee status, 32% subsidiary protection and 9% received a humanitarian permit.

Those who have been identified as having no protection needs are then sent to a Closed Centre for Identification and Expulsion (CIE). Access to the CIEs by NGOs and IOs is not systematic and only permitted on the basis of individual arrangements with specific organisations. This is very problematic considering the fact that many cases of trafficking victims,

181 <https://www.nirast.it>.

as well as cases of asylum seekers, have been detected only once the migrants had been sent to detention. Furthermore, maximum duration of stay in a CIE was extended from 60 days to 180 days (Law 94/ 2009) and has now been further extended to 18 months (in June 2011), without planning any changes in the management of this kind of centre.

#### Providing services for trafficked women inside detention centres – Be Free

The project “Prendere il Volo”, Be Free Social Cooperative against trafficking, violence, discrimination, runs an advocacy based service for women who have been victim of trafficking for purposes of sexual or work exploitation and who are now detained within the Governmental Centre for Identification and Expulsion (C.I.E.) of Ponte Galeria – Rome. The main objective of the psycho-social and legal counselling office provided is to help victims to join programmes of social protection and therefore give them access to a special humanitarian residence permit, accommodation in a protected structure and access to language and job training.

The service provides:

- **psychological counselling** to help them overcome the strong trauma and related feelings of fear and shame;
- **legal assistance:** collection of the traumatic history; writing and filing of the lawsuit complaint against the trafficker (to the Prosecution of the Criminal Court with notification to the Immigration Office of Rome’s Police Headquarter located within the CIE); writing the formal request for issuance of the residence permit to the Public Prosecutor.
- **social assistance:** search for accommodation in protected centres, with the help of the National Anti-Trafficking program, or through contacts with the associations and the centres located on the national territory. The Project is funded by the Department for Equal Opportunity and the Department for Social Affairs of the Province of Rome. For more information, please refer to: [www.befreecooperativa.org](http://www.befreecooperativa.org)

#### ➤ Separated children cannot be detained while waiting for the results of the age assessment procedures

If during registration the migrant declares that



he/she is a child and does not have any documents to prove he/she is below eighteen years old, the police request an X-ray examination to determine age. The medical report does not generally indicate the margin of error and the results are not given to the child, which makes it very difficult to appeal. Presumed unaccompanied children are supposed to receive special treatment and cannot be detained pending the outcome of the age-assessment procedure.

Unaccompanied children who are recognised as children are allocated a guardian and referred to reception facilities for minors where they can stay till until they reach the age of 18. Italy has registered on its territory the presence of 7,797 minors in 2008 and 4,438 in 2010 –of which 689 had arrived by boat. The top five countries of origin according to the 2010 data were Afghanistan (20.7%), Morocco (14.7%), Egypt (11.1%), Albania (9%) and Bangladesh (5.7%).

**The Italian experience in reception of Unaccompanied Children**

The ‘National Programme for the Protection of Unaccompanied Foreign Minors’ aims to facilitate the reception and integration of unaccompanied foreign minors. It is promoted by the Ministry of Labour and Social Policies and implemented by the National Association of Italian Municipalities (ANCI) via a network of municipalities selected by means of a public call for proposals. Focusing on the initial moment of arrival of unaccompanied foreign children in Italy, especially on the coasts of Sicily and the Adriatic Sea, the main aim of these services is to facilitate the transition between the initial moment of reception and the successive stages of care.

The Programme also aims to increase the protection afforded to unaccompanied foreign children in Italy by encouraging Italian municipalities to set up specific services, respecting certain quality standards according to nationally standardised procedures.

Working together with the network of municipalities adhering to the scheme, the Programme:

- defines and disseminates (via the transfer of existing good practices and various other methods) standardised, jointly drafted procedures for the initial reception and protection of unaccompanied foreign minors;

- coordinates local activities (with the support of a computerised data base);
- increases levels of skill and collaboration (especially between institutions) to improve the procedures currently adopted vis-à-vis the identification of unaccompanied foreign children;
- tests and disseminates innovative tools designed to increase the skills of operators working with unaccompanied foreign children (with a special focus on linguistic and cultural mediation);
- increases the protection afforded to unaccompanied foreign minors via the definition of jointly- approved, personalised socio-educational programmes;
- promotes the family fostering of unaccompanied foreign children;
- encourages prompt, accurate exchanges of information between local and national institutions;
- strengthens collaboration between institutions by means of the Committee for Foreign Minors, an inter-institutional committee for the protection of unaccompanied foreign minors set up by the Ministry of Labour and Social Policies;

Developed on the basis of voluntary engagement of municipalities, the structure of the Programme is based on the sharing of responsibilities and financial burden between central administration and local authorities.

For more information: <http://www.anci.it/index.cfm?layout=detttaglio&IdSez=810827&IdDett=28515> <http://www.anci.it/index.cfm?layout=detttaglio&IdSez=810827&IdDett=28515>

**3. Malta**

**a. Key facts and figures**





Between 2002 and 2008 the number of migrants arriving to Malta increased significantly, reaching a peak in 2008 of 2,775 migrants arriving in 84 boats. 2009 and 2010 saw a decrease in the number of arrivals. In 2010 only 47 migrants had arrived irregularly, in two boats only. However, since the beginning of 2011 numbers have increased again. The Maltese Refugee Commission, the institution in charge of refugee status determination, reported that from March 2011 until mid June 2011, 1,530 migrants arrived in Malta.<sup>182</sup>

Malta has refused to host FRONTEX operations since March 2010, the main reason being that the guidelines require that migrants intercepted during operations are to be taken to the country

182 Friggieri also reported that the Refugee Office has received 600 applications for protection of which 420 have been decided: 5 migrants have been granted refugee status, 370 granted subsidiary protection, 8 granted temporary humanitarian protection status, and 1 was granted "special protection." 36 applications have been rejected. 91% of the applications for protection decided to date have been approved in some fashion. Information by the Maltese Refugee Commissioner Mario Guido Friggieri, 14.6.2011, <http://www.timesofmalta.com/articles/view/20110614/local/immigrant-arrivals-exceed-average-since-2002.370573>.

hosting the mission. However, Malta does host, since June 2011, the newly created European Asylum Support Office (EASO).

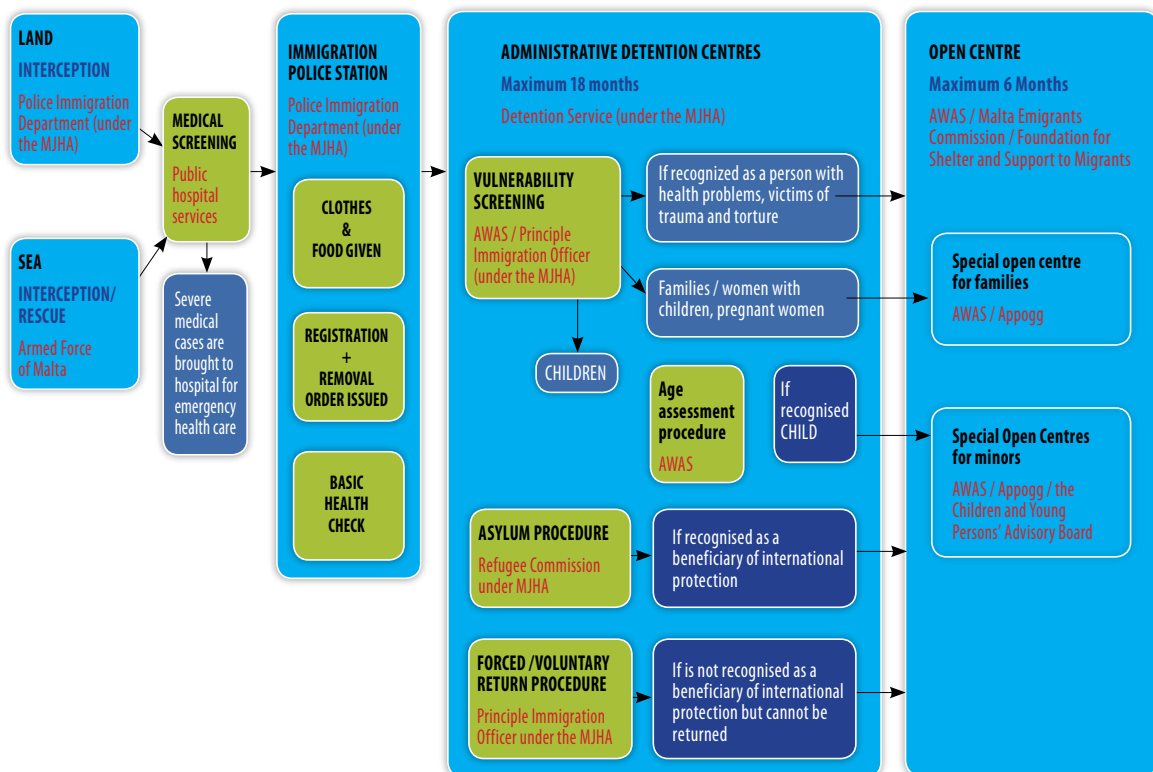
### b. Procedures and practices in Malta when dealing with boat arrivals – key issues identified by the DRIVE project

Procedures for all migrants arriving in Malta by sea follow the same pattern. On arrival, people with severe medical needs are taken to hospital. Upon registration by the police, all other migrants, including unaccompanied children, persons who belong to a vulnerable group and asylum seekers are taken directly to administrative detention facilities. Registration is usually done without an official interpreter or cultural mediator, relying for interpretation on migrants in the boats with some knowledge in English. NGOs and IGOs cannot access migrants at the initial stage of arrival nor monitor the process.

The following chart represents the procedure usually followed in dealing with migrants arriving by boats in Malta.

- All newly arrived migrants are sent to

PROCEDURES FOLLOWED FOR MIGRANTS ARRIVING BY SEA IN MALTA



detention and many remain there for a lengthy period of time. Conditions in detention centres have been heavily criticised.

For migrants who have applied for asylum and have not yet received a response to their claim, the maximum period of detention is 12 months. For migrants who have been refused asylum and for other migrants the maximum period of detention is 18 months. Conditions in detention in Malta have been widely criticised as being substandard and leading to a deterioration in the mental and physical health of detainees.<sup>183</sup>

In particular, unaccompanied children and other vulnerable persons suffer an increase in vulnerability and mental health problems when detained for prolonged periods in facilities with insufficient capacity and expertise to address their specific medical and psychological needs.

➤ **NGOs have unlimited access to detention and offer a variety of services to detainees – legal assistance, cultural mediation, social support etc.**

This is the only positive aspect of the appalling detention regime in Malta, although NGO services are limited and cannot mitigate the conditions.

➤ **There is a system in place for the identification of asylum seekers.**

Since 2009, all migrants have been provided by the Refugee Commissioner's Office with information about their right to seek asylum and are given a questionnaire in various languages to complete if they wish to make a claim. This systematic identification of asylum seekers and the nationalities represented (mainly Somalis, Ethiopians and Eritreans) contributes to a high percentage of those making a claim. There is no specific procedure to identify victims of trafficking and, according to Maltese authorities, there has been only one migrant identified with protection needs on the grounds of trafficking.

<sup>183</sup> MSF, *Not Criminals: Medecins Sans Frontieres exposes conditions for undocumented migrants and asylum seekers in Maltese detention centres* (April 2009) [http://www.msf.org.uk/UploadedFiles/not\\_criminals\\_report\\_Malta\\_200904160055.pdf](http://www.msf.org.uk/UploadedFiles/not_criminals_report_Malta_200904160055.pdf).

#### Asylum Information project – Office of the Refugee Commissioner (ORC)

Staff of the ORC, with the help of interpreters, give information sessions to potential asylum seekers, and inform them of their rights and obligations if they desire to apply for asylum. Staff offer individual assistance to every asylum seeker in filling the form where they are asked to set out their asylum claim.

The ERF funded project also provides for training of interpreters, focusing on both technical and linguistic competencies, as well as training of officers responsible for making decisions on asylum claims.

“All boat arrivals are informed of the possibility to apply for asylum. They are also informed from an early stage what is expected from them and what are they entitled to in terms of the asylum procedure.”

Mario Guido Friggieri,  
Refugee Commissioner, ORC

➤ **Malta has a procedure to detect vulnerable migrants. However, vulnerability assessment focuses on releasing vulnerable people from detention, but is not followed by referral to appropriate services to address their needs.**

Malta has introduced a procedure to identify vulnerable migrants and, when vulnerability is identified, release them from detention. The main criteria used to determine vulnerability are: minor age, old age (above 60), pregnancy, serious, acute or chronic illness, disability, and serious mental health problems. Vulnerable cases can be identified either by the Immigration Police on arrival, or by Detention Service personnel, fellow detainees or NGO personnel when in detention.

Migrants identified are then referred to the Agency for the Welfare of Asylum Seekers (AWAS) for assessment. If the migrant is recognised as vulnerable, AWAS will issue a recommendation for release from detention. Whilst the introduction of this process is a positive step, a lack of human resources leads to long delays in the procedure. As a consequence, vulnerable categories defined by law – including children – can stay several months in detention. Furthermore, subsequent referral to adequate services to address vulnerability is lacking.

### Detention Outreach Project JRS Malta

This project has been running since 2004. It is funded by the ERF as well as private donors. The aim is to provide information to immigrants and asylum seekers to try and identify vulnerable migrants. JRS staff conduct weekly visits to detention centres, interview detainees and provide them with information.

“Through these regular visits [to detention centres], JRS staff are able to identify vulnerable persons and refer them to AWAS. This service is particularly valuable in those cases where vulnerability is not immediately obvious upon arrival. Such cases would include persons with psychological or mental health problems or persons suffering from chronic illness”.

Katrine Camilleri-JRS Malta



### Inadequate reception facilities

After release from detention, some specific groups - mainly families with children and separated children - are housed in smaller open centres, where they have access to some social workers and interpreting services. Other categories of vulnerable persons, and in particular people with mental health problems, are released to large centres where material conditions are extremely poor and only a few services are available. It has been reported that families arriving in the recent boats from Libya (2011) are being accommodated in the larger open centres in deplorable conditions.

### Recognition rates are high, but prospects for integration are low

Recognition rates in Malta are high with a strong prevalence of people being recognised

as beneficiaries of subsidiary protection. Figures released by the ORC (Office of the Refugee Commissioner) for the period of January 2002 until February 2011 reveal that during this period, out of 11,484 asylum seekers, 280 (2.43%) were granted refugee status, 5845 were granted subsidiary<sup>184</sup> protection (50.8%) and 5359 were rejected. It should be noted that subsidiary protection does not give access to permanent residence status or family reunification, as compared to refugee status. This affects the long-term integration prospects in Malta for the majority of beneficiaries of international protection and those who cannot be returned. Hundreds of beneficiaries of international protection were relocated from Malta to other European countries, mainly France and Germany as well as extensive resettlement to the USA.<sup>185</sup>

“Integration is a major problem. There is a lack of initiatives and integration programmes from the government and on the other hand a willingness from the part of refugees to want to move on and not settle here”.

Brian Gatt, Lieutenant Colonel  
in Charge of all Detention Centres

### Migrant Health Unit in Malta

The Migrant Health Unit was set up within the Department of Primary Health in August 2008. In view of the large influx of irregular immigrants arriving in Malta, the department recognised the necessity to address the health needs of this group.

Migrants coming from different cultural backgrounds are often unfamiliar with the health care system of the host country and do not know how, when and where to seek help. Cultural diversity in health care poses a challenge to service providers as well, who need to manage complex differences in communication styles, attitudes as well as expectations.

184 The subsidiary protection status was introduced in 2008 after the transposition of the EU Qualification Directive. Previously the Refugees Act provided for temporary humanitarian protection, defined as special leave to remain in Malta for those persons who could not have returned safely to their country of origin. Therefore prior to 2008 numbers entitled “subsidiary protection” reflect in fact this category of protection beneficiaries.

185 Between 2007 and May 2011, 620 beneficiaries of international protection were resettled from Malta to the United States.

The objectives of the unit are to:

- provide community based health education to migrants on health issues
- help migrants access health care services
- provide translated material
- train health care professionals & students in culture & diversity issues in health care
- train cultural mediators in health care: e.g., a series of 8 sessions on various topics related to health and communication in health care, leading to a certificate by which the trained migrant is able to work in the field of Health and Social Care.
- develop capacity building amongst migrants

For more information, please refer to: [https://ehealth.gov.mt/HealthPortal/health\\_institutions/primary\\_healthcare/migrant\\_healthunit.aspx](https://ehealth.gov.mt/HealthPortal/health_institutions/primary_healthcare/migrant_healthunit.aspx).

## 4. Spain



### a. Key facts and figures

Arrivals by boat into Spain have significantly decreased since 2006, when 37,757 migrants were recorded. In 2010, a total of 2,949 migrants only were detected by the authorities.<sup>186</sup>

While the numbers of arrivals at the southern coast of Spain (mainly Andalucía) have remained steady, the number of arrivals in the Canary Islands has decreased substantially. In 2006 a record 30,627 migrants arrived by boat to the Canaries, while in 2010 only 157 migrants were detected.<sup>187</sup>

<sup>186</sup> Presentation of Amapola Biasco, representative of the Spanish Ministry of Labour and Migration, in the regional workshop “Responding to boat arrivals and mixed migration flows in the Mediterranean”, organised by ICMC in the framework of the DRIVE Project (10-13 May 2011) Catania, Sicily.

<sup>187</sup> Ibid.

Spain has been putting considerable efforts and resources into reducing irregular migration, with the help of the EU – through the European border funds and FRONTEX operations. For example, between 2003 and 2010 there has been an increase of 60% in the number of police officers assigned to immigration and border control.<sup>188</sup> Spain has also signed various readmission agreements and memorandums of police cooperation with both countries of origin and transit in order to facilitate returns and control departures. Due to the strong focus on border control, it is estimated that many migrants attempting to reach Spain in an irregular manner are currently being blocked before entry into the territory.<sup>189</sup>

### b. Procedures and practices in Spain when dealing with boat arrivals – key issues identified by the DRIVE project

“Currently, the main challenge is to guarantee the access to international protection of people who need it. It should include differentiation and identification mechanisms during FRONTEX operations that could ensure that the principle of non-refoulement is duly respected.”

Javier Sanchez Ribas-Legal Advisor,  
Spanish Red Cross

The majority of migrants attempting to reach Spain in an irregular manner are currently being apprehended in third countries, before they can access Spanish territory. This is mainly achieved by the allocation of extensive resources to third countries building the capacity of border control mechanisms, as well as through joint operations with FRONTEX. It is highly likely that amongst those not departing, or those refused entry, are migrants with protection needs.

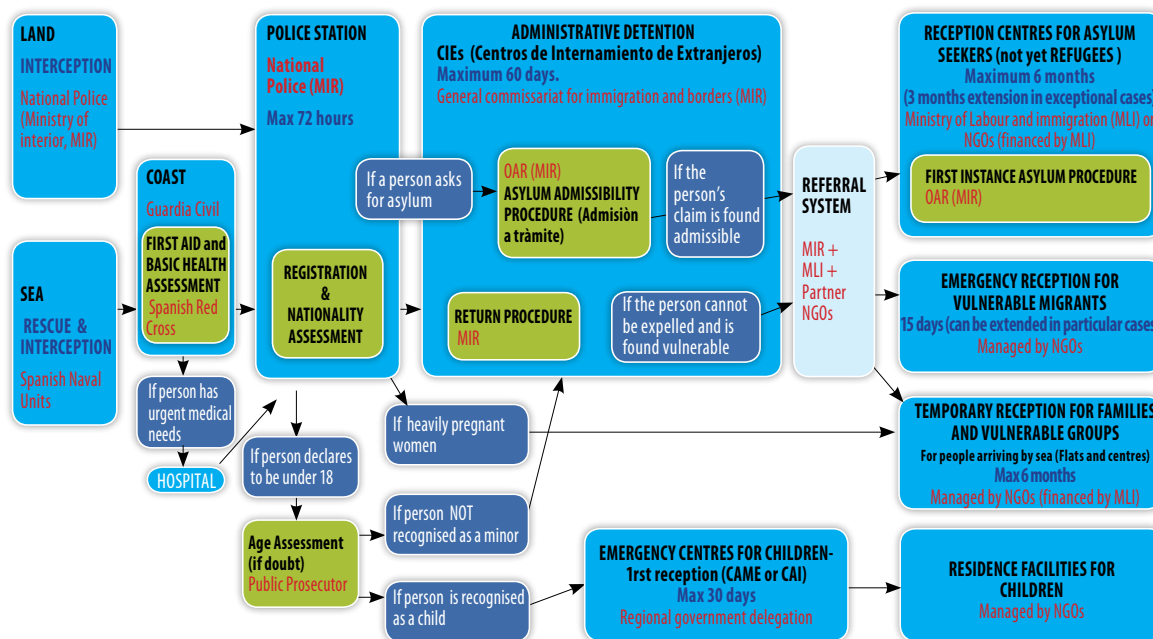
The chart on the next page represents the procedure usually followed in dealing with migrants arriving by boat in Spain

<sup>188</sup> Spanish Ministry of Interior, *Lucha contra la inmigración ilegal-Balance 2010*, available at: [http://www.interior.gob.es/DGRIS/Balances/Balance\\_2010/Balance\\_lucha\\_inmigracion\\_ilegal\\_2010.html](http://www.interior.gob.es/DGRIS/Balances/Balance_2010/Balance_lucha_inmigracion_ilegal_2010.html).

<sup>189</sup> CEAR, *La situación de las personas refugiadas en España, INFORME 2010*, pp.46-48, available at: [http://www.ikuspegi.org/documentos/documentos\\_externos/CEAR%20INFORME%202010.pdf](http://www.ikuspegi.org/documentos/documentos_externos/CEAR%20INFORME%202010.pdf).



## PROCEDURES FOLLOWED FOR MIGRANTS ARRIVING BY SEA IN SPAIN



### Medical screening and humanitarian assistance are systematically offered to migrants on arrival, in collaboration with the Red Cross.

Upon arrival at shore, migrants are assisted by Red Cross Emergency Intervention Teams (ERIES), which attends to basic needs (water, food, clothes and blankets) and conduct systematic medical screening, identifying people with urgent medical needs and referring them to the hospital. All other migrants are brought to the police station, where they are registered. It appears that police officers do not ask questions about the reasons for leaving the country of origin and questions are geared towards technical registration only.

### The Spanish Red Cross: collaboration with the Ministry of Labour to benefit migrants

As a response to boat arrivals in Spain, the Spanish Red Cross has developed a series of activities, financed and conducted in collaboration with the Ministry of Labor:

- Humanitarian assistance for migrants arriving by boat: at main points of arrival– East and South coast, Balearic islands, Canary Islands
- the Red Cross conducts maritime rescue, provides medical and health assistance and distributes food and clothing. This action is embedded in law Royal Decree 1453/2005 and Royal Decree 1142/2006, and organised through annual arrangement with the

Ministry of Labour. The Red Cross emergency intervention teams (Eries) –present at most strategic points of the Spanish coasts - are specifically trained and deployed on call to respond to arrivals.

- Activities in detention centres: Once migrants are transferred to the CIEs, Red Cross teams intervene to distribute goods, provide information & basic social, legal, and cultural mediation services. The Red Cross also organises socio-cultural activities and health awareness workshops. Initially conducted only in the CIE of the Canary Islands, these activities have also started in the CIE of Madrid and, this year, in Tarifa, Algeciras and Valencia.
- Reception, social assistance, labour and cultural orientation for vulnerable migrants and refugees

### The majority of migrants are sent to detention centres, where only limited information is provided and where no pro-active identification is conducted by the authorities

All migrants entering Spain irregularly are sent to detention, apart from those identified as children and heavily pregnant women. The maximum detention period is 60 days.

Both at the registration phase and whilst in detention, it appears that the authorities in general do not conduct pro-active identification for asylum seekers, trafficking victims



and vulnerable people. If in need of protection, migrants have to expressly state that they wish to claim asylum in order to gain access to the procedure. A study published by CEAR has indicated that there are many migrants held in detention with valid claims for asylum who did not have the opportunity to make such a claim.

190

In detention centres, migrants are supposed to be given an information leaflet regarding their rights, including the right to seek asylum. The leaflet is available in four languages (Spanish, French, English and Arabic). In practice, it appears that many migrants have very limited understanding of what their rights are. This situation is worsened by the fact that NGOs and IOs have restricted access to these centres, on an ad-hoc basis only, which limits their ability to monitor the situation and provide effective services to detainees.

#### Over half of asylum claims are rejected as inadmissible

A migrant who has applied for asylum will go through an admissibility procedure. Only if the claim is found to be admissible will he/she be released from detention and his/her asylum claim considered substantially. According to information by the Spanish Refugee Council, in 2009, 52% of all applications were found to be inadmissible<sup>191</sup>. When compared to the number of people arriving in Spain, the number of asylum seekers as well as the protection rate can be considered as low. According to data by UNHCR, in 2010 only 2,740 applications were submitted (a 9% decrease from the year before). This may be a reflection of the nationalities represented in migration flows<sup>192</sup> but also of the obstacles to asylum mentioned above.

#### At referral stage, institutional collaboration with NGOs leads to a good provision of reception services

190 CEAR, SITUACIÓN DE LOS CENTROS DE INTERNAMIENTO PARA EXTRANJEROS EN ESPAÑA : Informe Técnico realizado por la Comisión Española de Ayuda al Refugiado (CEAR) en el marco del estudio europeo DEVAS, 2009, available at : <http://www.inmigrapenal.com/Areas/Cies/Documentos/InformeCearCIESdic09.PDF>.

191 CEAR 2010 Annual Report.

192 The top nationalities of migrants claiming asylum were Cuba, Nigeria, Algeria, Guinea and Cameroon. Apart from Nigeria, none of these countries are amongst the top 15 countries or origin of asylum seekers.

When released from detention, all migrants and asylum seekers who have arrived in the Canary Islands are released to the mainland. Through a national referral system between the Ministry of Interior, the Ministry of Labour and the NGOs managing the centres, asylum seekers are taken to special open reception centres geared towards their needs. Other migrants who cannot be returned can have access, under certain conditions, to emergency humanitarian assistance, basic services or emergency housing. Most vulnerable people can have access to housing for longer periods (6 months or more). These reception centres are mainly managed by specialised NGOs. They are financed by the Ministry of Labour, and monitored against standards set by the Ministry as planned by law. These small-scale centres provide social, legal, cultural and integration oriented services.

Once people are released from detention and are in the open reception centres, social workers are able to identify vulnerabilities and provide special assistance. However, identification and rehabilitation for victims of torture and trauma remains very rare.

*“There is not a specific known procedure for victims of trauma. If a person is identified to have specific medical needs they will be addressed within the medical care system available at the centre or through the corresponding hospital if needed.”*

**Marta Garcia, Protection Officer,  
UNHCR Spain**

#### Spain's treatment of unaccompanied children remains inadequate, with controversial repatriation practices and poor reception standards in some of the centres for children

On 1 October 2010, the UN Committee on the Rights of the Child released a report asking the Spanish government to improve the conditions under which unaccompanied children are either admitted into the country or deported. Concerns have been raised that there are no adequate safeguards in place and that children are being returned to situations of risk without an appropriate best interest determination and without an attempt to identify family members.

According to law, those who identify themselves as under age should be referred directly to child protection services, but in practice many are held in police stations for weeks. The conditions of the emergency centres for children in the Canaries were also subject to severe criticism, with a 2010 Human Rights Report calling them “substandard” and describing serious allegations of ill-treatment and neglect.<sup>193</sup>

### Government offices and NGOs have collaborated to design services for the identification and protection of victims of trafficking

In 2010, Spain introduced an Action Plan for combating trafficking for sexual exploitation. There is an agency responsible for the formal identification of victims and identified victims are allowed a reflection period and granted temporary residence.

While it is still at an early stage, the Spanish government has been financing NGO activities in the field of support to victims such as accommodation and integration and NGOs have been also taking active part in research and advocacy efforts to raise awareness of this growing phenomenon.

“Recently, the profiles of the persons arriving by sea has considerably changed. In many cases, there are Nigerian women heavily pregnant and/or with young children. We are very preoccupied by this situation since we have strong indications that they could be victims of trafficking for sexual exploitation. On the other hand, we are very worried of the situation of these children since we have had women looking for their children and saying that their child has entered the country with another woman. We believe trafficking networks send pregnant women with children to avoid expulsion at arrival.”

**Milagros Nunez Sachetich,  
the Spanish Red Cross**

The majority of this work has focused on the victims of trafficking for the purpose of sexual exploitation, though progress has also been

193 HRW, *External Emergency: No End to Unaccompanied Migrant Children's Institutionalization in Canary Islands Emergency Centres* (June 2010). Available at: <http://www.hrw.org/sites/default/files/reports/spain0610webwcover.pdf>.

achieved in addressing trafficking for the purposes of labour exploitation which is very prevalent, especially in the agricultural sector in the south.

### ACCEM's work on trafficking for labour exploitation in Spain

ACCEM has worked in the field of trafficking for the purposes of labour exploitation since 2007, motivated by a general lack of information in Spain about the phenomenon. ACCEM has been involved in organising training sessions on the identification, assistance and referral of trafficked persons, which involves not only relevant actors at national level (i.e. trade unions, public prosecutors, NGOs, etc.), but also its own staff, present throughout most of the Spanish territory.

These actions are supported by the Spanish Ministry of Labour and Immigration and Ministry of Equal Opportunities.

### The MIRROR Project : A tool to identify victims of trafficking for labour exploitation

Since February 2010, ACCEM has undertaken a transnational project funded by the EU and conducted in partnership with Associazione On the Road & Opere Riunite Buon Pastore in Italy, Fundatia Floarea Ialomiteana in Romania, and the Churches' Commission for Migrants in Europe (CCME) in Belgium. The MIRROR project aims to develop methodology for identification and referral for trafficking for labour exploitation, guaranteeing the victims access to protection. The project has also held national training sessions and has awareness raising materials for dissemination in each of the countries.

Several materials have been developed as part of these projects, including:

- an easy-handle-card in 3 languages (Spanish, English and French), listing the main signs of trafficking and aimed at victims;
- leaflets in 4 languages (English, Spanish, Italian and Romanian) aimed at officials and other professionals working with migrants and intended to provide information on trafficking for the purpose of labour exploitation. It contains a list of indicators, as well as case studies of persons trafficked for the purposes of labour exploitation in construction, catering, textile and domestic services.

## C. Migrants survey

### 1. Introduction to the survey

Over the seven month period July 2010 through January 2011, ICMC and partnering non-government organisations: Praxis in Greece, the Italian Refugee Council (Consiglio italiano per i rifugiati, known as "CIR") and Save the Children in Italy, the Jesuit Refugee Service (JRS) in Malta, the Spanish Commission for Assistance to Refugees (Comisión Española de Ayuda al Refugiado, known as "CEAR") and Asociación Católica española de Migración (known as "ACCEM") in Spain, carried out a migrants survey to survey migrants on their experiences: thus giving them -and listening to- their voice.

Migrants themselves are normally absent from the public and policy debate, despite the fact that policies implemented directly affect them. Images appear from time to time in the media, especially when disaster strikes, but the reality and challenges migrants face on a daily basis remain largely unrecorded.

The aim of the survey was to obtain information about the experience of migrants crossing to Europe irregularly by boat at the moment of, and in the period immediately following, their arrival. Participants were not asked about their experiences in their countries of origin or during their trip. Rather, in line with the objectives of the DRIVE project, the focus of the survey was on practices encountered on arrival in the four southern Mediterranean countries, as well as any subsequent identification and referral to services and procedures.

#### Methodology

During the second half of 2010, 401 migrants were interviewed as part of the survey, including 57 children and 72 women. Migrants were from over 30 countries, including Afghanistan, Algeria, Bangladesh, the Democratic Republic of Congo, Egypt, Eritrea, Iraq, Nepal, Somalia, Sri Lanka, Sudan, Togo and Tunisia. All of those interviewed arrived irregularly and by boat. Some were subsequently granted refugee status, protection as victims of trafficking or children. Some were refused and some had never applied for any status. Amongst those who applied and were refused were many who

could not be returned for various reasons. Others prefer not to enter the system at all, preferring to remain undetected. Migrants in this situation often remain underground, trying to survive by working illegally.

A quantitative approach was chosen to facilitate subsequent statistical analysis, so interviews were structured around a series of 30 closed questions. However, the migrants interviewed were given an opportunity to elaborate on their experiences and interviewers were encouraged to record comments and expand on the questions if necessary.

Each migrant was interviewed by a staff member or trained volunteer from the DRIVE project's partner organisation in that country, in some cases with the help of an interpreter. Interviews were held in a variety of locations and settings across the four countries, including offices of the partner organisations, open reception centres and detention centres.

A separate questionnaire for children was designed with the help of Save the Children, which included both specific questions and safeguards for the interview. All interviews were conducted in settings respectful of confidentiality and were kept anonymous. Interviewees were invited to sign a declaration of consent to allow the project to use the data.

All the data was then transferred by partners to ICMC in Brussels and, in cooperation with researchers from the Catholic University of Leuven (IMMRC, Interculturalism Migration and Minority Research Centre- Social Sciences), was entered into a database and analysed. The results were presented to the partners and other stakeholders in regional meetings for feedback.

#### Limitations

Lack of human and financial resources made work difficult for the project partners, especially as most of them were already stretched to a maximum. Efforts were made to keep the sample of migrants interviewed representative and also similar from one country to another, using common guidelines. However, it was often difficult to identify irregular migrants who were willing to take part in the survey, as many undocumented migrants prefer to remain undetected.

Furthermore, in some countries, migrants had already been interviewed several times in any number of processes unrelated to this project, and had to find new interest in taking time to participate in these questions.

Following the presentation of the results to the partners and based on their feedback, the following general limitations were noted:

- The results achieved present a better picture overall than is generally the case on the ground. This was because those interviewed were identified through NGOs networks and outreach points and were therefore receiving considerably more services than the general migrant population. Furthermore, many of the services were provided by the organisations that were also conducting the interviews, which meant that some migrants may have felt compelled to give a positive picture of the services so that they didn't appear ungrateful.
- A significant proportion of participants were already beneficiaries of international protection or were asylum seekers at the time of the interview. This meant that their situation was potentially better than that of irregular migrants in general, and that they had successfully accessed the procedures.

With those reservations, the survey was able to identify a number of individual and broad perspectives and provide meaningful insight into the conditions faced by migrants arriving by boat in Greece, Italy, Malta and Spain.

## 2. The migrants survey in Greece

The interviews were conducted by Praksis, <sup>194</sup> a leading NGO in Greece, which provides, among other things, medical and psychosocial services to migrants. Interviews were held in day clinics that Praksis operates in Athens and Thessaloniki.

### Migrants interviewed

*“My intention was to come to Greece so as to give to my child a better opportunity in life. I understand that things are very difficult here but my life is better in comparison to my country.”*

**Amina, from Somalia**

194 See 'Overview of Drive Partner Organisations'.

101 migrants were interviewed. 10 were children and 36 were women. 1/3 of those interviewed were from Afghanistan. The second largest group, almost a quarter, was from Somalia. Just over half of the adult participants were single. About a third were married with children.

Two-thirds of the adults were on their own, the others were accompanied by a family member. It is interesting to note that 24 of the 30 migrants that had family members with them were accompanied by their children only, without a spouse, effectively making them single parents during this period.

70% of those interviewed had arrived in Greece irregularly using boats. The rest were smuggled on board a regular ferry to Greece.

Nearly three out of four migrants interviewed had an application for asylum pending at the time of the interview. 13% were already recognised as refugees. The high number of pending asylum applicants in the sample illustrates the situation in Greece, where it was estimated by the Ministry of Citizens Protection that there were at least 52,000 asylum claims waiting to be resolved. However, 13% in the sample interviewed that were recognised as refugees is extremely high compared with the general case in Greece, where official figures for 2010 indicated a recognition rate of only 3% for claims both for international protection and for protection on humanitarian grounds.

Nearly 40% said that they had originally hoped to reach another European country before embarking on their journey. Less than one in three said that Greece was even now their final destination, confirming the fact that Greece is considered by many to be only a country of transit. Seven of the ten children also intended to reach a destination other than Greece.

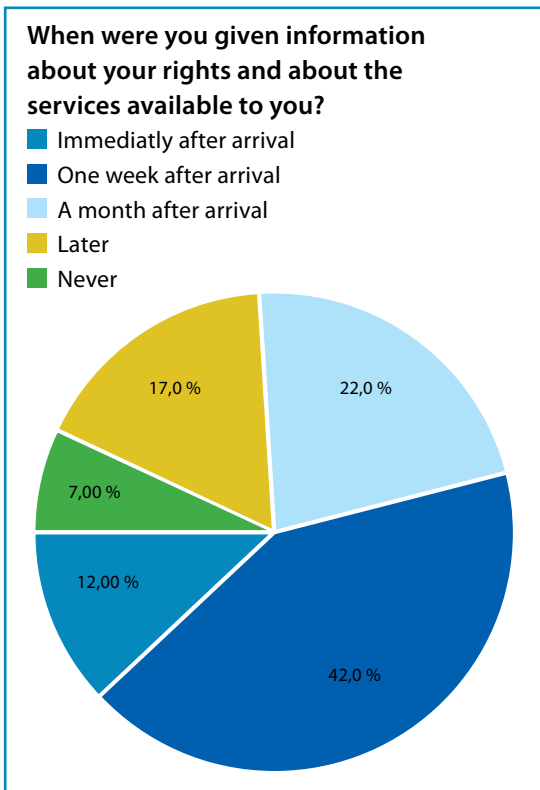
### Identification, differentiation and –referral

The majority of those interviewed, including children, reported that upon arrival they were taken into either detention centres or police stations. This reflects the situation in the country, where there are no open reception facilities at the border and the lack of official detention centres leads authorities to use police cells to detain migrants at arrival. Three quarters of the

migrants interviewed reported that the first people they encountered were government officials. Only 13 % encountered NGO staff upon arrival.

Registration at arrival appeared limited, with only 19% registered immediately. Even a month after their arrival, less than 40% were registered.

About 10% of migrants said that information about rights and services was given to them on arrival. A further 42% said that they had received information within a week of their arrival.



Only limited services were available during the first week of arrival. However, nearly half said they had access to medical assistance and almost a third to social services. It was notable that the level of social services changed over time, with those who had arrived between June 2008 and June 2009 considerably more likely to receive social assistance than those who arrived the year after. This figure can be explained by the ad hoc presence of projects, usually led by NGOs or UNHCR at the borders.

Also striking is that only 7% of arrivals said that they had had access to a cultural mediator or

a translator in the first week following their arrival.

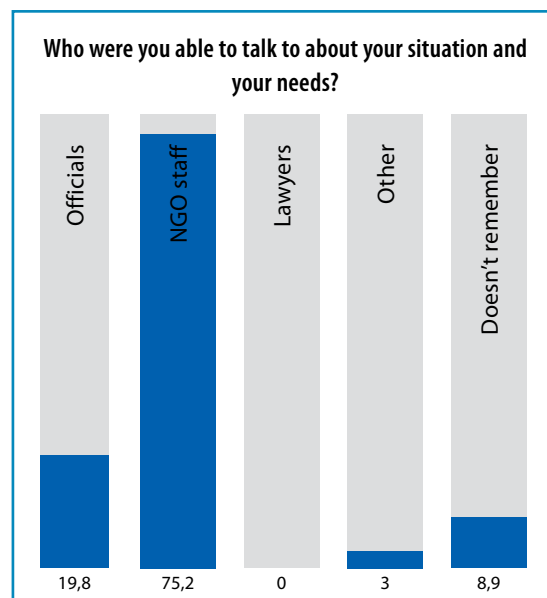
*“It is very important to receive legal advice upon arrival. I only got legal advice several months after my arrival, when I went to the PRAKSIS office for medical care.”*

**Tarek, from Afghanistan**

Although NGOs were less visible at the initial stage, the majority of migrants interviewed reported that at the time of the DRIVE interview, most of the support they were given was provided by NGOs. This varied from medical assistance to social support, legal help, psychological support and cultural mediation.

Public facilities were extremely limited. Medical assistance was the only form of meaningful support mentioned, and even that to a limited extent. Less than one in five mentioned that they received medical assistance in public facilities, while 79 of the 101 migrants interviewed referred to medical assistance provided by NGOs.

Furthermore, when asked who they were able to talk to about their situation and needs, 75% referred to NGO staff while only 20% mentioned state officials.



53% of migrants said they felt their needs were not effectively addressed. Among the key concerns listed were their difficulties in



accessing employment and in being reunited with their family members.

**Case Study: Maria from Nigeria**

Maria is a 25 year old woman from Nigeria. She was trafficked into Greece on board a ferry in April 2010 to work as a prostitute. She was forced to have unprotected sex with numerous men. She had tried to escape on two occasions but was caught and badly beaten up. In October 2010 she came to the PRAKSIS clinic for an HIV test. In the clinic she asked the staff for further advice and protection. She is now under a specific program for psychological treatment and witness security shelter.

**Children**

Seven of the ten children interviewed had made the crossing on a boat unaccompanied by an adult; the other three arrived with family members.

Nine of the children were first taken into detention. Only one was taken to a centre operated by an NGO. Those in detention were on average kept there for one to two months. One minor described that whilst in detention he fell ill and there was no medical help available. Following their stay in state operated detention centres, the majority were moved into centres run by NGOs.

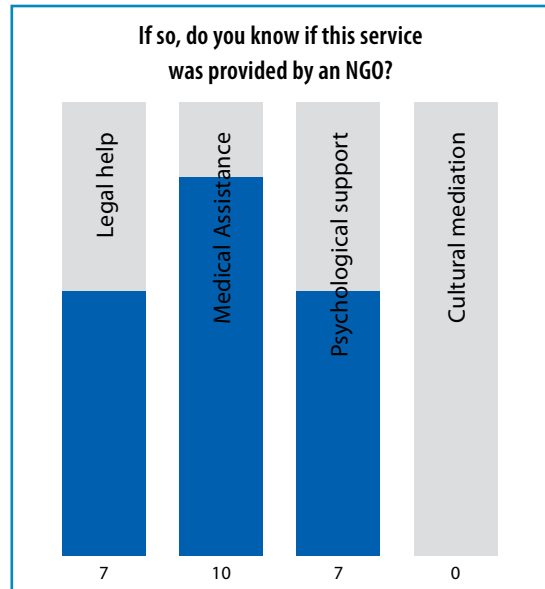
Only five children out of 10 had their age assessed. Unlike in the other three countries studied in this project (Malta, Italy and Spain), age assessment was mainly done through general assessment by doctors (4 out of 5) and one child through teeth examination.

In Greece, all ten of the children interviewed reported that all of the services they were receiving were provided by NGOs. It appears that their needs were assessed and addressed and that they were allocated a guardian only after they were under the care of NGOs. This poses a real question regarding protection of children at arrival and underlines the lack of safeguards set up by authorities towards this particularly vulnerable category.

**Case Study: Daud from Afghanistan**

Daud is 16 years old. He is from Afghanistan and arrived in Greece irregularly, together with his

father. They were planning to work in construction and send money to their family back home. Upon arrival they were detained and spent a week in prison. In prison, Daud fell ill and contracted high fever but there was no treatment available to him. Since their release they are staying irregularly and receive some services from a local church. They do not want to stay in Greece and would like to travel elsewhere in Europe.



**3. The migrants survey in Italy**

Interviews in Italy were conducted by CIR (the Italian Refugee Council) and interviews of children, by Save the Children Italy. The interviews were carried out in Rome, Bari, Catania, Ancona, Agrigento, Crotone, Verona, in the CIR Offices or in migrant reception centres<sup>195</sup>.

**Migrants interviewed**

112 interviews were conducted. 12 of those interviewed were women and 10 children.

Just over half were between 18 and 25 years old and two-thirds were single. 93 % were in Italy on their own; only 7 % had a family member with them.

The interviewees were from 24 different countries. The largest group was from Eritrea (21.6 %), followed by Afghanistan (18 %), Somalia (10.8%) and Iraq (9.9%).

Slightly more than one quarter of those who arrived

<sup>195</sup> The reception centres were the CARA, Residential facilities for minors as well as SPRAR centres.

in Italy had been smuggled on board a regular ferry. Nine out of ten had entered the asylum process, facilitated by the easy access to this option that the DRIVE partners were able to provide. Indeed, 33% of those interviewed had asylum claims pending, while 23% had already been granted refugee status. Separately, 22% of participants had been granted subsidiary protection.

39% said that they had intended to arrive in Italy; only 20 % indicated that they had really wanted to arrive in another European county.

Many of those interviewed had actually travelled through Italy earlier on their way to other countries of Western Europe but had subsequently been caught and returned to Italy under the provisions of the Dublin II regulations.<sup>196</sup>

*“When I was returned to Italy I was held overnight at the Fiumicino airport in Rome. I was held in a room for 24 hours. I was given a sandwich only and had to sleep on the floor. I was not told why I was being held.”*

**Selim, from Eritrea**

*“When we arrived in Sicily we were forced to take off our clothes and instead were given a tracksuit and slippers. We had to leave our clothes and our shoes. This was so that we can’t escape from the centre.”*

**Efram, from Eritrea**

**Identification, differentiation and referral**

**Case study: Mohamed from Afghanistan**  
 Upon arrival, Mohamed went to the police headquarters to ask for asylum. His claim was registered 8 days after and he was fingerprinted 2 weeks later. He was transferred to a CARA one month after and during that period, he had to live in the street. He has been living for about a year in a container with other asylum seekers. He suffers psychological problems, has problems with his sight and has serious wounds over his body due to past persecution by the Taleban. He has not yet received adequate psychological and medical support.

On arrival, the majority of interviewees had encountered state officials, mainly civil guards. Some had said that they had been beaten upon detection by police. Some had also encountered

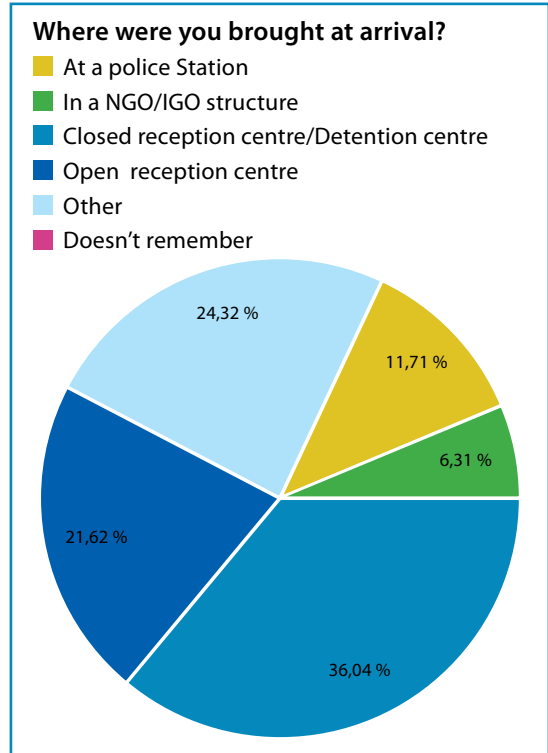
<sup>196</sup> EU Regulation 2003/343/CE, known as the, Dublin II Regulation, the main purpose of the Regulation is to determine the Member State responsible for examine an asylum application. According to Article 5(2) of the Regulation, “The Member State responsible in accordance with the criteria shall be determined on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State.”

staff of non-government or humanitarian organisations, in particular the Italian Red Cross.

38% said that they had received no information upon arrival, while 40% said that basic information had been provided to them. In Italy, the procedure followed differs considerably depending on the point of arrival, i.e., whether it is an official point of entry (port) or non-official. The variation responses can be explained by the differing information provided based on the point of disembarkation as well as the presence of NGOs in the procedure.

All but four of those interviewed, i.e. 96% had been registered by the authorities. Registration for most was done at arrival (59%) or within a week of arrival (24%).

Following their arrival, participants were brought to a variety of places. Most were detained: 36% in a closed reception centre 22% in open reception centres and 12% in a police station. 13 participants said there were not provided with any



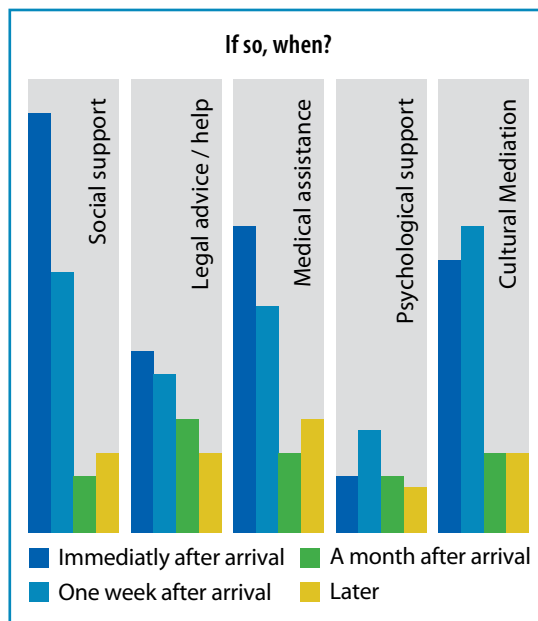
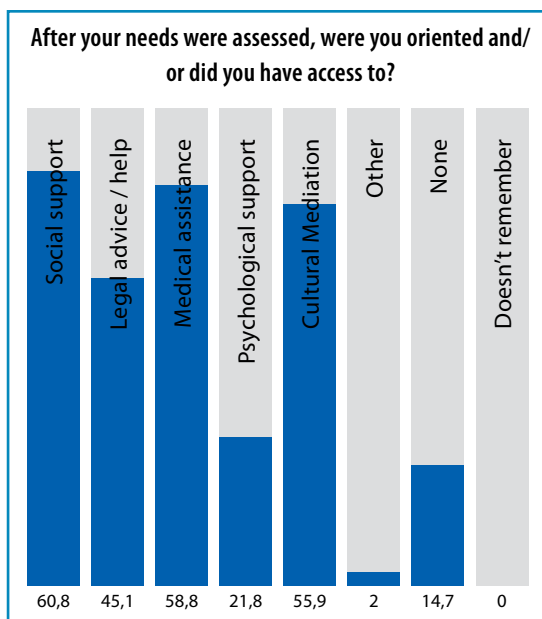
“accommodation and had to sleep in the street. *“After I arrived in Lampedusa I slept in the street for one week as there was no place available at the reception centres. I was given no assistance. After one week I was transferred to a centre in Caltanissetta.”*”

**Daniel, from Eritrea**

Initial reception facilities changed with time. Arrivals between June 2008 and June 2009 were more likely to be taken to closed centres, as arrivals during this period were mostly to Lampedusa where the main facility is a closed reception centre. Between 2009 and 2010, most arrivals were in the Puglia region.

About half of those interviewed had been given access to medical care in the first week after their arrival. About two-thirds had access to translation or cultural mediation, which is a high figure compared to the other three countries examined in the DRIVE project. 30% had been given access to legal assistance.

The level of services available was actually at its highest upon arrival, especially with regard to social support and medical assistance, and during the first week after arrival. It can be estimated that this was made possible by the presence of the multi-actor, multi-disciplinary team deployed by the “Praesidium” project at arrival points in Italy (see Part 2). However, the provision of services declined as time went by.



In Italy, more than in the other three DRIVE project countries, the authorities have a key role in providing services to arriving migrants, including social assistance, medical assistance, cultural mediation and legal help. However, many of those interviewed complained about the quality of services provided, especially medical assistance.

“When I stayed in detention, I lived with 12 people in a little cell. The bathroom was dirty and the food wasn't good. The telephone didn't work and we did not have enough clothes.”

**Muhamed, from Somalia**

This may be attributed to the fact that the majority of participants were staying at the time in public reception centres, where the authorities or private service providers deliver most services. Legal help was the only service in which NGOs appear to have been involved at the first stage of arrival, at a level similar to that of the authorities. Indeed, during the period that the interviews were conducted, a majority of those interviewed were receiving legal help from NGOs although the authorities still predominantly provided medical assistance and social support.

“I have been living in a CARA outside Rome for six months now but I have to leave tomorrow. I was granted refugee status but I have nowhere to stay. Some of my friends have been squatting in a deserted building. I wanted to attend Italian classes but they are only available in Rome. The CARA is 31 km outside of Rome and we are not entitled to receive bus tickets.”

**Aman, from Eritrea**

### Children

10 children were interviewed in Italy. All of them had arrived in Italy unaccompanied by a parent or relative. Upon arrival, six of the children had been brought to a police station or a detention centre. Subsequently, all ten children were brought to a specialised residential care facility for children. Only half were assigned a guardian before age assessment. Five of the children had their age assessed using an X-ray wrist exam.

Three of the children had been granted refugee status and four had been given a residence permit for children.

*“To be honest, regarding linguistic and cultural mediation, there was nearly nothing. Only a year after I arrived, when Save the Children came to the reception centre to give me legal information, did I start to clearly understand my situation. Usually, in the children reception centre, communication was nearly always done through a Moroccan boy who lived with us.”*

Faisel, from Somalia

### Case study: Kidane from Eritrea

Upon arrival, Kidane was taken to the reception centre in Lampedusa where he stayed for 15 days. During this period, he says he had no assistance and only had contact with the police. After he was fingerprinted, he was transferred to the CIE in Bari, although he had asked for international protection. In Bari, he was fingerprinted once again without the presence of an interpreter. He had no contact with a lawyer and did not benefit from any kind of socio-psychological assistance. Confronting a lack of information about the asylum procedure in detention, he had to rely on information provided by other asylum seekers. After a few weeks, his asylum claim was refused but he was allowed to remain in Italy with a humanitarian status. After release, he obtained legal assistance through CIR and lodged an appeal. He was interviewed again and was recognised as a refugee.

## 4. The migrants survey in Malta

Interviews in Malta were conducted by the Jesuit Refugee Service (JRS) staff and took place in their offices or in the detention centres where they serve.

### Migrants interviewed

88 migrants were interviewed in the survey in Malta, 13 of them children. They had arrived in Malta by boat between June 2008 and August 2010. Unlike in previous years, arrivals in Malta were increasingly limited during this period, to the point that by August 2010 only one boat was reported to have arrived since the beginning of the year. It was therefore only possible to identify these 88 participants rather than the target 100, with a large number of them having arrived in that single boat in August.

Nearly two-thirds of the participants were from Somalia, with the second largest group from Eritrea (14%). Nine out of ten of the migrants arrived unaccompanied, and half of the total number of people interviewed had left their spouses or children behind.

Only 6% of those interviewed said that Malta had been their intended destination. Almost all stated that they had been hoping to arrive in another European country.

Of the 88 interviewed, 34 were given subsidiary protection, 31 had an outstanding application for asylum, and 2 were already recognised as refugees. 21 were refused status. Those who are refused in Malta either await their removal, normally in detention, or where removal cannot be executed are given some temporary permit, on a discretionary basis that leaves them in limbo.

### Identification, differentiation and referral

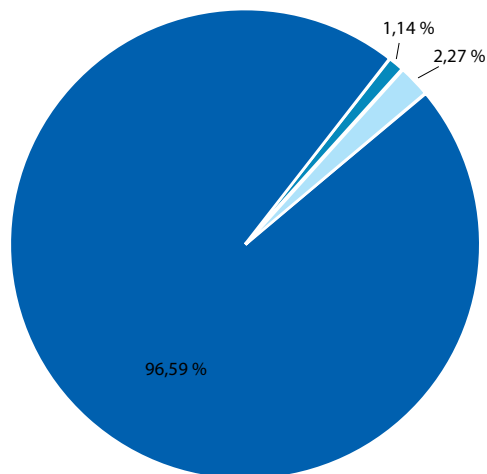
Everyone interviewed had arrived in Malta irregularly by boat. The procedure experienced upon arrival by most participants was identical: after having first encountered state officials, mostly from the coast guard or the army, all were registered with the authorities. All but two (who were taken to a hospital for emergency treatment) were then taken to a police station and from there to a closed reception centre.

*“The police didn’t give us any information. My fingerprints and photo were taken and I was given an identity number. I was then taken to a detention centre. I did not even know I was in Malta.”*

Muna, from Somalia

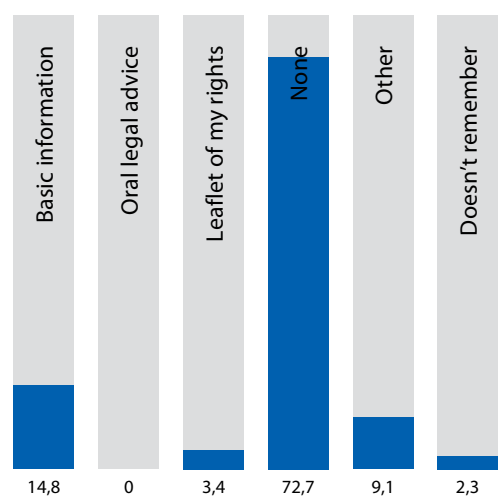
### Where were you brought at arrival?

- At the police station
- In a NGO/IGO structure
- Closed reception centre/Detention centre
- Open reception centre
- Other
- Doesn't remember



Nearly three-quarters of the migrants interviewed said that they were given no information on arrival. 15% said that they were given some basic information, for example, that they were in Malta.

### What information was provided to you in this place?



As time progressed, more information was made available: two in five saying that within a week of arriving they received information about their rights and the services available to them. However, more than one in five said that they never received such information.

Many said that when information was given, it was communicated to them through fellow migrants who understood some English, as there were no interpreters available.

Almost 90% said that upon arrival they were asked the reason they left their country, which reflects the high proportion of people asking for asylum in Malta.

All arrivals were taken into reception centres. At first all were kept in detention, in closed centres. Subsequently, approximately half of the adults were taken to open reception centres. Migrants interviewed had spent lengthy periods in detention, some nearly two years.

Most interviewees indicated that they had had access to medical assistance whilst in reception centres (both closed and open) though there were many complaints about the quality of assistance.

*“The medical service in the centre is poor. Panadol (a basic pain killer) are given for every problem complained of.”*

**Efram, from Ethiopia.**

Psychological assistance was virtually non-existent. While the State had provided the majority of medical assistance, other services such as legal assistance and cultural mediation were predominantly provided by NGOs.

Migrants arriving after July 2009 were more likely to feel that they were given an opportunity to express their needs than migrants arriving between June 2008 and June 2009. The level of satisfaction from services has also increased for those arriving later. One explanation that could be offered for this is that those arriving in late 2009 and 2010 were part of a much smaller group of migrants (arrivals during that period had dramatically decreased) and it may be supposed that reception centres were considerably less crowded with better access to services.

*“I would like to point out the very deplorable conditions of living in the open centres in Malta. In my case, I live in a military tent, shared with 25 persons. The conditions of hygiene at the showers and the toilets are very poor as well.”*

**Adam, a refugee from Eritrea**



Many complaints were raised on the conditions in detention centres, especially the open centres. One complained that there is a tuberculosis problem in the centre.

#### Case Study: Ben

Ben, a 29 year old man from Nigeria arrived in Malta by boat in late 2008. He is married but migrated without his wife and child, who stayed behind.

Ben did not intend to arrive in Malta. He was hoping to reach Italy from where he thought he could move to elsewhere in mainland Europe. After he was apprehended, he was taken to the police station and registered. He was then transferred to a detention centre. He was given information about his rights approximately two weeks after arrival but was then kept in detention for nine months without being interviewed or asked why he had left his country. After nine months he escaped from detention and managed to reach mainland Europe. His claim for asylum in Malta was refused in his absence for non-compliance.

Ben was then returned to Malta under the provisions of the Dublin II regulation.<sup>197</sup> He was sentenced to four months in prison for travelling illegally and was transferred to a detention centre again to “finish his 18 months”, which is the maximum period failed asylum seekers can spend in detention according to the law in Malta. Ben is still in detention.

#### Children

Out of the 13 children interviewed, 12 were unaccompanied. 11 of them had their age assessed by an x-ray examination of their wrist. All were brought to the police station and then detained on arrival.

All had cultural mediators present during the assessment. Once it was confirmed that they were children, they were sent to children’s centres and allocated tutors. The state authorities provided all services offered to the children.

Twelve children were given subsidiary protection and one was given refugee status. Most felt that they could talk to a state official about their situation and needs, though more than half

felt that they had needs that had not yet been addressed.

## 5. The Migrants survey in Spain

Interviews were conducted by CEAR (the Spanish Commission for Refugee Aid) and ACCEM in Aviles, Azuqueca de Henared, Baralom, Barcelona, Bineau Caragena, Fuerteventura, Gerona, Jerez, Las Palmas, Madrid, Santutzi, Segovia, Sevilla, Valencia and Vecindario, in offices and centres managed by the organisations.

#### Migrants interviewed

100 migrants were interviewed. 10 were women and 24 were children.

The migrants interviewed were from a variety of nationalities, though the composition of nationalities was distinctly different from those in the other three Mediterranean countries examined. A significant proportion (44%) of migrants were from countries in West Africa including Cameroon (10%) Guinea (10%) Mali (10%), Ivory Coast (7%) and the Western Sahara (7%). In comparison to the other three project countries, there were very few migrants from the Democratic Republic of Congo (only 3%), Afghanistan (only 2%), Iraq (only 1%) and Somalia (only 1%). There were no Eritreans amongst those interviewed.

Nearly all had crossed the sea irregularly on boats; only 6 were smuggled into the country on a ferry.

Just three of those interviewed had received refugee status, though nearly a fifth of the others had an asylum application pending. 20% had been given “residence permits” too, which is quite high compared to Greece and Malta where no one interviewed had received a permit and in Italy, where only 4% had received a residence permit.

At the same time, many had no official status: 13% because their asylum claim had been refused, 10% because they didn’t qualify for any status. It was also notable that a relatively high number said that they had never even applied for any status (17 %).

<sup>197</sup> Dublin II Regulation, see footnote 196.

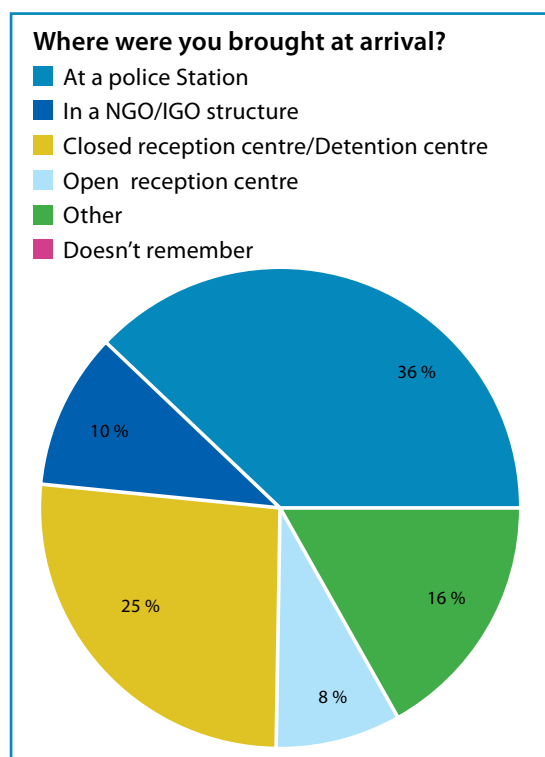
Almost 90% of those interviewed—including all the children—said that they had intended to reach Spain as their final destination.

### Identification, differentiation and referral

Four out of five of those interviewed were registered with the authorities. Most were registered immediately upon arrival (42%) or a week after arrival (32%). With respect to the remaining one in five who said that they were not registered with the authorities, the number roughly corresponds with that of those who said that they had never applied for any form of status.

Upon arrival, about two-thirds had first encountered government officials, though almost half—a relatively high number compared to the other three project countries—also encountered NGO or humanitarian staff, mainly from the Red Cross. This reflects the wide presence of the Red Cross at points of arrival in Spain and their role in providing immediate aid and assistance.

The majority had been detained, either in police stations or in closed reception centres on arrival.

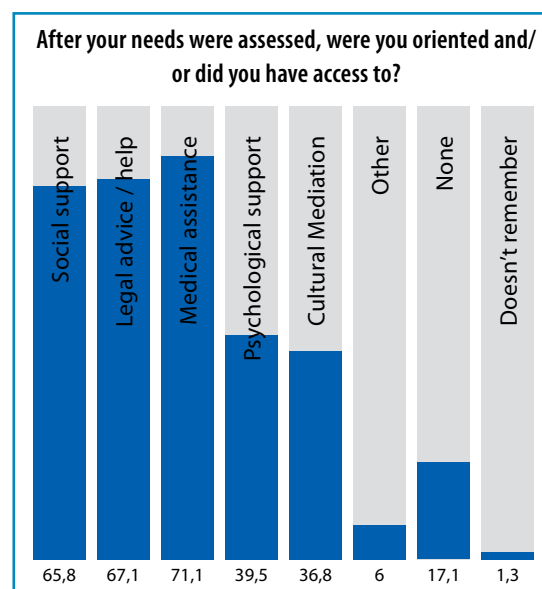


*“There was no interpreter on my arrival and I could not understand anything. There was no lawyer. No one told me anything about asylum”***Serge, from the Democratic Republic of Congo**

25% of the migrants interviewed had received information about their rights on arrival, another 26% within a week of arrival. A large percentage (28%) however said that information had only been received at a later stage, i.e. more than a month after their arrival. Many of the others said that they had never received any information.

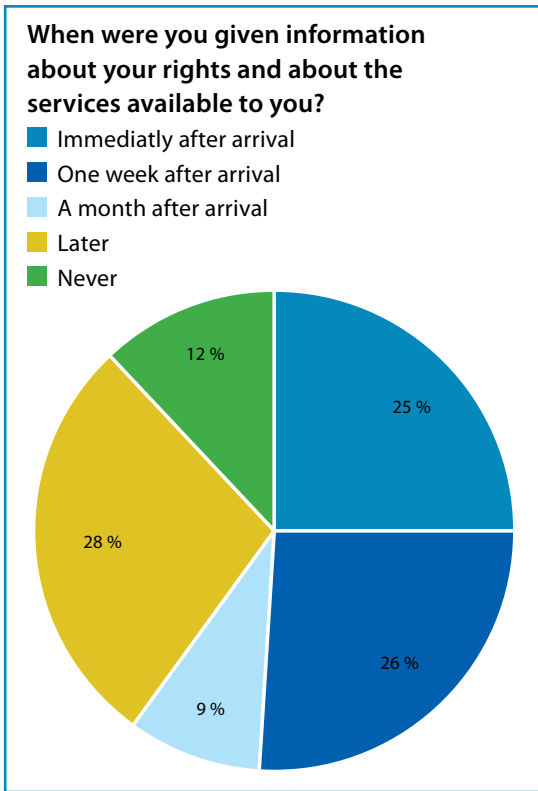
Nearly a third of those interviewed had been asked about their situation and the reasons why they left their countries, but another third said they had not been asked. Among those who had been asked about their situation, the majority explained that this happened later than a month after their arrival. This figure points to a problem of access to the asylum process in Spain.

The level of access to services however was relatively high in Spain, compared to the other three countries examined in the project, especially once the needs of the migrants were assessed. Indeed, most migrants recalled having had access to medical assistance during the first week following their arrival. Approximately half had access to legal assistance and to translation services or cultural mediators. One quarter also had access to psychological care.



While medical assistance had been provided mainly in public facilities, services such as legal help, social support, cultural mediation and psychological support had been provided predominantly by NGOs. It is evident from the

responses that NGOs also provide support to those who have never applied for status.



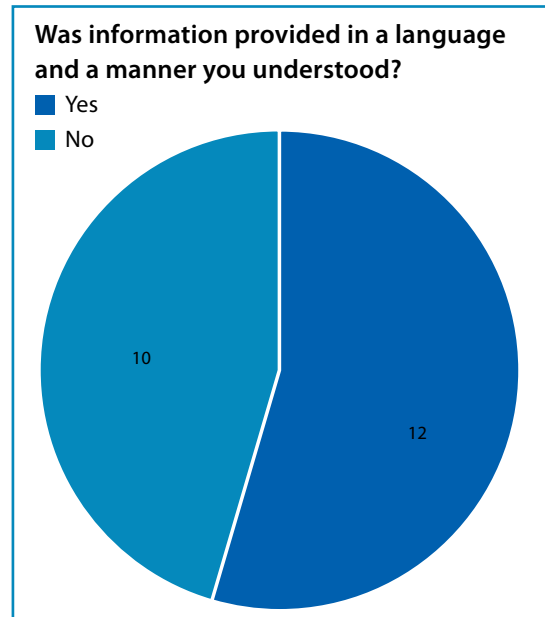
51% of participants felt that they still had needs that were not addressed, including their lack of legal status, difficulty in finding work and obstacles to family reunification.

### Children

24 children were interviewed, 22 of whom had arrived unaccompanied by a family member. Identification at the initial stage was limited. One third of the children had not even been asked their age upon arrival.

The majority of children had been brought either to a police station (9) or to a detention centre (8) at arrival. At this stage it is most probable that they hadn't been identified as minors yet. However a large majority of those recognised as children (17) had been transferred into children's centres. The others were brought to adult centres, both open and closed.

Among the children whose age was assessed, the most frequent procedure was the X-ray wrist exam. A considerable part of the children (10 out of 22 children) said that they received the information in a language or in a manner they did not understand.



According to the children, the medical assistance and legal services available to them were mainly provided by public facilities.

Just over a majority of the children (15) had been given a residence permit for minors.

### Case Study: Awa

Awa, a 17 year old girl from Nigeria, arrived in Spain by boat irregularly when she was 16 year old. Upon arrival she was taken directly to a detention centre. She was not asked what her age was. After 30 days in detention she was interviewed by a lawyer from CEAR who identified that she was a child and had protection needs. Subsequently she applied for asylum and was transferred to an open centre for asylum seekers. Nevertheless, following an age assessment examination it was not accepted that she was a minor. Her asylum claim was refused and she is awaiting the outcome of her appeal. As her age is disputed, she has no access to public education.

## D. Main gaps identified in the four Mediterranean countries

The main gaps identified in the DRIVE countries overall can be summarised under the following five headings:

- Lack of effective coordination and communication
- Lack of planning and prevalence of ad hoc responses to migrant arrivals

- Violation of human rights at EU borders and in detention
- Lack of clear and consistent identification, differentiation and referral mechanisms
- Insufficient humanitarian assistance on arrival and inadequate services for the most vulnerable

### 1. Lack of effective coordination and communication

In all four DRIVE countries, humanitarian assistance and protection to boat people at borders is affected by several legal instruments, with varied levels of application - national, regional and local. There is no comprehensive legal framework at the EU or national level to ensure systematic assistance to, and protection of irregular migrants from the moment they arrive at the territory of a member state. At the national level, however, ad hoc decrees have been adopted to address certain aspects of this question, such as the Real Decretos<sup>198</sup> in Spain, which provides social and legal assistance to migrants arriving by sea; the law providing assistance and legal services to asylum seekers arriving at ports in Italy<sup>199</sup>, and the recent law which aims for consistent screening of migrants in dedicated centres at the borders in Greece.<sup>200</sup>

Administrative systems also differ quite considerably. In Italy and Spain, certain matters such as the protection and reception of unaccompanied children are devolved to the regional and local authorities, which also play a strong role in the care of vulnerable people. Malta and Greece have a centralised framework. At the central government level, ministerial responsibility with respect to entry to the territory, legal migration and asylum rests mainly with the relevant Ministry of the Interior. However, a number of other ministries are involved, especially the Ministry of Health in Greece and the Labour Ministry in Spain.

In view of the complexity of mixed migration,

198 Real Decreto 1435/2005 and 1142/2006 regulating the allocation of subsidies to certain entities for humanitarian assistance to people in vulnerable immigrants who come to the Canary Islands, the autonomous region of Andalusia and the cities of Ceuta and Melilla.

199 Article 11 sub-section 6 of Immigration Law 286/98 as modified by law 189/02, partly regulates setting up services and assistance to asylum seekers and foreigners staying for less than 3 months.

200 Law 3907/2011 creating an asylum service, services of "first reception" and transposing the return directive.

as well as the multiplicity of state and other actors involved, clear leadership and effective coordination and communication are essential. A dedicated focal point to address mixed arrivals does not exist in any of the four countries. Poor coordination and communication lead to an absence of—or gaps in—services, as well as confusion and a lack of transparency, all of which ultimately have a negative impact on the lives of migrants. During stakeholders meetings organised as part of the DRIVE project<sup>201</sup>, participants confirmed that there are too few occasions where the different actors are able to meet and discuss coordination and cooperation.

The few coordination mechanisms at the national level are thematic, i.e., asylum, trafficking etc., and normally operate either at the inter-ministerial or non-governmental level, such as "tavolo asilo"<sup>202</sup> on asylum in Italy and "Red Espanola contra la trata de personas" on trafficking in Spain. It is rare that coordination meetings include both state and non-state actors. Since Malta is a small country, stakeholders do meet regularly. However, there is no formal platform for coordination.

Weak communication, coordination and consultation mechanisms, especially between governmental and non-governmental actors, inhibit planning, information-sharing, the identification and resolution of problems and needs, as well as the development of necessary services.

### 2. Lack of planning and the prevalence of ad hoc responses to migrant arrivals

In most of the countries studied, it is apparent that the present system was built step-by-step, responding ad-hoc to migrant arrivals and changing migration routes. Systems therefore appear often incoherent or at least incomplete. A lot of informal and local practices have been developed over time, especially at longstanding entry points in Andalusia, the Canary Islands, Lampedusa and Sicily. However, practices are rarely consistent at all points of arrival in the territory and often depend on the discretion of individual actors.

201 Meetings took place between November 2010 and February 2011.

202 Constituted from Acli, Arci, Asgi, Cir, la Comunità di S. Egidio, Centro Astalli, la Casa dei Diritti Sociali, Federazione delle Chiese evangeliche.

Although boat arrivals are a historic and present day feature of the Mediterranean, there is no emergency preparedness mechanism in any of the DRIVE researched countries. There has been no proper planning to deal effectively with sudden inflows of people. Responses are too often unplanned and uncoordinated.

In Italy for example, the 2011 arrivals from North Africa were predictable given the political developments in the region. However, no adequate preparations were made, leading to chaotic situations once migrants arrived. For example, large numbers of migrants were left for days in Lampedusa without being transferred to the mainland. This led to overcrowding of the centre of the island, with migrants having to sleep in the street or on the beaches. This created tensions with the local population, who felt overwhelmed and unsupported. At the peak of arrivals in March 2011, around 3,000 migrants slept on the docks in Lampedusa for several days, sharing only 16 chemical toilets and having access to only 1.5 litres of water per person per day.<sup>203</sup>

This lack of planning and apparent reluctance to recognise that migrant arrivals will most probably be a reality for years to come has immediate consequences for migrants themselves who are left in precarious situations, without regard for their basic human rights, dignity and needs. Structures meant to be temporary, erected for an emergency, are being used for far too long.



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203 <http://www.msf.org/msf/articles/2011/04/msf-claims-sanitary-conditions-in-lampedusa-italy-below-humanitarian-standards.cfm>.

For example in Malta, the Hal far reception centre for asylum seekers and refugees has been in use since 2006 but still consists of tents instead of properly constructed buildings. Some of the refugees interviewed had been living in shared tents for years, in very poor conditions with serious risks to their health and safety.

*“Malta is likely to receive asylum-seekers and migrants also in the future. Meanwhile the living conditions in some of the centres remain sub-standard, mitigated only by the dedication of the people working there. For Malta, the challenge and the opportunity is to move from what has been in some respects an emergency response towards establishing sustainable asylum-migration management mechanisms.”*

**Jon Hoisater, UNHCR representative Malta<sup>204</sup>**

Planning by authorities should take into account the important roles of NGOs and ensure that adequate funding is available. NGOs are often the main providers of services and protection assistance to irregular migrants. The surveys demonstrate that NGOs have a vital role in providing services to migrants, especially those who are vulnerable. However, where funded, they receive mainly short-term programme funding rather than core funding. The current economic climate is leading to a further decrease in funding to NGOs. This adds to the ad hoc nature of responses and services. Apart from restrictions in funding, NGO participation and service provision depends considerably on the will of the authorities in charge of the processes. An exception is Spain, where NGOs are assigned by law a role in the reception of asylum seekers and vulnerable migrants. This contrasts starkly with Greece, where NGOs provide most services while not being assigned any official role in the process.

### 3. Violation of human rights at EU borders and in detention

In most cases, the only actors present at the borders are those officially in charge of controlling access to the territory: national police, border guards and military. There is limited or no monitoring to ensure compliance with legal obligations both at arrival and subsequently in detention centres. There has been a recent trend towards criminalisation of migration with

204 3/11/10, available at: <http://www.unhcr.org/mt/index.php/component/content/article/307>.



Italy introducing the crime of illegal entry<sup>205</sup> and Greece issuing expulsion orders to all irregular migrants on arrival. The DRIVE project has found it difficult to ascertain precisely what procedures the authorities are following when migrants are detected at their borders. There is only limited official data on the number of people intercepted at the European borders and the number of people detained and expelled after arrival.

This lack of access to the territory and transparency in procedures mean that access to protection and respect for human rights cannot be ensured. The lack of appropriate health services at arrival, degrading treatment of migrants by some authorities, detention of vulnerable people, including children, and bad conditions in both open and closed reception centres, further offer a discouraging picture. Independent organisations and NGOs have very little access to border processes and detention centres; this limits transparency and monitoring of the human rights situation. Only in Malta is NGO access to detention centres unlimited. In Spain, Italy and Greece access is given occasionally, on the basis of the provision of specific tasks or services, as outlined in a Memorandum of Understanding.

Detention conditions in both Malta and Greece have been heavily criticised by NGOs, UNHCR and the Council of Europe. Detention centres for migrants in Greece are overcrowded facilities, where men, women, children and other vulnerable people are detained together in unsanitary conditions with no heating or access to outside space. The European Court of Human Rights found that the conditions in a Greek detention centre where an applicant was held were “degrading” and amounted to a contravention of Article 3 of the ECHR which bans inhuman and degrading treatment.<sup>206</sup>

Greece, Malta and Spain all use detention systematically to deal with mixed arrivals, even for some vulnerable people. Italy is the only country out of the four where detention is not used systematically. Periods of detention vary from 60 days in Spain to 18 months in all other countries, with a recent dramatic increase from 6

to 18 months in June 2011 in Italy. Those who claim asylum in Spain are released from detention if their claim is found admissible, while in Malta and Greece asylum seekers can remain in detention until their case is concluded.



A police cell in Greece - Photo: UNHCR Greece

#### 4. Lack of clear and consistent identification, differentiation and referral mechanisms

Apart from registration for administrative and security purposes which is systematically conducted in all countries, research has shown that most states lack identification and differentiation procedures for asylum seekers, trafficking victims, and vulnerable people on arrival. Migrants who are obviously vulnerable, such as people severely ill, heavily pregnant women or young children normally do receive special attention from authorities on arrival.

Even where identification and differentiation procedures do exist, like within the Praesidium project in Italy, they are not consistently applied throughout the territory.

The DRIVE research also shows that it is very difficult for most migrants arriving at the borders to access their rights, even when they self-identify as belonging to a category entitled to legal protection. One of the big gaps underlined by the results of the migrants survey is that while in certain cases information is given to migrants on their rights—mainly in the form of a leaflet provided on arrival—it is not done in a systematic manner nor understandably. The scarcity of translators and cultural mediators at all stages

205 Law n. 94 of 2009, “Regulations on Security Matters”

206 M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, (21 January 2011).

is a major obstacle to the identification and differentiation process, and to setting up a transparent system understood by the migrants themselves.

The correct identification and differentiation of individuals has an important bearing on their status, needs, and the services to which they are or should be referred. Although in many cases the services that are required simply do not exist.

Overall, there is a high risk that people with protection needs (asylum seekers, children, and victims of trafficking and torture in particular) are sent back to their country of origin or transit-without having been identified. The lack of reliable data on the number of people being sent back directly after arrival or once they have been through expulsion centres means that there is no clear idea of how many people are affected.

#### **Identification of asylum seekers**

Although asylum seekers are the group for which the most safeguards and practical guidelines are available at EU level, it was found that access to asylum processes is not systematic. In too many cases, authorities do not try to identify asylum seekers within the group of arrivals.

In Spain, if a person does not explicitly ask for asylum and legal assistance from an NGO (which presupposes that they have prior knowledge of this NGO), then they have little chance of being referred to the asylum procedure.

In Greece, there is no system for relevant authorities to identify asylum seekers at arrival and in detention. Practical obstacles to submitting an asylum request are numerous, even if the person self-identifies. Furthermore, detained asylum seekers are kept longer than others in detention centres in Greece, which is a clear deterrent to applying for asylum. This is an area being addressed in the framework of the new asylum reforms but changes remain to be seen in the field.

In Italy, in places where, only the police are present, "identification" of asylum seekers is done too often on the basis of nationality. Those with high chances of being granted asylum, such as Afghans, Iraqis or Eritreans, are

usually considered *prima facie* asylum seekers and transferred to centres for asylum seekers. People with protection needs coming from other countries, for example those from North or West Africa, can potentially be excluded from the procedure.

Effective and systematic access to the asylum procedure only exists in Malta. Even though the Reception Directive asylum obliges EU states to take into account the specific situation of vulnerable persons, (such as persons who have been subjected to torture, rape or other forms of severe psychological, physical or sexual violence) to ensure that they receive the necessary treatment for the damage caused by those acts, only Malta has a formal identification procedure for vulnerable persons in place. Even then however, despite the fact that Malta has the vulnerability assessment procedure in place, it is not followed by a referral to services geared towards the needs identified, and is only used for release from detention. In addition, vulnerable people still spend long periods in detention waiting for an assessment of their vulnerability.

#### **Identification of trafficking victims**

Although figures of identified trafficking victims in all four countries are relatively low, partners in the field have reported that the phenomenon of trafficking is widespread. Furthermore, while the focus has traditionally been on trafficking for sexual exploitation, trafficking for labour exploitation is an emerging phenomenon in Italy, Spain and Greece, particularly in the agricultural sector. Because of the lack of information available, even about how to assist identified victims, it is difficult to track the number referred to assistance and protection.

In all four countries, there has been only a limited attempt to identify victims of trafficking at the borders. The only example of pro-active identification is the Praesidium project in Italy where IOM is responsible for identifying trafficking victims on arrival. As mentioned earlier however, Praesidium does not cover the whole territory.

Given that trafficking victims are hardly ever identified, due to lack of procedures and training on this complex issue, there is a strong chance

that victims of trafficking arriving in these countries are simply considered to be illegal migrants and are forcibly repatriated or released without being identified.

Many who are identified as victims of trafficking are only identified (by social workers or NGO representatives) after they have been referred to reception centres or have been released onto the streets. The project found that there is a distinct lack of suitable secure accommodation and support for trafficking victims once they are identified. The role of NGOs in attempting to identify and provide adequate care for these victims is paramount.

The growing criminalisation of irregular migration has also had an impact on the work of NGOs working with trafficking victims. In Italy for example, a new law has criminalised illegal entry, rendering a foreigner immediately expellable (and subject to a fine) without reference to the public prosecutor and irrespective of his/her social situation. This has led to a decrease in the probability of identifying victims of trafficking and activating the procedures for investigation and protection.

#### Identification of unaccompanied children

A recent report<sup>207</sup> has underlined the lack of consistency and coherence in child protection policies within the EU member states. The DRIVE survey confirmed this in the four countries reviewed. Data relating to unaccompanied children under the care of the state including nationality, type of accommodation, status, etc., is incomplete and outdated in all countries except Italy. While the recent EU plan for unaccompanied minors tries in some way to address this question, the situation on the ground, especially at border points, needs to be improved.

Systematic identification of children is not carried out and relies almost solely on data given by the migrant himself during registration. Some children do not declare themselves as such because they are caught up in criminal webs or trafficking, or simply want to reach their intended destination, which may not be where they are stopped. As confirmed by the latest

207 France terre d'asile, CIR, Institute for Rights, Equality and Diversity, The Reception and Care of Unaccompanied Minors in Eight Countries of the European Union, (December 2010), available at:

study by FRONTEX<sup>208</sup>, most separated children are not identified at the borders but at their final destination, often only when and if they claim asylum.

Practices differ when someone declares that he is under the age of 18 and is unaccompanied. The child's statement is rarely sufficient and the unreliable X-ray technique is widely used in Italy, Malta and Spain to assess the age of the person, without taking into account the margin of error of plus or minus 2 years. Furthermore, these tests are not complemented by a psychosocial evaluation. In Greece, the situation is even worse as the evaluation is usually completely arbitrary and based solely on the perception of the police officers.

In relation to those identified as children, in most countries guardianship is illusory, a merely symbolic act with one guardian (prosecutor, mayor of town, etc.) being responsible for hundreds of children.

Detention of children alongside adults is still practiced in Greece and in Malta, at least for children awaiting age assessment results. Spain has been criticised for holding newly arrived children in police stations for weeks. When "best interest" determination is conducted by authorities, it is not done on the basis of national standards, except in Italy.

#### Identification of victims of torture and vulnerable people

It appears that only people with visible medical needs are attended to for upon arrival. Other vulnerabilities are identified much later, if identified at all. From the research, and in the migrants survey, it was noted that there is a lack of psychological support for traumatised migrants at arrival and later, despite the extreme vulnerability of most migrants on arrival. There was a gap in identifying and responding to victims of violence, especially women serially raped and victims of trauma, including the long-detained and witnesses to death and brutality.

208 [http://www.frontex.europa.eu/newsroom/news\\_releases/art86.html](http://www.frontex.europa.eu/newsroom/news_releases/art86.html)

In Italy, there is a procedure to identify vulnerable people including torture victims. However this is not consistently available throughout the country. There is a shortage of places available in the centres where assessments are normally carried out, so that people sometimes have to wait for a place.

Spain has set up a system to temporarily take care of vulnerable migrants released from detention or on the territory and has set up adequate facilities for asylum seekers, although duration of their stay is limited.

#### **5. Insufficient humanitarian assistance on arrival and inadequate services**

Only Greece does not provide any systematic humanitarian assistance to people arriving ,although some efforts have been made recently to address this question through emergency ERF funding granted to some service providers.

First aid and emergency humanitarian assistance was provided fairly consistently in Italy and Spain, mainly through long-term collaboration with specialised actors such as the Red Cross. However, even in these countries, the international NGO Doctors without Borders/ Médecins sans Frontières has stepped in to fill gaps and provide medical assistance to refugees and migrants on arrival. For example, it has been providing medical care, including mental health support at landing points in Italy under a Memorandum of Understanding with the Italian government.

The project found that people with severe medical needs were all taken to hospital for care on arrival, with the exception of Greece.

A key need migrants have is for shelter, for both immediate and longer-term accommodation. The availability and quality of accommodation, including in some cases for asylum seekers, was of concern. Many people are left to fend for themselves on the streets. Others are housed in shared tents for long periods. In Greece the situation of all migrants—including those identified as children or asylum seekers—is extremely poor in terms of accommodation and access to adequate services. In Malta, the poor living conditions in open centres, where both asylum seekers and migrants are housed, have been

under severe criticism. With respect to victims of trafficking, there are few suitable, secure reception facilities. Most centres for victims are run by non-governmental organisations and the level of services they can offer depends on the availability of funding. The recent financial crisis has led to the closure of such facilities, especially in Greece.

# DRIVE: Improving protection and assistance in mixed migration arrivals: conclusions and recommendations

MAYDAY! As in other regions and moments of history, the situation of today's boat people in Europe requires changes in policies and action.

No one should accept the high death toll at Europe's door, during crossings of the Mediterranean, North Atlantic and other waters. Nor can the suffering of those who survive the voyages be ignored. Responding specifically to the unexpected transitions and turmoil in North Africa this year, the European Council has acknowledged that it is crucial to put in place "a more long-term, sustainable strategy to address protection, migration, mobility and security in general"<sup>209</sup>. Clearly, migration across the Mediterranean, North Atlantic and other routes can only be more balanced—and work to the advantage of continents on both sides of the sea as well as the migrants themselves—through a combination of policy instruments and practice. Such measures would include providing better access to protection, an equitable system to share the responsibility at borders, increased opportunities for both refugee resettlement and legal migration, greater leveraging of positive linkages between migration and development and, where other options are not available, more sustainable returns.

Among the practical opportunities for increasing access to protection and responsibility-sharing—and the distinct focus of the DRIVE project<sup>210</sup>—is improving the identification, differentiation and referral of boat people (and those crossing land borders in similar circumstances) with claims to specific assistance and protection, beginning with refugees and asylum seekers, children, victims of human trafficking and survivors of torture. For them and

other vulnerable groups who arrive in need, including people with disabilities, pregnant women, single parents with children, and victims of violence, sexual assault and trauma, the challenge is to respond to each person and each need with respect for human dignity and in compliance with international and regional laws. When migrants and refugees with these different needs travel and arrive together, i.e., in movements of "mixed migration", the extra challenge is to "un-mix" claims and needs to allow for an individualised response.

UNHCR made a major contribution to the development of a comprehensive approach to mixed migration with its 10 Point Plan of Action for Refugee Protection and Mixed Migration. In the plan, UNHCR expressly invited actors in government, the international community and NGOs to further develop, coordinate and implement the range of practical measures and mechanisms needed to strengthen protection of refugees, and all vulnerable migrants, moving and arriving in mixed flows.

Even though a range of such measures and mechanisms exist, the DRIVE project and partners have found that they continue to be largely ad hoc, inconsistent and incomplete across the southern border of Europe. Addressing gaps and opportunities, the following conclusions and recommendations arise from the work of the DRIVE project between March 2010 and September 2011.<sup>211</sup>

209 Council of the European Union (April 2011), Council conclusions on the management of migration from the Southern Neighbourhood, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/121479.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/121479.pdf)

210 More information on the DRIVE project can be found at: <http://www.icmc.net/activities/drive-referral>.

211 This includes the conclusions of the multi stakeholder regional workshop held in Catania in May 2011. <http://www.icmc.net/article/DRIVE-regional-workshop>



# 1. Promoting coherence in the EU legal, policy and financial framework to address mixed migration

There is currently no comprehensive EU policy or framework that specifically addresses mixed migration arrivals at the sea and land borders of the EU. There are gaps within the European Commission directorates between ensuring security and respecting basic freedoms, and gaps in the attribution of roles to EU agencies, such as the European Asylum Support Office (EASO), the Fundamental Rights Agency (FRA), and FRONTEX.<sup>212</sup> The resulting gaps in policy, practice and accountability lead to inadequate respect for the fundamental human rights of migrants at borders and insufficient acknowledgement of the critical link between border control and access to protection, including asylum.

The EU financial instruments maintain the division of policy areas: protection falls under asylum; human trafficking under terrorism and combating crime and control of irregular migrants under the unit responsible for border management and return. This continuing separation between protection and border control will likely be maintained in the new financial perspective for the multi-annual financial framework.

Such division ignores the realities of mixed migration flows and creates confusion and gaps in responsibility for the range of people arriving at borders, particularly with respect to the provision of humanitarian assistance (to meet fundamental rights to health, shelter, food) and identification procedures that are necessary to safeguard rights to protection under EU and international instruments. Currently humanitarian assistance is channelled through the European Refugee Fund (ERF), among other things through emergency measures for countries under migratory pressure, thus stretching available resources in order to address

<sup>212</sup> FRONTEX is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

basic needs beyond those of asylum seekers. Moreover, the disbursement of funds is not immediate and is dependent upon a formal request by an EU member state, rather than an objective evaluation of the situation and needs.

## Recommendations

### Ensuring policy coherence

- Following up on the Stockholm Programme, the European Commission should develop a framework (communication or other policy paper) to promote protection-sensitive procedures at borders and points of embarkation. Specific guidelines and coherence between legal provisions, instruments and responsible agencies, including EASO, FRA and FRONTEX, should be provided to ensure that humanitarian needs and basic human rights of all migrants arriving at borders are respected and that protection needs are identified.<sup>213</sup> Such a framework should also take into account the research and evidence-based advice from projects such as DRIVE, PROTECT<sup>214</sup>, and the FRA project on the rights of third-country nationals at external EU borders.<sup>215</sup>
- To improve policy coherence and coordination, there should be a designated interlocutor within the European Commission on the theme of mixed migration and access to protection at the borders.

<sup>213</sup> The Stockholm Programme section 5.1 “Integrated management of external borders” establishes the obligation to ensure protection to those who travel in mixed flows and the need to establish FRONTEX operational procedures in this respect. The European Council requests FRONTEX and EASO to coordinate actions relating to the reception of migrants at the EU’s external borders and EASO to develop methods to better identify those in need of international protection in mixed flows.

<sup>214</sup> To improve policy coherence and coordination, there should be a designated interlocutor within the European Commission on the theme of mixed migration and access to protection at the borders.

<sup>215</sup> The FRA project, “Treatment of third country nationals at the EU’s external borders”, examines the treatment of third-country nationals at the external borders of the EU in the context of the existing fundamental rights framework. The project is coordinated by the International Center for Migration Policy Development (ICMPD). Phase 1 of the project (December 2010 - December 2012) will focus on the EU’s southern maritime borders in Cyprus, Greece, Italy, Malta and Spain. Phase 2 will focus on selected land and airport border crossing points at the external Schengen border.

- The EU should consult NGOs in a formal and consistent manner. The European Commission could draw upon the insight of NGOs and consult them in ways similar to a number of EU agencies that have set up consultative fora. Specialised NGOs or human rights organisations should be able to formally feed into the policy agenda of relevant EU and national agencies.

### Strengthening the legal framework

- To strengthen the legal framework relating to access to asylum in the EU, the strong safeguards proposed in the amended Recast Reception Conditions and amended Recast Asylum Procedures Directives should be adopted. The procedures directive expressly stipulates that there should be access to border points and transit zones for organisations providing counselling and refers to the provision of interpretation services to facilitate access to procedures<sup>216</sup>.

### Ensuring EU Funding for protection-sensitive measures

- There should be shared responsibility and accountability between the European Border Fund and European Refugee Fund to address the realities of mixed migration and ensure protection-sensitive measures. These instruments should provide for reasonable core funding to implementing partners to ensure continuity and building of capacity in this area.
- The European Border Fund should include a protection element in its terms of reference, with measures including identification, assessment and referral mainstreamed into its priorities to ensure consistent investments, instruments and tools in this area.
- International organisations and NGOs should be enabled to access the European Border Fund directly and not only through national authorities, to strengthen service provision, counselling and referral and monitoring of access to procedures.

<sup>216</sup> European Commission (June 2011), *Amended proposal for a directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status, (Recast)* (COM (2011) 319 final), Article 8.2.

### Strengthening EU humanitarian assistance capacity

- In order to ensure sustained funding for emergency preparedness and humanitarian assistance for sudden and large scale arrivals of migrants, additional use can be made of the Civil Protection Financial Instrument under the ECHO mechanism. ECHO could also be instrumental in building structured cooperation frameworks with humanitarian partners, using mechanisms similar to ECHO Framework Partnership Agreement.
- To prevent further deaths at sea, the EU should establish a comprehensive and effective system of Search and Rescue (SAR) operations. This should be accompanied by legislative measures that ensure that nobody who saves a migrant from danger can be prosecuted criminally.

### Ensuring migrant protection in EU relations with third countries

- Countries on both sides of the Mediterranean and north Atlantic should be encouraged to fully incorporate protection into their responses to irregular migration. Readmission agreements between the EU or one of its member states and transit countries must contain strong and enforceable safeguards for the respect of human rights of migrants being considered for return, including identification, differentiation and referral procedures. Return operations must be immediately stopped if the respect of human rights is not ensured in the country to which migrants would be returned. The FRA is encouraged to examine the content of existing readmission agreements, highlighting gaps as well as good practices.

## 2. Providing essential humanitarian assistance

Under international human rights law, all persons must be provided with basic and urgent humanitarian assistance, whatever their form of migration or arrival and regardless of their immigration status.

## Recommendations

- Humanitarian assistance must address basic needs and include the provision of food, drink, shelter, clothing, medical and emergency psychological support. Cultural mediators should be used to ensure meaningful two-way communication without delay.
- Humanitarian response mechanisms must be strengthened. National authorities should:
  - to ensure that the humanitarian needs of all migrants are met from the first moment of contact with authorities, even prior to or while performing basic registration (i.e., collection of bio data) and identification measures;
  - to have emergency plans in place to anticipate and respond effectively to sudden or large arrivals of migrants;
  - to appoint a single body/focal point responsible for the emergency planning, development and coordination with operational actors;
  - to be prepared to declare an emergency, thus triggering financial and other assistance from the EU.

## 3. Remediating detention

In view of the composition of mixed flows and the high vulnerability of boat people, it is of concern that in three out of the four countries in the DRIVE project, they are taken straight to detention centres on arrival. In Malta and Greece, and to some extent in Spain, this procedure widely applies to all (including children), regardless of apparent or potential vulnerability. Moreover, detention conditions in Greece and Malta are extremely poor and have been severely criticised.

### Recommendations

- Detention is not the appropriate measure for boat people and other migrants arriving in irregular circumstances across any borders, and should not be used automatically. Upon arrival, migrants should be taken to a safe and neutral place as soon as possible. This place should be neither a detention centre geared towards

expulsion of migrants at arrival nor police cells but rather open or semi-open reception centres specifically designed for that purpose, where people can receive humanitarian assistance and have their needs identified and assessed. In line with the recommendations of the UNHCR 10 Point Plan,<sup>217</sup> multi-disciplinary expertise should be present in the centre.

- Although the EU Reception Directive applies to centres for asylum seekers, similar minimum standards should be applied to all centres of first assistance.

- Children should never be put in detention centres.

- When detention is used:

- families should not be separated
- unrelated men and women should not be detained together
- people detained for immigration purposes should not be kept in facilities with criminal detainees
- all detainees should have access to emergency health care and essential treatment, as per the EU Returns Directive
- NGOs must have access to those in detention

- Given clear evidence that current detention practices create and seriously exacerbate the vulnerabilities of those detained, states should explore alternatives to detention, together with NGOs, other local and regional actors and international organisations.<sup>218</sup>

## 4. Broadening cooperation between key actors

Multi-agency responses are essential in mixed migration contexts, require coordinated action between different agencies with different mandates, and should be further developed.

<sup>217</sup> UNHCR, The 10 Point Plan in action, op.cit.

<sup>218</sup> Several key documents, such as the "UNHCR Alternatives to Detention of Asylum seekers and Refugees", the "IDC Handbook for Preventing Unnecessary Immigration Detention" and the FRA report "Detention of third-country nationals in return procedures", can be used by states and partners to explore practical options.

## Recommendations

- The comprehensive approach promoted under the UNHCR 10 Point Plan, including its emphasis on cooperation between governments, international organisations and NGOs, is a model that should be further implemented throughout the Mediterranean region, at entry points for both sea and land arrivals.
- Cooperation among stakeholders, including NGOs, should be promoted at EU, national and regional levels, assigning clear roles and functions to each organisation according to mandate and expertise, preferably through formalised collaboration frameworks. The multi-actor cooperation model set out by the Praesidium project in Italy is a good example that should be further applied in the region.
- Partnerships with NGOs are essential. Trusted by migrants and refugees, NGOs currently play important roles in providing information, legal, medical and social services, delivering services through on-the-ground partnership with national and local government authorities and international organisations every day. Governments should value the role of NGOs and consult them on a systematic basis. NGOs should be properly funded and be consistently included in multi-agency partnerships and agreements.
- The EU and EU member states should support the development of flexible pools of expertise to respond to mixed migration flows. Rosters and/or teams of experts, should be maintained “on standby”, able to operate as temporary support and/or mobile units and be deployed rapidly in situation of specific needs and/or emergencies.<sup>219</sup> Both the EASO and FRONTEX have provisions in place for the deployment of similar teams, which could be expanded for this purpose and expressly to include NGOs. Services could include providing medical assistance, delivering

<sup>219</sup> Several rosters to deploy staff on a temporary basis exist, such as: 1) NORCAP, operated by the Norwegian Refugee Council, deploying, among others, experts in logistics, information, camp management, gender and child protection; 2) SURGE, the International Rescue Committee (IRC) roster for protection activities, including in returnee and border monitoring, protection of refugees in camps, gender-based violence and detention-related issues; and 3) the ICMC-UNHCR Resettlement Deployment Scheme, providing support to assess protection needs of women at risk, children and elderly people and to identify and refer refugees for resettlement.

food, shelter and other services, performing identification processes and developing referral mechanisms to tap into services and resources that are available at local levels.

- Cooperation programmes involving NGOs from both sides of the Mediterranean should be promoted to exchange information, share practices and strengthen migrant protection in the region. The EU should continue to support networks like DRIVE in organising regional reflection, training and capacity-building, including local and national government authorities and international organisations together with NGOs.

## 5. Strengthening protection at borders: identification, differentiation and referral

Some groups have been clearly defined in international and EU law as having specific needs and rights which must be addressed in migration contexts, such as asylum seekers and refugees, children, victims of trafficking and survivors of torture. Other people may also have needs arising from their particular vulnerabilities, although to date their rights as specific groups in migration contexts are less consistently defined in law, e.g., people with disabilities, people with serious medical needs, pregnant women, single mothers with children and victims of sexual and gender-based violence (SGBV) and trauma.

Several EU instruments make reference to the special needs of vulnerable categories of migrants that must be addressed but normally include these groups only within the category of asylum seekers.<sup>220</sup> Practical measures are

<sup>220</sup> The EU Qualification, Reception and Returns Directives each suggest that vulnerable persons include “minors, unaccompanied minors, disabled people, the elderly, pregnant women, single persons with minor children, persons subjected to torture, rape or other serious forms of psychological, physical or sexual violence”. The Reception Directive also mentions that its provisions shall apply to “persons found to have special needs after an individual evaluation of their situation”. Both the Qualification Directive and the Reception Directive are applicable to asylum seekers only.

required immediately to strengthen protection and ensure that vulnerable people are identified and assisted at the borders. Procedures at borders and other points of entry must include effective and transparent processes of identification and differentiation so that every migrant and refugee can enjoy protection to which they are entitled under international and EU law.<sup>221</sup> Such procedures should be flexible enough for use in all arrival situations and ensure all those in need are identified at as early a stage as possible.

Early identification is key, but it is also important to note that identification is an ongoing process since needs may not immediately be apparent or reported, and often emerge at a later time.

### General recommendations on identification, differentiation and referral

- The human rights of all migrants must be respected, regardless of their immigration status
- National and regional authorities and agencies need a renewed commitment to the principle of non-refoulement in its full legal sense under international and European law: prohibiting the return of migrants to any country where their human rights would be at serious risk of violation. As an overarching principle of binding law, this constrains any automatic return of potential asylum seekers and refugees, children, victims of human trafficking and victims of torture, and thereby compels careful identification, differentiation, and appropriate protection and assistance of such populations.
- Greece, Italy, Malta and Spain must address the serious deficiencies identified in their systems to ensure that they comply with obligations and standards under international and European legal instruments, and respect and protect the human rights of migrants at all stages of arrival. This includes border points, detention centres and all other facilities.

<sup>221</sup> As observed in Parts 1 and 2 of this report, these include, amongst others, the 1951 Refugee Convention, the Convention on the Rights of the Child, the EU Charter of Fundamental Human Rights, the EU Reception Conditions and Return Directives, the “Palermo Protocol” and the CoE Convention on Trafficking.

- The term “identification” should be defined and used consistently in both EU and national instruments, encompassing a holistic differentiation of needs and rights.
- Consistent identification and differentiation must be carried out at borders, to identify asylum seekers, children, victims of trafficking and victims of torture so that migrants can enjoy the specific protective provisions set out in international and EU law. The needs of other vulnerable migrants should also be addressed.
- Migrants arriving at borders, largely unaware of laws and procedures in place, shall not be expected to explicitly “self-identify” their need for assistance and/or protection. National authorities, assisted wherever practicable by international and NGO experts, should include “proactive” identification processes within entry procedures to verify potential protection needs. Such procedures should take priority over any returns procedures and be consistently applied throughout the territory.
- Information, legal advice, counselling, interpretation and whenever needed, cultural mediators must be provided to all upon arrival and beyond in order to ensure better identification and differentiation and follow-up on their needs and rights. The distinct role of cultural mediators should be more widely understood and considerably expanded.
- Interviews should be carried out sensitively, in a safe environment, and with as much time as needed, recognising the difficulty that victims of persecution, trafficking and torture, and children have in disclosing—at times even remembering or recognising—their experiences.
- A range of expertise, and as a result, multi-disciplinary teams are normally required to identify and assess the different vulnerabilities, needs and rights, and relate them to corresponding procedures for protection and assistance. Capacity for such identification must be further strengthened through a multi-disciplinary exchange of practices, a European curriculum, and cross-regional training.



➤ To benefit from multiple tools available, an “identification toolbox” with relevant instruments and guidelines (see a list of tools in annex 5), should be collated by EASO to define common definitions, standards and guidelines and to strengthen the capacity of both officials and NGOs to identify people in need of protection and vulnerable migrants.

➤ Identification and differentiation procedures must be complemented by effective referral mechanisms and appropriate services. Such services need to be further developed and/or strengthened and should tap into local resources and facilities.

➤ Beginning already in the first phase of arrival, migrants should have the possibility to re-establish contact and stay in contact with their families. Authorities should take such needs into account, as well as the needs of family members of migrants in the countries of origin to know the fate of their loved ones. For this reason, and taking into account the necessary protection of personal data, authorities should share information that is used for their procedures that could be important to restore family links. Authorities should also work on a proper system of identification, collection and management of information on mortal remains. The experience of the International Red Cross and Red Crescent Movement in the area of restoring family links should be recognised.

### Recommendations for identification, differentiation and referral of specific groups

➤ Refugees, asylum seekers and others in need of international protection

- Access to protection procedures must not depend solely on a person explicitly requesting asylum. National authorities should ensure that frontline actors provide appropriate information regarding the right to ask for asylum to all migrants arriving in irregular circumstances and, about their right to have access to independent legal assistance, interpretation and other meaningful assistance in completing the asylum application.

- To identify persons who should be referred to the asylum procedure, every migrant must be asked as early as possible, about the reasons why he or she has left their country of origin. This must take precedence over any detention, expulsion or other enforcement measure.
- Identification of asylum seekers should not be exclusively based on the country of origin of the applicant.

➤ Victims of human trafficking

- National authorities have a duty, imposed by international and regional law obligations, to explore directly with persons apprehended in irregular movements the possibility that they are victims of human trafficking. Tools and training need to be developed for border guards, police and other officials, and NGO actors to enable them to identify potential trafficking victims.
- Information should be provided at points of arrival to alert those arriving to the circumstances and risks of being trafficked and to provide guidance on how to get help if they were trafficked.
- Medical staff and other providers of services to newly arrived persons should be trained to recognise signs of trauma, mistreatment or force that could indicate trafficking.
- Practical and recovery-centred alternatives to detention for trafficking victims need to be explored.
- National laws and services should take a victim-centred approach in contexts of human trafficking, with priority given to offering rehabilitation services, rather than simply securing the assistance of trafficked persons in enforcement against the traffickers.
- Referral mechanisms to law enforcement agencies should be developed to ensure adequate follow up and instant referral to victim protection services.

➤ Children

- States should put in place child protection safeguards at the border and when otherwise first encountering children from third countries in their territory. Unaccompanied and separated children should not be refused access to the territory.

- National authorities have an obligation to provide special protection and assistance to unaccompanied and separated children, including through the appointment of a guardian. This requires proper identification processes to be in operation, including appropriate age assessment processes (where there is a reasonable and serious doubt as to age) as well as careful screening to ensure a child is considered to be accompanied only when they are with an adult who has primary responsibility for them.
  - Family unity should be preserved in the case of families with children and reception conditions should be appropriate to the needs of family.
  - As a general rule, children should not be detained, nor should they be kept in police cells separated from family members, or left with unrelated adults.
  - States should establish proper procedures for the referral of unaccompanied children to qualified Unaccompanied children should be referred to qualified services for protection and assistance, in their best interest. The children's reception and assistance needs already identified at the borders should be taken into account. Services involved should be provided on the basis of collaboration between interdisciplinary actors including NGOs and intergovernmental organisations.
  - The EU should support the establishment of proper procedures, including best interest determination procedures, and tools to assess the best interests of the child in each case and to deliver appropriate durable solutions.<sup>222</sup> This includes family tracing if it is in the best interest of the child and safe for the family.
  - The EU should support the development and strengthening of child protection systems in countries of origin and transit, to foster opportunities for children in order to reduce the risks of unsafe migration, and facilitate return and reintegration where this is in the best interests of the child.
- Victims of torture
    - Victims of torture need particular care both in the arrival and reception stage. Psychological and medical support should be available at points of arrival and all along the asylum process.
    - Experts should be engaged in processes of identification, differentiation and referral of victims of torture.
    - Distinct identification tools, procedures and referral protocols with specialised health centres and services should be developed.
    - Awareness on the health needs of torture victims should be raised among health professionals throughout the region and a mapping of all adapted or specialised care providers should be drafted in order to allow swift referral.
    - Mainstream medical staff and other service providers, as well as police and border officials, should receive training on the evidence and effects of torture on survivors, both for identification and for referral purposes.

## 6. Monitoring access to protection and assistance

While a number of legal and other measures have been adopted recently to improve essential protection of migrants, such as the recast FRONTEX regulation, the FRONTEX fundamental rights strategy and the Schengen Border Code, the monitoring of actual access to entry and protection procedures is still weak and should be strengthened.

### Recommendations

- To ensure compliance with procedures, it is essential that states permit and facilitate monitoring mechanisms to be set up at the borders, incorporating and allowing access to NGOs.
- Monitoring mechanisms must also be introduced or strengthened at post-arrival stages, including at reception and detention centres, and any other facilities used to accommodate or hold migrants. Practice and examples in place at the eastern border of the

<sup>222</sup> See UN High Commissioner for Refugees, *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, available at <http://www.unhcr.org/refworld/docid/48480c342.html>.

EU should be examined for reference and possible replication.

- Data should be collected consistently at national and EU levels and made publicly available, including information on all arrivals disaggregated by age, gender and nationality; expression of needs or rights and related responses, identification within any particular rights group(s), access to and response of any forms of protection, assistance or enforcement, and outcomes.
- With respect to detention:
  - children should never be put in detention centres.
  - families should not be separated.
  - unrelated men and women should not be detained together.
  - people detained for immigration purposes should not be kept in facilities with criminal detainees.
  - all detainees should have access to emergency health care and essential treatment, as per the EU Returns Directive.

## 7. Promoting a protection framework for migrant victims of violence and trauma

Large numbers of migrants travelling irregularly to Europe, especially by boat, arrive in profound distress, both physical and psychological, suffering from dehydration, hunger, exhaustion and trauma. Most of these men, women and children have endured peril and misery during the trip - in their country of origin or in countries of transit and during the boat trip. Women, particularly, widely and repeatedly endure sexual and gender-based violence (SGBV), predominantly rape and sexual extortion, while travelling on these routes. DRIVE project partners and research point to an important gap in protecting and assisting those who have suffered violence and trauma along their journey.

## Recommendations

- In the absence of a protection mandate for migrants travelling in an irregular manner, more research, stakeholder consultation and coordination is needed to obtain agreement on the protection framework for migrants in transit and to promote action at international and regional levels. Such a framework should follow a victim-centred humanitarian approach.
- The European Union should, within its Global Approach to Migration, human rights instruments and thematic programme for migration and asylum, address specific protection and assistance needs of refugees, asylum seekers, children, victims of torture and trafficking and other migrants at arrival and transit points on both sides of the Mediterranean as well as on other borders.
- EU member states should increase efforts to offer protection to migrants who have suffered tremendously during their journey and present compelling humanitarian needs. Even if some of those arriving would not necessarily qualify for asylum, they may still be offered some type of humanitarian status. Current law in the four DRIVE Mediterranean countries allow for humanitarian status to be granted on a discretionary basis. Stakeholders need to be more aware of the possibility to promote the use of such humanitarian status for vulnerable migrants, including victims of violence and trauma.

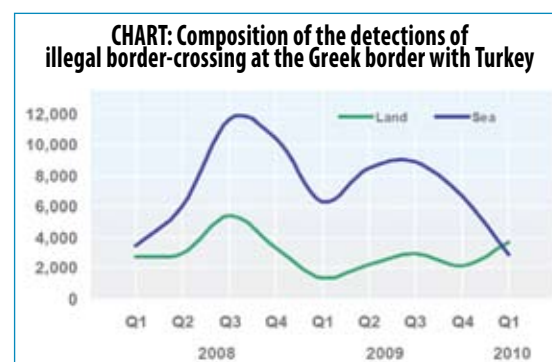
# Country report: GREECE

## Part A: Country context

### 1. Information on migration and asylum trends in Greece

- Greece constitutes one of the main entry gateways to the EU. Situated geographically on the external borders of the EU, Greece has both extensive sea (18,400 km) and land borders (1248 km) with mostly non-EU countries: Turkey, Albania and the Former Yugoslav Republic of Macedonia. Because of its strategic geographical location and particular nature of its borders, the borders remain extremely difficult to control.
- Changes in migration flows in the region in recent years (mainly through the closure of the West Africa and central Mediterranean routes) have resulted in massive influx at Greek borders.
- Most of those who irregularly cross Greece's border see the country as a transit country from which they will attempt to reach other EU member states.
- In the period 2007-2009 most irregular arrivals occurred in the islands of the Aegean Sea (Greek-Turkish sea border). However, in 2010, most migrants arrived irregularly through the land border (Evros), mainly through a 12.5 km land strip border zone near the Greek city of Orestiada. In terms of numbers, whereas in 2009, 49% of all detections were at the maritime border between Greece and Turkey, in the first half of 2010, the number had dropped to 16% of the total detections.
- Several explanations have been given for this change including the intervention of FRONTEX at Greek sea borders from March 2009 in the Joint Operation *Poseidon*. The deployment of Rapid Border Intervention Teams (RABITs) coordinated by FRONTEX at the Greek-Turkish land border in November

2010 further altered migration movements. These teams of specially trained border guards from different EU member states were originally deployed for 2 months, but the operation was extended to March 2010. The RABIT deployment was concluded on the 2nd of March 2011, but the presence of expert border guards at the Greek Turkish border continues to date, on a somewhat smaller scale, but on a more permanent basis through the Joint Operation *Poseidon Land*.



Source: FRONTEX, FRAN Quarterly Update, Issue 1, Jan.-March 2010

- Strongly hit by the economic crisis, Greece has been advocating for increased EU action on migration. In particular, Greece has asked the EU to:
  - Intensify FRONTEX activities.
  - Conclude the EU readmission agreements and improve cooperation with countries of origin and transit (i.e. Turkey). Greece has emphasised that border control and migration management is a European rather than a Greek problem.
- Greece has been heavily criticised by human rights NGOs, international organisations and international and regional expert bodies (UNHCR, UN Rapporteur against Torture, Council of Europe Commissioner, FRA) and by the EU for its inadequate implementation of protection policies for migrants and asylum seekers as well as the reported ill-treatment of migrants at borders. Following

several reports and a landmark decision of the European Court of Human rights (*MSS v Belgium and Greece*<sup>1</sup>), most EU countries stopped returning asylum seekers to Greece under the provisions of the Dublin II Regulation.

- Many of these irregular entrants have protection needs which are not met due to the insufficiency of procedures, and the lack of appropriate structures in Greece coupled with the disproportionately large number of migrants that the authorities must cope with. In 2010, according to data from the Hellenic Ministry of Citizen Protection, amongst the persons arrested were: 28,299 from Afghanistan, 7,561 from Palestine, 6,525 from Somalia and 4,968 from Iraq.
- In addition, there are large numbers of asylum seekers in Greece whose claims are pending examination from previous years. Figures released by UNHCR at the beginning of 2010 report the presence of 48,201 asylum seekers, but the Ministry of Citizen Protection estimated that there were approximately 52,000 pending claims (in both first and second instance).
- It must be noted that the numbers of persons wishing to seek asylum present in the Greek territory is far greater than those who can actually access the asylum procedure (at present authorities lack the capacity even to register claims). Non-governmental organisations that are active in the field of legal representation in Greece mention that in 2010, asylum seekers who were in a particularly vulnerable situation (for example unaccompanied children, single parents, pregnant women) were usually only able to access to the asylum procedure following their intervention.
- Additionally, the profile of asylum applicants has changed in the recent years: those who would be in need of international protection show very limited trust in the quality and fairness of the asylum procedure and do not apply for asylum, and many who would not

qualify as beneficiaries for international protection apply in order to gain some form of residence status in the country.

- Since late 2009, Greece has undertaken changes in its asylum legislation and drafted an action plan for migration management after pressure from international and EU bodies (see below).

## 2. Overview of the administrative and legal framework

### Institutional responsibility for asylum and migration policies

Until October 2009, the Ministry of the Interior was responsible for the overall management of migration and asylum policies in Greece. The newly elected government divided the responsibilities of the former Ministry of the Interior between two new administrative units:

- The Ministry of the Interior, Decentralization and e-Government, is responsible for the immigration policy of Greece in issues concerning legal immigration, social integration and citizenship.
- The newly-established Ministry of Citizen Protection, under whose remit is also the Greek Police Force and the Port Authority Offices, is responsible for irregular immigration, surveillance of borders and the asylum policy.

The Port Authority Offices are exclusively responsible for the territorial sea, ships and navigable craft and the country's ports. In addition to the responsible regional Offices (Port Authorities) are responsible for the control and surveillance of the maritime borders of Greece.

In addition to the above, the Ministry of Health and Social Solidarity is in charge of the reception of asylum seekers and migrants as well as for ERF (European Refugee Fund) projects.

### 2.1. Legislation on migration

In the area of migration, the basic legislative text is Act 3386/2005 on the "Entry, residence and social integration of third country nationals into the Greek territory." This law was thoroughly revised, principally by virtue of Act 3536/2007 of

1 *MSS v Belgium and Greece*, app. No. 30696/09, 21 January 2011, *S.D. v Greece*, app. no 53541/07, Judgment of 11 June 2009



22 February 2007<sup>2</sup> as well as by further legislative acts. This law transposed the EU Directives in the area of migration and provides the framework for legal migration, integration of migrants, protection for victims of trafficking in human beings and the right to family reunification. In addition, it criminalises illegal entry while envisaging its non-penalisation in certain cases.

## 2.2. Legislation on asylum

In the area of asylum, Greece had transposed:

- The EU Directive on Reception Conditions into Presidential Decree 220/2007;
- The EU Qualification Directive into Presidential Decree 96/2008;
- The EU Procedures Directive into Presidential Decree 90/2008 which was further amended regarding asylum procedures by Presidential Decree 81/2009. This latter decree was heavily criticised by UNHCR and non-governmental organisations<sup>3</sup> as it removed important safeguards by assigning responsibility for the examination of second instance claims to the Council of State that did not have the authority to re-examine the facts of the case but before which a first instance decision could only be challenged regarding points of law. In addition, it decentralised the examination of asylum claims at first instance to police departments in 53 prefectures where the decisions were based on the interview and consequent recommendation of an Advisory Committee, comprised by two police officers and one representative of the Regional Authority (UNHCR, also holding membership status in these Committees abstained from the procedure). The deciding authority on asylum claims was the competent Police Director.

<sup>2</sup> Determining matters in migration policy and other issues falling into the competence of the Ministry of the Interior, Public Administration and Decentralization .

<sup>3</sup> See UNHCR, *Observations on Greece as a country of asylum*, December 2009, at pp. 15-17, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4b4b3fc82&page=search>.

The Greek Council for Refugees (GCR) had petitioned the Council of State challenging the adherence of the said Decree to the Greek constitution and the European Directives. See Press Release of GCR, 90 Greek Council for Refugees files a challenge before the Council of State against the Greek legislative framework of 19 November 2009, available at: <http://www.gcr.gr/en/node/338>

## 2.3. The Asylum System Reform

Since October 2009, the Greek government has been taking steps to reform the asylum legislation and address the problematic situation that had led to the accumulation of some 52,000 applications and the lack of conformity of its legislation on asylum procedures with EU law.

To this end, in August 2010, the Ministry of Citizen Protection—after consultation with other competent ministries and civil society organisations—communicated to the European Commission the *Greek Action Plan on Migration Management*. This Plan contained the basic framework of action to be undertaken on both practical and legislative levels, mainly:

1. Creation of screening centres and a procedure for screening and registering migrants entering the Greek territory;
2. Creation of a new Asylum Service (separate from the police);
3. Increase in the number of reception centres for vulnerable groups;
4. Improvements in the return procedure including reforming migrant detention centres.

In addition, two new legislative instruments were adopted:

1. In November 2010, the Presidential Decree 114/2010<sup>4</sup>, came into force, a legislative text which replaced the earlier PD 90/2008 and repealed the problematic PD 81/2009. This decree also establishes the procedure for all pending asylum applications (backlog on second instance). Its provisions will be analysed in more detail later, but in principle it gave the responsibility for the examination of first instance claims to 14 Police Directorates in the country and in second instance to independent 3-person Appeal Boards who have decision-making authority, and not only a consultative role.

<sup>4</sup> This Decree has been adopted for the so-called transitional period , until the provisions of Law 3907/2011 will be implemented.

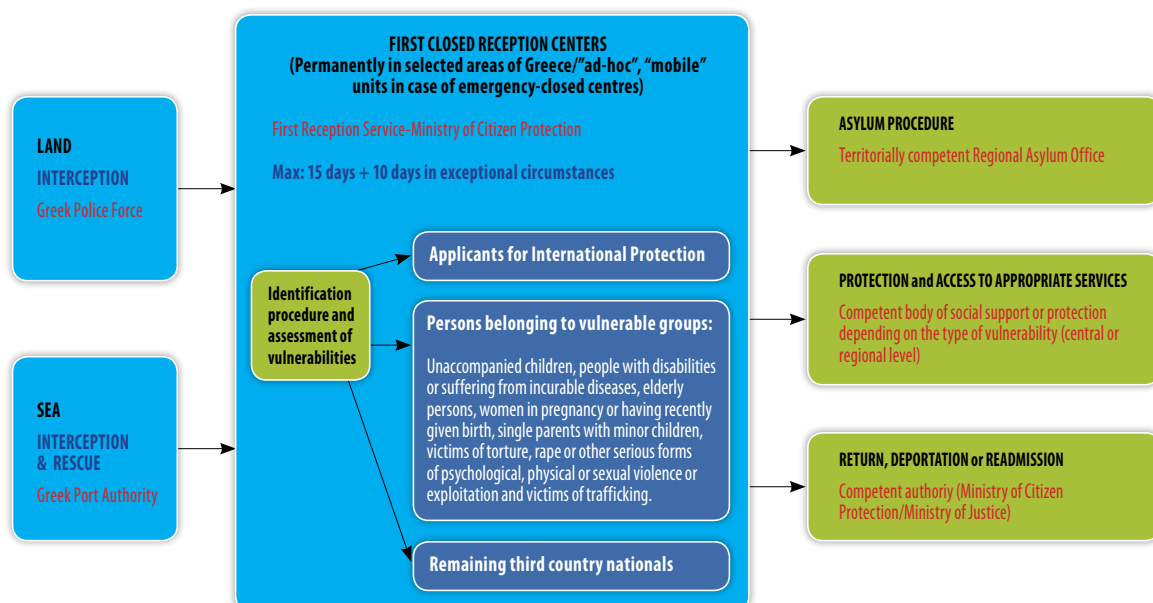
2. In January 2011, Law 3907/2011 came into force, an ambitious legislative text which aims to achieve three basic goals within a period of one year:
  - the creation of an Asylum Service within the Ministry of Citizen Protection for the examination of asylum applications on first instance and the establishment of Appeals Committees (within the same Service, but with independent character) to examine applications on second instance.
  - the creation of a “first reception” service within the Ministry of Citizen Protection. This service will have a Central Unit which will have its seat in Athens but several other regional units which will be based in different geographic departments. The functioning of this system will be analysed in detail below.
  - transposition of the EU “Returns Directive” Directive 2008/115/EC into Greek legislation. The law also establishes a “humanitarian leave to remain” by consolidating and replacing provisions of earlier legislation, namely Law 3386/2005.

## Part B: The procedure upon arrival once the new Law 3907/2011 will be fully implemented

Law 3907/2011 was adopted in January 2011. However, as the changes included in this piece of legislation are far-reaching and have financial implications, the text of the law has provided a time-frame for their implementation—12 months for the creation of the new Asylum Service and the Service of First Reception. The aim of these centres is to establish screening procedures, identification and referral of all irregular entrants. At the time of writing, the setting up of the Service of First Reception is still underway and it remains to be seen how the envisaged procedure will work in practice. In addition, apart from the setting up of the centres themselves, it will be necessary to enhance the general capacity of the national reception system in order to make referral meaningful.

The following graph outlines the main aspects of the procedure of registration, identification and arrival as they are defined in the new law:

### PROCEDURES TO BE FOLLOWED FOR MIGRANTS ARRIVING BY SEA IN GREECE



## Part C: Current procedures and existing practices for migrants arriving by boat

### 1. Description of procedures

#### 1.1. Interception at sea

When migrants are identified at sea or in ports, they are apprehended by the port authority, in charge of the control and surveillance of maritime borders in Greece. The port authority is said to have trained staff for first aid on the boat. Only emergency medical cases are taken to the hospital immediately after arrival.

#### 1.2. First place of arrival: Port authority station

Migrants are then brought to the port authority station where they spend a few hours. They may be provided with warm clothes and blankets, depending on availability.<sup>5</sup>

- Basic registration takes place - names, date of birth and nationality are taken.
- The port authorities do not have contracted translators at their disposal and mostly rely on migrants on the boat who speak English.<sup>6</sup> It appears that at this stage, when FRONTEX experts are present, they sometimes assist the port authority and/or police in conducting nationality assessments.
- The cases of those arriving irregularly are referred to the public prosecutor, who usually abstains from penal prosecution.<sup>7</sup>

No NGO or governmental body appears to be involved in first aid actions in a consistent manner. However, ad hoc support has been provided by NGOs (PRAKSIS, MSF, the Hellenic Center for Disease Control and Prevention - HCDCP, Doctors of the World etc.) in certain rare cases.

5 Where supplies are available, it is usually through donations from the general public.

6 This issue was underlined as a major problem by the police during the field trip interviews.

7 In Greece illegal entry constitutes a criminal act (Law 3386/2005). However, as criminal proceedings are complicated and resource-intensive, Public Prosecutors often refrain from initiating a criminal investigation and instead notify the police and port authority that immediately begin procedures for the removal of third-country nationals to their country of origin or to a country of transit-(mainly Turkey).

#### 1.3. Transfer to the police authorities

- Migrants are then delivered to the police authorities for formal registration. From that moment onwards, they follow the same procedures as migrants apprehended inland. Migrants normally spent a few hours at the police station.
- At police stations migrants are formally registered: their name, nationality, date of birth, fingerprints and photo are taken. Again, there are no permanent translators, so ad hoc translation services are used. Migrants are also interviewed by FRONTEX, especially on their travel route, timeline, cost and facilitator.
- The age of a migrant is said to be registered according to what he/she says. If there are any doubts, a doctor might undertake further investigation. The final decision is taken by the police authorities, often in accordance with the assessment of FRONTEX, both on the nationality and on the age.
- From the police stations migrants are brought to the hospital for a general medical check and clarification of age disputes. Many reports however, underline that usually medical checks to define the age of children do not take place.<sup>8</sup> It is said that the police arbitrarily decide on the age of the migrant.
- Those who need longer hospitalisation can stay in the hospital, whereas the rest are brought to the detention centre. When there are no detention centres in the area, migrants are kept in cells in the police station, usually in overcrowded and inadequate settings.

#### 1.4. Administrative detention

During the initial registration procedure, irregular entrants are kept in temporary detention for up to three days<sup>9</sup>, on the basis of a detention order issued by the police without approval

8 See for example Human Rights Watch, *Left to Survive Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, 2008, at pp.20-21, available at: <http://www.hrw.org/en/reports/2008/12/22/left-survive>

9 Article 76 (3) of Law 3386/2005 allows for temporary detention for up to three days if, on the basis of the general circumstances, there is a risk of absconding or if the person constitutes a danger for public order or if they avoid or obstruct the procedure for expulsion or return.

from a judge. Further detention is only allowed if a deportation order is issued. Once the deportation order has been issued, detention may continue but cannot exceed a period of six months. The maximum duration of detention was raised from 3 to 6 months in July 2009 by Law 3772/2009. According to Law 3907/2011 transposing the EU Returns Directive, this period may be extended in certain circumstances but this extension should not exceed 12 months. Thus detention may last for a maximum of 18 months.<sup>10</sup>

In practice, the period of detention differs according to the administrative treatment accorded to each individual; persons may remain in detention for a period ranging from 2-3 days to six months, and in some cases even more. The length of detention is usually linked to the individual's nationality, which determines the feasibility of deportation. However, research conducted by Amnesty International in 2010 on detention conditions in Greece revealed that in some areas irregular migrants who could not be returned for practical reasons were nevertheless detained until the completion of the maximum period of detention prescribed by law.<sup>11</sup>

**Detention of children:** Presidential Decree 114/2010 provides that authorities should avoid detaining minors. According to the same decree, children separated from their families and unaccompanied minors should be detained for only the necessary time until their safe referral to adequate centres for accommodation of minors.

<sup>10</sup> The new Presidential Decree 114/2010 states as a principle that third-country nationals or stateless persons who apply for international protection shall not be held in detention for the sole reason that they entered and remain illegally in the country. However it allows for the detention of asylum seekers exceptionally when alternative measures cannot be applied for reasons that can be interpreted widely such as the speedy and effective completion of an application. It stipulates that the detention is ordered for the absolutely necessary duration and it should in no case exceed ninety days. If the applicant has been detained earlier in view of an administrative deportation order, the total detention time cannot exceed one hundred and eighty days.

<sup>11</sup> Amnesty International, Greece: Irregular Migrants and Asylum Seekers Routinely Detained in Substandard Conditions, July 2010, at p 13. , available at: <http://www.amnesty.org/en/library/asset/EUR25/002/2010/en/07291fb2-dcb8-4393-9f13-2d2487368310/eu-r250022010en.pdf>

However, due to the lack of available places in reception structures, children end up spending weeks or even months in detention. Furthermore, children are often kept together with unrelated adults. Children often remain in detention until guardianship and reception allocation procedures are concluded.

### 1.5 Release from detention

Migrants are released from detention when:

- they cannot be returned, or as a result of practical considerations (in particular overcrowding) or,
- the maximum permissible detention period has been exhausted.

Upon release, they are issued a police notice, also known as the "white card", requiring them to leave the country within 30 days. According to the UNHCR legal officer that ICMC met in its field trip, the content of this document is usually not explained to migrants, who sometimes even think that it is a residence document. Furthermore, migrants holding it cannot leave Greece since they usually do not hold any identity documents and therefore cannot purchase any travel ticket. If they are intercepted by the police after the police notice has expired, they risk further detention. They could be detained for various periods of time after which they are issued a new deportation order. This situation could be repeated more than once. Most irregular migrants will head for bigger urban centres and try to access the asylum procedure there. As there are very limited places in reception centres (which are often reserved for the most vulnerable) the majority will face destitution if they do not have assistance from personal networks.

### Detention conditions

The conditions in detention centres in Greece have been widely reported as being grossly inadequate. Greece has been repeatedly condemned by the ECtHR<sup>12</sup>, the European Committee for the Prevention of Torture, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and a number of non-governmental organisations. Some of the main concerns are:

<sup>12</sup> *MSS v Belgium and Greece*, app. No. 30696/09, 21 January 2011, *S.D. v Greece*, app. no 53541/07, Judgment of 11 June 2009, *R.U. v Greece*, app. No. no 2237/08, Judgment of 7 June 2011

- Men, women, children and other vulnerable persons are all being held together
- cells are overcrowded and conditions are inhumane. There is no heating and the hygiene is poor
- detainees do not have access to outside space
- detainees are given no information about the legal status / duration of the detention / right to apply for asylum
- lack of specialised personnel
- sometimes there is no access to telephones
- NGOs are not always granted access to centres
- absence of formal complaint procedure and no internal regulation

#### **Good practice example: the Project "AEGEAS"**

Between 2008-2009, assistance was provided to detained migrants on the islands of the Aegean Sea and Evros in the framework of the Project AEGEAS, which was funded by the European Commission and implemented by four Greek prefectures (Chios, Samos, Lesbos, Evros) with the assistance of UNHCR as a partner agency. The programme provided for the hiring of civilian staff within the detention facilities/centres, such as a lawyer, a social worker, a psychologist for the rendering of direct assistance to the persons of concern, as well as capacity-building (through networking and coordination) at the local level.

## **2. Identification and referral procedures for people with specific needs**

### **2.1 Identification at arrival**

#### **Asylum seekers**

In general, during the initial registration and processing of migrants there is no interview focusing on the reasons of flight. The processing of irregular migrants is primarily carried out by the police, except for the nationality screening which is done initially by FRONTEX and then by the Greek police teams. It is geared towards recording and at most information-gathering about patterns of organised crime and not at all conceived as a differentiation/needs assessment procedure.

#### **Unaccompanied children**

In addition, there is no adequate framework for

the identification of unaccompanied children, nor official procedures for assessing an alleged child's age. The national law (PD 114/2010) provides for no precise age determination procedure, though it does stipulate the possibility of turning to a medical examination. In addition, it mentions that until the completion of the medical examination, the person who claims to be a child shall be treated as such. In practice, no age determination procedure is carried out. Therefore, police officers either take into account the declaration of the child or make an independent assessment, which is not necessarily accompanied by a medical procedure. Indeed, research undertaken by both Human Rights Watch<sup>13</sup> and UNHCR<sup>14</sup> have recorded instances where police officers have recorded migrants' ages as older than that declared by them. Furthermore, in some cases, children have been recorded as accompanied when in fact legal or family ties with the adults had not been established. The lack of any formal age assessment procedures also means that there is no legal way to challenge a wrong or arbitrary assessment. This may lead to large numbers of unaccompanied minors remaining unidentified and unable to access protection.

#### **Victims of trafficking in human beings**

There is no pro-active identification and referral procedure for potential trafficking victims at arrival points. Most of the victims are self-identified or identified by state or civil society organisations at a later stage.

### **2.2 Identification within Administrative Detention**

In general, as described above, conditions of detention at border stations are poor; there is a lack of interpreters and lack of information materials for those held in administrative detention, and the presence of lawyers is sporadic. Therefore, currently not only is there no pro-active identification procedure in place but there are hurdles for persons who wish to access international protection by claiming asylum while in detention at the border.

13 Human Rights Watch, *Left to Survive Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, at pp. 20-24, available at: <http://www.hrw.org/en/reports/2008/12/22/left-survive>

14 UNHCR, *Unaccompanied Minors Asylum Seekers in Greece*, at pp. 40-44, 2008, available at: <http://www.unhcr.org/refworld/docid/48abd557d.html>



Vulnerable persons are routinely detained, including persons belonging to groups generally identified as vulnerable such as families, elderly persons or persons with special health needs and unaccompanied children. No formal interviews are conducted the by authorities before or during detention. In addition, apart from the case of children, no referral system for other categories of people with special protection needs (i.e. victims of torture) exists. Furthermore, there is no pro-active identification and referral procedure for potential trafficking victims at arrival points.

#### NGOs in focus: provision of services at the border

Non-governmental organisations try to improve the situation by providing social, legal and medical emergency assistance at the borders.

- Médecins Sans Frontières (MSF) has been assisting migrants in Lesvos since 2008, and since 2009 has intervened in the area of Evros by performing psychological and medical screening and offering medical services and psychological support to them.
- The Greek Council for Refugees (GCR) is currently implementing a social and legal intervention programme. They organise and deploy teams of lawyers, social workers and a translator to detention centres, and can stay for 2 – 3 days. Their main responsibility

is to inform incoming refugees of their rights and the asylum process, as well as the rights of those who belong to a special category of refugees, such as minors, trafficking victims etc.

- The Ecumenical Refugee Programme (ERP) has been running an intervention programme at the island of Lesvos since 2008 and provides social and legal assistance within the administrative detention centre on a more permanent basis.

It thus becomes obvious that services differ from place to place and are not standardised. Even in the provision of medical assistance there are often different levels of services. Furthermore, the capacity of civil society organisations is dependent on available project-based funding. Due to the unpredictability and limited availability of such funding, services are not provided in a consistent manner.

## Part D: Referral to procedures and related services

### 1. Protection for asylum seekers and refugees

#### Statistical information on asylum in Greece (2008 – 2010)

Figures as provided officially to UNHCR by the Greek authorities (Ministry of Citizen Protection)

Year	Instance	Applications/ Appeals	Recognitions of Refugee Status	Granting of HP or SP status**	Negative decisions/ rejections	Total applications/appeals examined***	Recognition rate for 51 Convention Status	Recognition rate for HP or SP status
2008	FI	19,884	14		22,188	29,573	0,05%	
	AP	13,386	344	21		3,342	10,29%	0,63%
2009	FI	15,928	11	19	14,190	29,501	0,04%	0,06%
	AP	12,095	25	11		870	2,87%	1,26%
2010	FI	10,273	60	35	3,348	3,453	1,73%	1,01%
	AP	1,648	35	0		41	85,3%****	0%

FI: First instance / AP: On appeal

\* Mixed data (for 1st and 2nd instance)

\*\* Subsidiary protection status was first introduced in 2008 according to P.D. 96/2008; therefore, from 2008 onwards these figures include both complementary forms of international protection, namely humanitarian status and subsidiary protection.

\*\*\* This figure contains positive decisions, rejections as well as otherwise closed cases.

\*\*\*\* UNHCR comment: The high recognition rate is due to the extremely limited number of cases that were examined at 2nd instance during 2010 concerning serious cases of refugees during a period when protests of asylum seekers took place.

### 1.1 Asylum procedure

At the moment and until the setting up of the Asylum Service and the Refugee Authority (expected at the beginning of 2012), the procedure for the examination of first instance claims is as follows:

#### First instance examination

The competent authority to examine claims at first instance is the Greek police and in particular 14 Police Directorates situated in different geographic departments of Greece. The examining authorities conduct a personal interview with the applicant. This interview is conducted by an officer-ranked member of the Greek police. The law provides for the presence of a UNHCR representative who may also pose questions. The asylum seeker can be assisted by a legal or other counsellor during this process. The interview takes place with the assistance of an interpreter who, according to the law, is "able to ensure adequate communication". If the normal procedure is followed, after the conclusion of the interview the official completes a report and transmits his or her decision to the General Secretary of the Ministry for Public Order, who rules at first instance on the applications for international protection. The General Secretary might follow the opinion of the examining authority or might rule differently. If the special border procedure or the accelerated procedure is followed, the territorially competent Police Director is the one responsible for a final decision on the asylum claim.

For those who do claim asylum at the border, the law (PD 114/2010) provides that they will be subject to a special border procedure, which is in fact a form of accelerated procedure, for the process of their claim. At this point, the asylum seekers have not been formally admitted in the territory. The law also stipulates that when persons cannot practically be accommodated in the border area during the examination of their claim due to large numbers of applicants in a given location, they might be accommodated in other locations in proximity to the border or transit zone. In that case however, although they would be physically within the territory, they would not yet be considered legally as having entered the territory. The timeframe for the examination for this type of claim is 4 weeks.

If however the authorities have not completed the examination within this timeframe, the law stipulates that the asylum seekers shall formally

be allowed to enter the territory of the country in order for their application to be examined. In this case, the other provisions of the law apply and therefore, there is a 3-month timeframe if the case is examined in an accelerated procedure (when the application is manifestly unfounded or the safe country of origin/safe third country principle can be applied) or a 6-month timeframe if the case is examined under the regular procedure.

#### Appeal procedure

The competent authorities that examine and decide upon claims at second instance are Appeal Boards, which operate within the Ministry but are independent and have deciding power. Each Appeal Board consists of 3 persons: a civil servant of the Ministry of Justice or the Ministry of Interior, Decentralisation and e-Governance - with a degree in law as their president, a representative of the UNHCR and a jurist specialised in refugee law and human rights law as members. The Appeal Board should finish the examination within 3 months, when the accelerated procedure applies, and in 6 months when the normal procedure applies.

When the special border procedure applies, applicants have 10 days after the serving of the negative decision in order to file an appeal. The law stipulates that until the final ruling on their appeal applicants shall be allowed to enter the country without any passport control. They will be obliged to present themselves as soon as possible to the territorially competent authority to examine their applications in order to state their place of residence and to have the special asylum seeker's card issued. In their case, the validity of the asylum seeker's card will be three months.

In the case that the asylum seeker had already been formally accepted to the territory, they have 15 days after the serving of a negative decision in order to file an appeal if their application was examined under the accelerated procedure. They also receive an asylum seeker's card with a 3-month validity. If their application was examined under the normal procedure, they have 30 days after the serving of a negative decision to appeal the decision. In this case, they receive an asylum seeker's card with six-month validity.

In all cases, the lodging of the appeal has an automatic suspensive effect on deportation.

## 1.2 Rights and material conditions

The majority of asylum seekers do not make a claim while in administrative detention at a border entry point as they wish to avoid being kept in detention for a lengthier period and there is a lack of information, legal assistance and interpretation. Rather, they prefer to receive a formal order to leave the country and travel to Athens where they will claim asylum at the Central Alien's Office in Petrou Ralli.

### Residence

Upon registration of their claim, asylum seekers are not given a residence permit but a special individual document (asylum seeker's card) which certifies that they are allowed to remain in the Greek territory until the completion of the procedure. For asylum seekers that have made their application at the border, this card is renewed after their interview for 3-month periods until the final decision on the application for international protection. If their application is processed under the normal procedure, the card is renewed for a 6-month period.

### Free legal aid

Free legal aid is only provided in the case of recourse to the court. During the first and second instance examination procedure of their claim, asylum applicants have the right to consult, at their own cost, a lawyer or other counsellor. In this regard, the importance of NGOs such as the Greek Council for Refugees and the Ecumenical Refugee Programme that provide free legal assistance to applicants is seminal.

### Free health care

All asylum seekers are entitled to free health care. However, no specific services are available to them in general hospitals (such as interpretation etc). PRAKSIS has 2 polyclinics, in Athens and Thessalonica, which are open to all categories of the population who do not have access to medical insurance, including undocumented migrants. They also assist their patients in obtaining the required documentation if they are entitled to get free medical insurance. These polyclinics have medical staff but also social workers, psychologists, sociologists, human anthropologists and cultural mediators.

### Access to the labour market

According to P.D. 220/2007, asylum seekers should have immediate access to the national labour market. However, in practice this is rendered very difficult as they need to undergo a series of administrative procedures and fulfil requirements applicable to nationals or other legal residents in order to obtain their work permit, e.g. provide the authorities with a regular address, which is very difficult for them.

### Material reception conditions

Although the state is responsible for providing asylum seekers with adequate reception centres, the available spaces in reception centres that are either run by the state or are NGO-run are very limited. According to figures provided by UNHCR (in April 2011), there were only 780 reception spaces in total for both unaccompanied children and asylum seekers in about 12 centres. The responsible authority for overseeing the administration of the accommodation structures is the Ministry of Health and Social Solidarity, but some are run by NGOs such as the Hellenic Red Cross or Doctors of the World. Additional individual housing (in shared flats or houses) is also provided by NGOs such as PRAKSIS or ARSIS (Association for the Social Support of Youth).

Currently, the Greek Council for Refugees, funded by the Ministry of Health and Social Solidarity, is in charge of the referral to reception. Its social workers conduct the assessment and submit the request to the Ministry of Health who takes the final decision. The assessment takes place according to criteria defined by law. In view of the high number of asylum seekers in Greece, the number of places in reception centres is inadequate. Only asylum seekers considered to be vulnerable (women, women with children, unaccompanied children, ill, elderly etc.) are therefore considered for accommodation in a reception centre or prioritised.

It is apparent that a large (and unaccounted for) number of asylum seekers and unaccompanied children live on the streets, in parks and squares, rather than in reception centres as required by the legislation. They do not enjoy the necessary social care and protection, nor do they receive the basic assistance covered

by P.D. 220/2007. It could be said that generally, the reception conditions in Greece do not provide asylum seekers with a level of subsistence to cover their basic needs and or protect their fundamental rights.

## 2. Protection for Unaccompanied Children

### Unaccompanied Children – Key Figures

A study undertaken in 2010 by (IRED), France Terre d'Asile, and CIR reports that there are no reliable official data that can be used to assess the national situation. Nevertheless, some figures are available:

- In 2008, the Greek Ministry of Health and Welfare reported that 6,000 unaccompanied children entered the country.
- The same year, the Greek Coast guard reported the entry of 2,648 unaccompanied children.
- Information from the Hellenic police suggests the number of apprehensions were 6,031 in 2007 and 8,298 in 2008.
- Regarding asylum claims, data from the Greek Ministry of Citizen Protection reports 44 asylum claims by unaccompanied children in 2007, 237 in 2008, 38 in 2009 and 147 in 2010.
- The main countries of origin of apprehended unaccompanied children were: Afghanistan, Somalia, Iraq and Albania.

### 2.1. Guardianship

The police should refer unaccompanied children to the Public Prosecutor for Minors or, where one is not available, to the First Instance Public Prosecutor who is by law assigned the duties of temporary guardian. In reality, the Public Prosecutor will effectively take a very limited number of actions vis-à-vis the child. This is firstly due to limited capacity but also to the fact that public prosecutors are not equipped with the necessary support services to follow-up on the case of each child. Temporary guardians can propose the appointment of a permanent guardian through a court procedure. Often, it will be the director of a reception centre or a social worker of an

NGO. In many cases, unaccompanied children are not assigned a permanent guardian; especially if they do not manage to access a reception centre or gain assistance from civil society organisations.

### 2.2. Reception and services

The Ministry of Health and Social Solidarity is responsible for providing accommodation and access to medical services to unaccompanied minors. It supports regional social services as well as NGOs in providing such services.

According to UNHCR, there are 8 centres for children, with 405 places in total. These small-scale residential facilities also house Greek children in foster care. Until January 2010, a place in a centre for children (with exception of Agiassos) was provided only for minors applying for asylum. Now they are available for all minors regardless of their status. There is a special schooling system for UAM inside the centres including Greek language and general education. Minors are also granted access to the health system.

There are currently not enough spaces for unaccompanied minors in Greece and the existing capacity cannot fulfil the current needs. This is one of the most important obstacles to the creation of a meaningful referral system. As a result, many minors end up on the street after being released from detention where they sometimes fall prey to criminal gangs or have to work in exploitative conditions. Furthermore, most unaccompanied minors try to avoid identification and do not apply for asylum as they want to continue their journey to Italy and further to northern European countries.

According to an interview carried out with the Greek Council for Refugees CR, most minors do not want to stay in the centres since they are outside big cities and most of the children (especially those who come from Bangladesh and Pakistan) want to work. As mentioned by GCR, minors tend to stay in private apartments claiming that they prefer to stay with their relatives or members of their community. This could imply the presence of traffickers and abuse. Once they are out of the centres, they are therefore very difficult to access.

### NGOs in focus- Accommodation Centres for children

According to figures released by UNHCR Greece, the following structures existed:

- Makrynitsa, Volos, run by ARSIS (capacity: 30),
- Anogia run by the National Youth Institute (capacity: 25),
- Volos run by the Hellenic Red Cross (capacity: 24),
- Agiasos/Lesvos run by the Greek Church-Foundation Theomitor (capacity: 96),
- Oreokastro, Thesaloniki run by ARSIS (capacity: 40),
- Konitsa run by Merimna (capacity: 80),
- Athens run by the Foundation for the Care of Minors (capacity: 15).
- Athens, run by the National Youth Foundation, for single mothers, young single women and unaccompanied girls with a capacity of 70 persons.

#### 2.3. Status

Children who do not apply for asylum or who are not hosted in an accommodation centre for children are considered to be illegal migrants and thus liable to deportation and arrest. Information suggests that such children are often arrested and detained on multiple occasions. Large numbers of minors in need of international protection either do not manage to apply for asylum because they are unaware of their rights or prefer not to lodge a claim so that they can continue their journey without their country of destination later being able to apply the Dublin Regulation to return them to Greece.

## 3. Protection for victims of trafficking in human beings

### Key Issues

- Greece is a transit and destination country for victims of trafficking in human beings.
- The main countries of origin of victims are: Albania, Bulgaria, Nigeria, Romania and Russia.

Trafficking in human beings was first criminalised by Law 3064/2002. This law also stipulated the protection of victims. The modalities of this legislative mandate were defined in Presidential Decree 223/2003. Greece also

transposed the provisions of Directive 2004/81/EC on the residence permit for victims of THB (through Law 3386/2005). In August 2010 Greece ratified the Palermo Protocol, and to this effect Law 3875/2010 was adopted.

#### 3.1. Status

The authority responsible for the official identification of victims of trafficking is the competent Public Prosecutor. Identified victims of trafficking are provided with a reflection period ranging from 1 to 3 months. During this time they can recover and escape the influence of their exploiters.

It must be noted that although no residence permit is officially granted during the reflection period, any deportation order is suspended. Moreover, during the reflection period, identified victims should receive a number of benefits and services, namely: (a) access to health care (including hospitalisation) (b) satisfactory conditions of living, provided that they do not have adequate means to support themselves; (c) protection and security as a matter of priority will be provided by the competent public prosecutor and the police authorities; (d) translation and interpretation services, if they do not speak the Greek language; and (e) any required legal assistance and aid.

In practice, being officially identified as a victim of trafficking and referred to adequate structures is a lengthy procedure.

#### 3.2. Reception and services

To date there are no state-run centres that accommodate victims of trafficking.

The role of NGOs is double: some NGOs play a part in the identification of victims as they come in contact with migrants to provide them with social assistance. Other NGOs run shelters where victims of trafficking can be accommodated. The police will refer victims to such NGOs, although this is not done so much on the basis of a formalised procedure as through informal arrangements. However, the level of services that NGOs can offer varies, as they depend on the availability of funding. As a result of financial cuts certain NGOs had to close down the shelters they were running. This was the case with the Greek Council



for Refugees that used to run a program that provided legal aid for trafficking victims, and KLIMAKA, an organisation that used to run a refuge for foreign women victims of trafficking and victims of domestic violence.

#### 4. Protection for vulnerable categories

Although Law 3907/2011 defines vulnerability widely there are few possibilities for vulnerable persons who have not gone through the asylum process to be granted a residence permit. Apart from residence permits for trafficking victims and unaccompanied children, the law only makes provision for a residence permit on humanitarian grounds for the following categories of persons: victims of domestic violence and persons suffering severe health problems.

Greece lacks a structured identification and referral procedure for vulnerable migrants. When persons belonging to vulnerable categories, such as single parents, families with small children, victims of torture or trauma, are released from administrative detention there are very few structures to which they can turn. The reception capacity of existing centres is extremely limited and mainly geared to vulnerable asylum seekers, mainly single female parents, single women and families with small children and unaccompanied children.

Regarding victims of torture the NGO Medical Rehabilitation Centre for Torture Victims (MRCT) used to offer services to torture victims including legal assistance/assistance with identification, substantiation of torture claims and psychological and medical support. However, the Centre, the only one of its kind in Greece, could no longer continue its activities from 2008 due to lack of funding.

#### NGOs in focus: accommodation centres for vulnerable groups (other than children)

- PRAKSIS is running the programme “STEGI”, through which rented apartments/ flats are provided to asylum seekers in the regions of Attica, Central Macedonia, and in the Prefecture of Lesvos (capacity of 110 persons per year). PRAKSIS also provides medical and pharmaceutical, social, psychological, housing, work promotion and advocacy services at polyclinics based in Athens and Thessalonica.
- the National Youth Foundation is running a centre for accommodation of single young women and single mothers with a capacity of 70 persons.
- ARSIS is also offering assistance to vulnerable young migrants, not only unaccompanied children, but young persons aged 15-25 years old.
- the Greek Council for Refugees is able to provide short-term stay to vulnerable persons in hotels, subject to project funding availability.

All of the above accommodation places, albeit limited, are vital to both migrants and asylum seekers in Athens, since they prevent them from being in the street. However, they depend on temporary funding - mostly ERF funds, and their existence is precarious.

## Part E: Comparative Chart of rights attached to recognised beneficiaries of the categories above

	Refugees	Beneficiaries of Subsidiary / Humanitarian Protection	Unaccompanied children	Victims of human trafficking	Belonging to a Vulnerable Category*****
<b>Residence permit</b>	Yes, of a 5-year duration renewable	Yes, of a 2-year duration renewable	Yes, of a 2-year duration renewable**	Yes, of a 1-year duration renewable****	Yes, of an initial 1-year duration, renewable for 2 years at a time
<b>Right to Work</b>	Immediately upon recognition*	Immediately upon recognition*	For those over 15 years old on certain conditions	Yes, if residence permit	No
<b>Right to Social Support</b>	Immediately upon recognition*	Immediately upon recognition*	Services provided in the centre***	N/A	N/A
<b>Right to free Health Care</b>	Immediately upon recognition*	Immediately upon recognition*	Yes	Yes, if residence permit	N/A
<b>Right to Education</b>	Immediately upon recognition*	Immediately upon recognition*	Yes, in the mainstream education system.	N/A	N/A

\*On the same terms as nationals. In practice though, UNHCR Greece reports that there are hurdles in the integration of recognised beneficiaries.

\*\*According to Law 3907/2011 this is only the case for minors in established need of protective measures and hosted by relevant institutions or other charitable entities, provided that their return to a safe environment is impossible".

\*\*\*The existing centres strive to provide psychological, social and legal assistance. However as their functioning depends on the availability of funds and these are allocated on a yearly basis or even for a period of a few months at a time they often face problems with providing services to the minors housed therein.

\*\*\*\*With the 2010 amendments it was established that the competent prosecutor may officially identify a person as a victim of human trafficking even if the person does not cooperate with the authorities. Such persons may also be granted with a residence permit as long as they have been formally identified as victims of human trafficking .

\*\*\*\*\*Law 3907/2011 understands persons belonging to a vulnerable category to be: victims of domestic violence and persons suffering of severe health problems.

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# Country report: ITALY

## Part A: Country context

### 1. Information on migration and asylum trends in Italy

- Italy is situated on the southern border of Europe and has an extensive coastline of 7,600 kilometres. The island of Lampedusa is situated in the southern part of the Mediterranean Sea, 130 km from Tunisia, 160 km from Malta and around 207 km from Sicily.
- According to data released by CARITAS Italy in 2008, 1 inhabitant of Italy out of 14 is a foreigner (7.2%). In the last 10 years, the number of foreign residents in Italy has increased in absolute terms. The number of foreign residents in Italy went up from 2,670,514 in 2005 to 3,891,295 at the end of 2008 to 2009 and 4,235,059 in 2010.
- Experience with irregular boat arrivals in Italy, and particularly in Puglia, started in the 90s with people fleeing political instability from the Balkans. The basic legislative and administrative framework for receiving boat people was therefore set up at this period.
- Since 2000, Sicily and the island of Lampedusa have become the new points of arrival for boat migrants. These new migrant flows have come mainly from Africa with the departure point most often Libya. In recent years, the arrivals of boat persons in Italy from African shores have attracted the attention of the media in Italy and the world although the number of migrants arriving by boat in fact has represented less than the 1/50th of the total population of migrants in Italy.
- The chart below, composed of data released by CARITAS Italy and Save the Children, provides a picture of the number of arrivals from

2003-2010 in Italy in general and on the island of Lampedusa in particular.

2003	2004	2005	2006	2007	2008	2009	2010
Total Boat Arrivals:							
14,331	13,594	23,054	22,016	20,455	36,951	9,573	4,348
Lampedusa Arrivals (Save the Children):							
8,800	10,477	15,527	18,047	11,749	31,250	n/a	n/a

- Boat arrivals dropped sharply between 2008 and 2011. In 2009, 9,573 persons arrived by boat, a decrease of about 90% from the previous year. In 2010, in the former points of arrivals, i.e. Lampedusa and Sicily, there was a further decrease of about 80% (- 96% in Lampedusa) according to the Ministry of Interior. In parallel, arrivals on the Adriatic Coast (mainly to Puglia) increased considerably with migrants trying to reach Italy in small boats (or yachts) from Turkey or Greece. In 2010, among the 4,348 persons that arrived by boat, 209 were women and 1,023 were children (686 of them unaccompanied).
- This drop in arrivals can be explained mainly by the "Treaty on Friendship, Partnership and Co-operation" that was signed with Libya in late August 2008 and ratified by law in February 2009, which envisaged bilateral co-operation in the field of immigration and organised crime. Italy provided Libya with financial and technical assistance to achieve "the effective management of migration flows", an objective which included the strengthening of Libya's border surveillance capacity and the development of its own patrolling and search and rescue capacities in its territorial waters and at high sea.
- In the framework of this cooperation, Italy conducted push-back operations from May 2009 which consisted of the return to Libya and to a lesser extent to Algeria of hundreds



of persons, including women and children, who were detected or rescued by Italian authorities at sea. In 2010, the majority of interceptions took place in Libyan territorial waters. These push-backs were strongly criticised by NGOs and UNHCR who underlined that Libya did not provide any protection guarantees for asylum seekers and had a terrible record of human rights violations, notably with regards to the treatment of migrants. Furthermore, according to UNHCR, most migrants arriving to Italy by boat (mainly from Libya) were people in need of international protection (in 2008, some 50% of people arriving had been granted some form of protection by Italian authorities).

- The situation transformed drastically in January 2011 with the rapid changes in the political scene in North African countries. In mid-January, Tunisia's president Zine Ben Ali was ousted after massive protests. While the country was still in turmoil, border controls were loosened and thousands of migrants made their way to Europe, reaching mainly Lampedusa by boat. In addition, the violent repression by the Khadafi regime of insurgents was followed by the breakdown of diplomatic relationships and the military intervention of NATO in Libya. Italy fully supported the sanctions and action against the Khadafi regime and froze its cooperation.
- By the end of February 2011 almost 1,000,000 people had fled Libya, with a large majority of migrant workers repatriated. Boat arrivals to Southern Europe thus spiked in 2011 with 44,000 migrants arriving to Italy alone by July according to the Italian Coast Guard (over half of them were Tunisian nationals), bringing forth tensions between European partners and the debate on responsibility-sharing throughout the EU.

## 2. Overview of the administrative and legal framework:

### Legal Framework on Migration and Asylum

#### Migration

The Italian Constitution provides the legal basis for the respect of the rights of every human being, including foreigners. The basic legal text for migration is the "Consolidated Act on dispositions concerning the immigration regulations and stranger conditions norms", the so-called "*Testo unico*" that was passed with the Legislative Decree no. 286/1998. Further changes were introduced by Law 2002/189 that became fully effective beginning from 2005.

In 2009, important changes were brought to the Immigration law as well through the Security package law "Law 94 of 15/7/2009" (*Disposizioni in materia di pubblica sicurezza*).

Among the main changes were the following:

- Criminalisation of illegal entry and stay
- Increased of the duration of detention of migrants to up to 180 days

In June 2011 the government transposed the EU Returns Directive by Decree No. 89/2011 (amended into a legislative act on the 2nd of August), which raises the maximum limit of detention in a closed centre to a maximum of 18 months.

However, it is important to note that the recent judgement of the Court of Justice of the European Union, delivered in April 2011<sup>15</sup>, has declared incompatible with the Returns Directive the "criminalised illegal entry" provision. Indeed, the Returns Directive states clearly that voluntary returns should be the preferred solution for states.

Finally, according to article 11 sub-section 6 of Immigration Law 286/98 as modified by law 189/02, "information portals" have been set up at the entry points. Some of the official border points are: Venice, Ancona, Bari, Brindisi (in Adriatic Sea), Fiumicino-Rome Airport, Malpensa-Milan Airport. Other points of arrival, such as the island of Lampedusa, are not considered as "official".

<sup>15</sup> Case C61/11 PPU, El Dridi, available at: <http://curia.europa.eu/>

## Asylum

Regarding asylum law, in the absence of a single text, a series of legislative acts have been adopted. Article 10/3 of the Constitution recognises the right to asylum for those who cannot be free to exercise their democratic rights (as guaranteed by the Constitution itself). Law 39/1990 ensured the application of the 1951 Refugee Convention, and was later amended by Law no. 189/2002, which introduced the institutions of territorial commissions as decision-making bodies.

The Italian legislation regarding asylum was brought into conformity with European rules during the period 2005-2008. The Reception Conditions Directive was transposed through the Legislative Decree no. 140/2005; the Qualification Directive through the Legislative Decree no. 251/2007 and the procedures Directive, Legislative Decree no. 25/2008. Legislative Decree no. 159/2008 brought further changes regarding asylum procedures.

### Administrative framework

The Ministry of the Interior is the main actor, charged with both migration and integration.

The National Commission for the Right of Asylum coordinates the work of the Territorial Commissions for the Recognition of International Protection, which are the authorities that determine first instance status.

Another important department of the Ministry of the Interior is the Department of Public Security, which has under its responsibility the Central Directorate for Immigration and Border Police. This Directorate is tasked with controlling and countering irregular migration. Countering irregular entry via the sea falls under its remit and to this end, it cooperates with the maritime military forces and with port authorities.

Apart from the Ministry of Interior, the remit of the Ministry of Labor needs to be stressed. This Ministry is responsible for the coordination of inclusion and social cohesion policies, by adopting measures of integration of foreign citizens in the Italian society.

At local level, Territorial Councils for Immigration have been instated by law. Their task is to analyse needs and recommend action

for implementation at the local level. They are mainly active in the economic, social and cultural integration of migrants.

## Part B: Current procedures and existing practices for migrants arriving by boat

### 1. Description of procedures for those intercepted at sea:

Throughout the research, it was found that procedures differed considerably in Italy, relative mainly to whether a migrant arrives in a port (considered an official border) or elsewhere along the coasts. Procedures at arrival, especially in the phase of disembarkation and first reception, also depend on the presence of border offices and the *Praesidium project*, which was established since 2006 in certain regions of Italy. Furthermore, it appears that the reception system has adapted to the various emergencies it has had to face and has changed quite considerably in the last few years.

#### 1.1. Interception at sea

Interception at sea is carried out by the Naval Coast guard (*Guardia Costiera*), charged with Italy's search and rescue mandate. In particular, according to the Interministerial Decree of 19th June 2003, the navy operates in international waters, heading the port – costal guards (*Corpo delle capitanerie di Porto-Guardia Costiera*). In addition, the Tax and Customs police (*Guardia di Finanza*), operate in national waters and contiguous zones. According to law, the naval units have to inform the central directorate of the immigration and border police of the department of public security of the Ministry of Interior which has the task to coordinate interventions at sea.

Once brought to shore, migrants are under the responsibility of the provincial police authority (*Questura*). Upon their arrival, the civil protection (*Protezione Civile*), usually assisted by Italian Red Cross teams, distributes basic items to the newly arrived (dry clothes, water etc) and conducts a

first medical screening. Emergency health cases are transferred to the hospital where registration is conducted. In some cases, MSF doctors are also present at this point to provide basic aid and emergency health care with the presence of a cultural mediator. Depending on their point of arrival, migrants might be able to obtain assistance from organisations which are members of the Praesidium Project. These organisations provide information sessions to the newly arrived. In case of the arrival of a large number of migrants, this information is provided not individually but in groups, due to capacity constraints.

### 1. 2. Registration process for those intercepted at sea

Persons arriving at shore then undergo a first identification and registration process, undertaken by the police. It usually consists of an individual interview aimed at establishing the identity of the migrant, who is photographed and asked about his nationality, date of birth, final destination, trip and reasons for his travel to Italy. In-depth registration, intake of fingerprints for EURODAC as well as additional photographs are usually done a bit later by the scientific department of the police. During this first registration, an investigation on the travel route and possible involvement of criminal networks (in coordination with the Office of Criminal Investigation) is also undertaken. Since the change of law in 2009, migrants entering irregularly on the territory are charged at arrival with the crime of illegal entry, though it is suspended if the person asks for asylum.

#### Where registration takes place

This registration process can be performed in several places: at shore, at port, in a police station, or at first reception centre, depending on what exists in the region and what systems have been developed.

However, some centres have been created solely for this purpose in response to the large arrival flows witnessed in certain regions of Italy. In principle they are supposed to run as open centres though they are sometimes used as closed centres.

- The Centres for first aid and reception (*CSPA: Centri di Primo Soccorso e Accoglienza*) were created in 2006 so that

the first identification and emergency aid could be conducted before persons are transferred to other types of centres (CARA, CIE etc). Newly arrived migrants should stay in this kind of centre for no more than 48 hours, although in cases of big influxes this time is unlawfully prolonged for days. To date, there are 3 CSPA in Italy: Lampedusa (381 places), Pozzallo (170 places), Cagliari-Elmas (220 places). Most migrants housed in the Lampedusa centre are transferred to Sicily and are not supposed to stay on the island.

- The “Reception Centres” (*CDA- Centri D’Accoglienza*), first centres for foreigners in Italy, created in 1995. These centres are geared towards receiving newly arrived migrants regardless of their legal status to guarantee initial support and accommodation. However, as underlined by MSF, in the meantime they live in conditions not clearly regulated by law but which usually take the form of detention with no time limit, nor authorised by any judge. These centres are in Bari (774 places), Brindisi (128 places), Caltanissetta (360 places), Crotona (1166 places) and Foggia (778 places).

Regarding the length of stay, although there is no maximum legal stay period, the law specifically mentions for both centres that activities of first aid and reception should be of a short duration and not go beyond the “strictly necessary timeline”.

It is important to note that while CDAs have different status from the CARA, which are reception centres supposedly geared specifically towards asylum seekers, in practice they seem to have the same function and cater for the same groups. Many centres - Caltanissetta, Crotona Gorizia, Milano- are multifunctional (ie. including CIE/CARA, CDA/CARA etc.), blurring the distinctions between these types of centres.

## 2. Procedures for those arriving at official entry borders

### 2.1. Arrival at official entry borders (in particular ports):

Undocumented migrants that are found smuggled in boats or in trucks at ports (Ancona, Bari, Brindisi, Venice etc.), are only allowed on the territory if they ask for asylum. Indeed, ports are legally considered “borders” (like land or air borders) and specific procedures apply.

Often, people who arrive in an illegal way are hidden in the back of a lorry. Among them there are many Afghans, Iraqis and Kurds who could be potential asylum seekers. However, they often choose not to ask for asylum in Italy in order to reach their family members already living in another EU country. They therefore prefer to be returned directly to Greece, avoiding registration in the EURODAC database as having entered Italy.

When migrants arrive at ports, screening and the initial interviewing is conducted inside the port police offices immediately upon their arrival and a decision upon whether they are allowed to enter the territory is taken within hours.

If they are not allowed entry, they are returned immediately to their point of departure. These push-backs are considered by the Italian authorities a “readmission without formalities entrusted to the captain of the boat”. In this circumstance, the migrant is not provided with a written expulsion decision and is returned in the same boat in which he arrived. The police provide the captain of the boat with a list of the persons to be returned and the migrants are taken back to the country of departure.

Figures on the number of people smuggled in ferries are internal to the police and not available publicly.

### 2.2. Authorisation to enter into the territory

If migrants are not returned immediately as described above, they are authorised to enter into the territory by proceeding to registration (Reg. 562 UE of the TU Immigration). Persons authorised to enter are in most cases those considered to be asylum seekers as well unaccompanied children. According to the head of the

Port police of Ancona, potential asylum seekers (“ethnic groups exposed to risk”), unaccompanied children and accompanied children for which the police has doubts about the relationship with the person accompanying them, are referred to CIR services for further assistance. CIR has signed a protocol with the Juvenile Law Attorney to verify that minors are part of the family and report the results of the interview to the tribunal.

#### NGOs in focus: information portals

In ports, individual agreements concluded every year between prefectures and NGOs such as Consiglio Italiano per i Rifugiati (CIR), have led to the setting up of “information portals” for asylum seekers at ports, airports and land borders. On the basis of the law (Article 11 sub-section 6 of Immigration Law 286/98 as modified by law 189/02; Decree 2 May 2001), “the beneficiaries of the services are those who lodge an asylum application and foreigners who intend to stay in Italy for over three months”. In the above services, CIR ensures legal and social counselling; interpreting service; search for accommodation, contact with local authorities/services; production and distribution of informative documents on specific asylum issues directed to both asylum seekers and border police.

It must be stressed that CIR operators cannot directly access arriving vessels to provide potential asylum seekers with social and legal assistance, rather, only if the person has been authorised to enter the territory by the police authorities.

In the absence of clear instructions from the Ministry of the Interior to the border police, the provision of services depends very much on the individual willingness of local border police authorities. Police authorities may ask for CIR’s intervention. However, it can also be the case that the Italian border police merely declare to CIR that none of the “rejected” persons asked for asylum. It is impossible to verify the current practices due to the fact that rejected migrants do not receive a formal negative decision. Without adequate information, it is difficult to say if these persons intervention to ask for asylum or if they were actually not aware of their rights.

### 3. Identification and referral procedures for people with specific needs

During the registration process, basic oral information on rights and obligations are given to the migrant by the police, with the presence of an interpreter, if possible in the native language of the migrant. There is, however, a notable lack of interpreters, especially in less commonly spoken languages. The police also have leaflets with information on the asylum procedure and rights in different languages for distribution, but it appears that the practice of distribution is actually quite rare. The presence of NGOs or international organisations at this point depends very much on the place of arrival and the willingness of local authorities to allow involvement of non-governmental actors.

#### Asylum seekers

At this point, the person is asked about their reasons for leaving their country of origin and can ask for asylum. The asylum seeker will then fill in an asylum form (C3) and the police will register their claim and transmit the file to the “Territorial Commissions” in charge of refugee status determination. The asylum seekers are always allowed to write down their account in their own language. According to ECRE’s study on legal aid<sup>16</sup>, asylum seekers may get some advice and support from legal advisors if they manage to get in touch with a legal advisor (generally NGO workers) before the application is lodged. However, legislation does not provide for the presence of legal advisors at the police station where the application is registered.

The identification of asylum seekers should not be done with nationality as the only criterion; however it was reported that this practice still exists. Indeed, in some cases, straight at arrival, following the registration process, the police determine whether to refer the person to the asylum process or the expulsion procedure depending on his origin. For example, an Egyptian will be generally referred to expulsion whereas an Eritrean to the asylum process).

<sup>16</sup> ECRE/ELENA, *Survey on Legal Aid for Asylum Seekers in Europe*, October 2010, at p. 101, available at: [http://www.ecre.org/files/ECRE\\_ELENA\\_Survey\\_on\\_Legal\\_Aid\\_for\\_Asylum\\_Seekers\\_in\\_Europe\\_October\\_2010.pdf](http://www.ecre.org/files/ECRE_ELENA_Survey_on_Legal_Aid_for_Asylum_Seekers_in_Europe_October_2010.pdf)

In the case of persons arriving at official entry points, the port police are in practice charged with the registration, identification, and referral of asylum seekers and unaccompanied children. As described above, there are obstacles to gaining authorisation to enter into the territory and access asylum procedures. Although the presence of NGOs as information portals is definitely a positive step, staff members based ports are obliged to work under difficult circumstances: they have no direct access to potential asylum seekers on board, they enjoy differing levels of access to those newly arrived depending on the willingness of the local port authorities, and they are often given insufficient time to interview migrants due to vessel schedules. At the same time, when the authorities do not clearly understand that the person is seeking protection, such persons are considered not to have applied for asylum and therefore not admitted to the asylum procedure. All these circumstances do impede an objective assessment of the migrants’ situation and make it difficult to ascertain whether a person is an asylum seeker or not.

#### Unaccompanied children

During the initial registration and identification process upon arrival, migrants are asked about their age. The first identification of unaccompanied children is based on self-declaration. In case of doubt of the self-declared age of the migrants, other than in cases where they are also asylum seekers, the police should in theory ask for any copies of identity documents in the possession of the migrants and carry out investigation procedures with the competent Consular authorities. However, the latter are rarely consulted in practice.

If the migrants do not have any documents, in general, the police request a medical examination to assess the age using the Greylich-Pyle method, which involves an x-ray of the wrists. Although the medical literature indicates that it is not possible to determine with certainty the age of a person (with a margin of error of at least 2 years), the medical report does not indicate this margin of error. In theory, the migrants can appeal the result of the age-assessment procedure, whilst in practice this possibility is made difficult by the fact that in many cases there is no formal decision against which to appeal, as



migrants are not given a copy of the report but simply notified of the result of the examination by the Police Immigration Office. Unaccompanied migrants who declare to be less than 18 years old are separated from the rest of the group and are supposed to receive special treatment as children, even if at this stage there is a doubt about their age. Presumed unaccompanied children cannot be detained pending the outcome of the age-assessment procedure, according to the principle of the benefit of doubt, which has to be applied in favour of the children.

#### Victims of trafficking in human beings

There is no pro-active identification procedure at the border points for victims of trafficking in human beings. In addition, information regarding the victims' right to access assistance programmes available is lacking. Apart from IOM, which tries to inform migrants on this issue and identify potential victims of trafficking, no other organisation or actor systematically screens arriving migrants. Therefore, the majority of victims of trafficking are recognised at a later stage.

#### Persons belonging to other vulnerable groups

There is no formal process for the identification of other vulnerable categories at arrival or after some are taken in charge by the authorities in the framework of the asylum procedure. Specific services and provisions, although limited and insufficient, exist only in the field of reception, either within the SPRAR system or set up by NGOs.

## Part C: Referral to procedures and related services

### 1. Protection for asylum seekers and refugees

- According to data given for 2008 by the National Commission, of almost 22,000 applicants evaluated, 49% were granted some form of protection. More specifically, 8% of claimants received refugee status, 32% subsidiary protection and 9% a humanitarian permit.

- Statistical data provided by UNHCR in January 2010 placed the number of recognised refugees present in Italy at 54,965 with another 4,365 registered asylum seekers.
- Regarding the number of asylum claims, UNHCR statistics point to a sharp drop in recent years: from 30,320 in 2008 to 8,190 in 2010.
- In terms of protection rates for 2010, according to data released by EUROSTAT out of 11,325 decisions at first instance, 4,305 were positive, thus a recognition rate of 38.01%. The 3 largest populations of asylum seekers were from Nigeria, Pakistan and Afghanistan respectively.

#### 1.1 Asylum procedure

The claim for international protection is submitted to the police and is decided by the 10 Territorial Commissions and Sub-commissions which are set up in the cities of: Bari, Caserta, Croton, Foggia, Gorizia, Milan, Rome, Syracuse, Trapani and Turin, covering most of the territory. The commission is composed of an official of the prefecture body (appointed chairman of the Commission), a public security official, a representative of the local authorities and another from UNHCR. Through the police authorities, the Commissions invites asylum seekers for a hearing.

Some of the Territorial Commissions (e.g. in Croton, Foggia, Trapani) hold their temporary hearings inside the CARAs. The law intends that asylum seekers should be interviewed within 30 days maximum after they have submitted their application.

The asylum application procedure of the unaccompanied children is regulated in the decrees transposing the EU directives Decree 25/2008 and the guidelines (*Direttiva*) 07/03/2007 of the Ministry of Interior and the Ministry of Justice as well as in several legislative decrees. The procedure foresees that upon arrival on the Italian territory, children should be given information on their rights, in particular on the process to apply for asylum. The application for asylum of unaccompanied children must be confirmed by the guardian appointed by the judge (Tribunal for Minors) and only after this confirmation is the procedure activated by the competent police

authority. According to the law, in case the Commission considers that the acquired elements are sufficient to take the decision where (and only where) regarding the recognition as a refugee, the hearing does not necessarily have to take place.

It is important to note that although the Commission is only competent to recognise refugee status and subsidiary protection, it can also request the provincial police to issue a residence permit on humanitarian grounds if deemed necessary. The police (*Questore*) can also decide independently to grant humanitarian protection on a discretionary basis.

It is possible to appeal before the competent Civil Tribunal against a negative decision of the Territorial Commissions within 30 days. Rejected asylum seekers in CIE and CARA (with some exceptions) only have 15 days to appeal. The appeal will not have a suspensive effect when asylum seekers were notified with rejection or expulsion orders before lodging an asylum request, case of inadmissibility, and those placed in CIE. However a suspensive measure can always be asked to the competent judge.

### 1.2. Material conditions

On the basis of Reception Decree No. 140/05, when someone lodges an asylum claim at the borders, the Prefecture—after transmission of the file by the police—is in charge of finding a place for the applicant in a reception centre. The Prefecture can either refer the person directly to a CARA or consult the SPRAR (*Sistema di protezione per richiedenti asilo e rifugiati* - System of protection for asylum seekers and refugees) in order to verify availability in reception structures which are part of the SPRAR network, i.e:

- Open centres for asylum seekers – CARA (*Centri d'Accoglienza per Richiedenti Asilo*). Created in 2008 (legislative decree 25/2008), these open centres are supposed to house asylum seekers waiting for the determination of their status who do not possess identification documents for a maximum period of 35 days. However, it appears that quite frequently this period is extended to 6 months. In theory, if their claim is accepted, they should be transferred to a SPRAR centre immediately. If their claim is rejected, they have to leave the

CARA in the 15 following days unless they lodge an appeal before the tribunal. Many of these centres were built to respond temporarily to emergencies or are previous airports or barracks reconverted into reception centres, making them inadequate for the housing of asylum seekers, many of whom already considered vulnerable.

- System of protection for asylum seekers and refugees - SPRAR (*Sistema di protezione per richiedenti asilo e rifugiati*). Small reception structures managed by NGOs or private service providers in coordination with local authorities. Asylum seekers or refugees can be orientated towards SPRAR structures from prefectures directly by law from governmental centres (CARA, CDA) or NGOs. A minimum set of services are provided in these centres by the organisations managing them, which are monitored by the state at a central level: health assistance, social assistance (includes language and literacy courses), multicultural activities, educational integration for minors, linguistic and cultural mediation, work orientation and training. The average beneficiary stays about 11 months in these centres, depending on their needs and specific vulnerabilities. The objective of the system is to make people as autonomous as possible when they leave the centre. While such centres are considered adequate and suitable, demand exceeds available space.

In case no place is found, the asylum seekers should receive financial assistance, but in practice this happens very rarely.

As a general measure, some 70% of persons hosted in a CARA are asylum seekers, and 30% are refugees and beneficiaries of subsidiary protection. Only 30% of the refugee population living in Italy is hosted in SPRAR structures. The others are living on the streets and in abandoned buildings.

#### **The SPRAR system (*Sistema di protezione per richiedenti asilo e rifugiati* - System of protection for asylum seekers and refugees)**

The SPRAR, established in 2002, by Law 189, is the central body responsible for coordinating

the national transfers of asylum applicants, refugees and beneficiaries of humanitarian protection to the authorised reception centres. This system also enables local entities/NGOs to set up projects of “integrated reception” for both asylum seekers and beneficiaries of international protection. It is funded by the central government (Ministry of Interior, Department for Civil Liberties and Immigration) and managed by voluntary local authorities (through ANCI- *Associazione Nazionale Comuni Italiani*). In 2009, 123 local authorities were partners in the national project in a network that covered most of the Italian territory; all regions had partner local authorities partners in the project except Valle D’Aosta. According to SPRAR an average of 82% of the demands made for reception obtained a positive answer.

In Italy, there are currently 3,000 places in these centres for asylum seekers including 500 for “vulnerable asylum seekers and refugees” (in fact mainly refugees rather than asylum seekers), among them unaccompanied children seeking asylum. An extra 548 places were financed in 2008 to accommodate the large influx of people arriving by sea. However, although this system is considered a good practice and functions well, it is too small in scale considering the number of asylum seekers and beneficiaries of international protection in Italy.

### 1.3 Access to the labour market

While waiting for a decision from the Territorial Commission, asylum seekers are not allowed to work, except if their claim for asylum has not been examined within six months. In this case, the Reception Decree 140/05 considers the possibility of issuing a permit of stay for the purpose of claiming asylum, which allows asylum seekers to work.

### 1.4. Residence

Asylum seekers are allowed to reside temporarily on Italian territory with temporary asylum applicant status until the conclusion of the status determination procedure.

### 1.5. Access to free legal aid

Lawyers may participate in the interview before the panel of the Territorial Commission and may make comments during or at the end

of the interview.<sup>17</sup> However, it should be noted that lawyers representing clients at this stage of the procedure are only present at the asylum seeker’s own expense. Free legal aid is only provided at the appeal stage.

### 1.6. Access to free health care

Asylum seekers have the right to be registered with the National Healthcare Service and receive free medical care. In addition, those living in centres have access to medical personnel and services available there.

## 2. Protection for unaccompanied children

A national reference institution, the Italian Committee for Foreign Minors (CFM) brings together figures provided by public officials and authorities who have a mission to provide care to unaccompanied children.

- The CFM registered the presence of 7,797 minors in 2008 and 4,438 in 2010. The first five countries of origin according to the 2010 data were Afghanistan (20.7%), Morocco (14.7%), Egypt (11.1%), Albania (9%) and Bangladesh (5.7%).
- In 2010, 686 separated children arrived in Italy by boat. Amongst them 389 were Afghans, 174 Egyptians and 66 Tunisians. Most of them (296) arrived in Apulia region, the others in Sicily (194) and Calabria region (160).
- Regarding the number of unaccompanied asylum-seeking children, study released by the EMN National Contact Point reported that, from a total of 102 unaccompanied asylum seeking children in 2004, the number rose to 251 in 2006 and 295 in 2007, 187 of whom were hosted in the SPRAR structures.
- The main countries of origin of the aforementioned asylum seeking children were: Afghanistan (54%), Somalia (12%), Eritrea (10%), Ivory Coast (5%), and Ethiopia (4%).

17 ECRE, ECRE/ELENA, *Survey on Legal Aid for Asylum Seekers in Europe*, October 2010, at p. 108, available at: [http://www.ecre.org/files/ECRE\\_ELENA\\_Survey\\_on\\_Legal\\_Aid\\_for\\_Asylum\\_Seekers\\_in\\_Europe\\_October\\_2010.pdf](http://www.ecre.org/files/ECRE_ELENA_Survey_on_Legal_Aid_for_Asylum_Seekers_in_Europe_October_2010.pdf)

## 2.1. Guardianship

Once identified, unaccompanied children have to be assigned a legal representative since they are not of legal age and no parents or other relatives who could exercise parental authority are present in the territory. The Tribunal and, in particular a special judge called “*giudice tutelare*” (judge for guardianship) appoints the legal guardian. Usually, the Mayor, of the municipality where the child is residing is nominated as guardian. In practice, he delegates this duty to individuals who provide social assistance or other assistance to the child. In some cases, the guardianship is granted to the child’s legal representative or the director of the reception centre (though these cases implicate a conflict of interest). Guardianship could also be granted to a “volunteer guardian”, a specific category of qualified persons that have received special training, though this option is not systematically applied. Although the guardian should be in contact with the unaccompanied child, the level of interaction is often poor.

Although there is no formal “best interest determination”, the local authorities are supposed to act in conformity with the best interest of the child in accordance with a directive adopted by the Ministries of Interior and Justice. The Tribunal for Minors and the appointed guardian should also act in conformity with this principle.

## 2.2. Right to residence

In Italy, foreign children must be admitted to the territory and can legally reside on Italian territory with a specific residence permit (the most commonly used term is “*per minore età*”). The Italian law prohibits the forced return of minors, although the legislation makes exceptions for potential threats to national and public security upon the decision of the tribunal for minors. This provision is however not applied in practice. Children can return voluntarily, subject to advice of the Committee for Foreign Minors that examine whether this would serve the best interests of the child.

The law makes it possible for this residence permit to be extended even after a minor comes of age if two criteria are fulfilled: if the child had been in Italy for at least three years at the time of application and involved in a social integration program for at least two years. In practice, the criteria have been applied differently in different

regions, seemingly at the discretion of immigration police, with some regions demanding that the 2-year programme be concluded before the child reaches majority. This has resulted to children being denied further residence permits to remain in Italy. However, several administrative courts have overturned these provisions by allowing the conversion of residence permits even for youths that completed their two year program after turning 18, in light of principles previously upheld by the Constitutional Court.

## 2.3. Material conditions and rights

On the basis of the law for child protection, the unaccompanied children have access to accommodation: they should be transferred to residential care facilities for children as soon as possible. In practice, especially in cases of children who arrive by sea, they are hosted in CSPAs as they wait for a place in residential care facilities for children to become available. This first reception is temporary and has to be limited (usually not more than 48-72 hours). The search for available places is not done on a national scale but only in the district of reference and there is not a selection on the basis of the quality of the reception. The municipality where the residential care facility for children is located is financially responsible for the child. In Sicily, local prefectures are financially responsible for the children until a guardian is appointed, whereupon the financial responsibility is passed on to the municipalities.

The second reception phase aims more at the social integration of unaccompanied children. They are most often placed in residential care facilities for children that can accommodate a small number of minors (maximum 10 plus 2 in case of emergency). Another possibility is placement in foster care, but this is not widely used in practice. Finally, unaccompanied children who have claimed asylum have the possibility of being accommodated in specific SPRAR projects according to their capacity (which is limited at the moment).

In the residential care facilities for children, unaccompanied children have the right to health care (e.g., they can unconditionally access medical care in a hospital or be examined by a doctor), education, psychological services and can be supported by cultural mediators. In principle,

they are also provided with pocket money and international telephone cards for calls up to 15 euros. Education is compulsory and unaccompanied children are required to be given access to the mainstream education system, whether they hold a residence permit or not. However, in practice, access to education can be problematic depending on the age, length of stay, and possession of a residence permit. Unaccompanied children do not have access to the labour market. They can, in some cases, only benefit from an apprenticeship scheme.

The National Association of Italian Municipalities (ANCI) started a National Programme for the protection of unaccompanied children in order to define the quality of the standard procedures, guarantee the effective protection of foreign minors and support the municipalities in the difficult task of helping minors integrate into local society. At the moment, as noted by Save the Children Italy, which carries out monitoring activities in these residential care facilities, reception standards and quality of services delivered vary considerably from one place to another.

### 3. Protection for victims of trafficking in human beings

#### Key issues:

- There are no centralised statistics at a national level that show the number of victims included in social protection trafficking. However, each body or NGO is required annually to collect data relating to individual projects and draw up a report to the Department of Equal Opportunities.
- In 2008, approximately 1,100 trafficking victims, including 50 children and 100 men, entered social protection programmes in Italy.<sup>18</sup>
- According to the Ministry of Interior, 810 victims received residency permits by assisting law enforcement in 2009, compared with 664 the previous year.<sup>19</sup>

<sup>18</sup> *US Trafficking in Persons Report 2010*, available at: <http://www.state.gov/g/tip/rls/tiprpt/2010/>

<sup>19</sup> *Ibid.*

- The government reported that 138 trafficking offenders were convicted in 2008 and were sentenced to an average of four years' imprisonment.<sup>20</sup>
- Regarding the main nationalities of victims, women and children are mainly trafficked to Italy for prostitution from Eastern Europe, the former Soviet Union, Nigeria, Latin America and China. Recently the number of countries from which victims are trafficked has increased, including countries like Kazakhstan, Kyrgyzstan and Uzbekistan. Currently, Romanian and Nigerian women are the most commonly represented national groups in many parts of Italy<sup>21</sup>.

As mentioned earlier, the majority of victims are identified not immediately upon arrival but at a later stage.

#### 3.1. Types of protection/residence

Victims of trafficking in human beings may receive protection under two different schemes in Italy.

- The act of trafficking in human beings was criminalised by a reform of the Italian Criminal Code Law No. 228 dated August 11, 2003 "*Misure contro la tratta di persone*". This law also established a fund within the Prime Minister's Office to finance support and social integration programmes for identified trafficking victims. In addition, it launched a special support programme aimed at temporarily guaranteeing adequate accommodation, food and healthcare to victims (Article 13). The authority responsible for formally identifying victims of trafficking is the national police force (*questura*).
- Moreover, victims of trafficking in human beings may also access assistance programmes and receive a temporary residence permit on social protection grounds according to Article 18 of the Consolidated Text on Immigration (Law Decree 286/1998). This permit is available not only for recognised victims of trafficking but in general for foreign citizens that have been identified as victims of severe abuse or exploitation

<sup>20</sup> Information from the EU Anti-trafficking website, available at: <http://ec.europa.eu/anti-trafficking/showNIPsection?sectionId=6888c58a-3517-49fd-903c-c18984028f48&breadCrumbReset=true>

<sup>21</sup> *Ibid.*



by the police or the social services of the local administration. The granting of this permit is authorised by the chief of police, also acting on the proposal of the Public Prosecutor, or with the favourable opinion of the Public Prosecutor. It aims to enable the foreign citizen that has been found in such situations to escape from abuse and participate in a social assistance and integration programme. The permit is of six-month duration and may be renewed for one year or longer if required for judicial purposes. Holders of the permit have access to social services and educational institutions, and the possibility of accessing employment. If the holder of the residence permit is employed at the date of expiry, then there is a possibility of extension until the end of the employment contract. In the case of an indefinite employment contract, the modalities for the issuance of residence permits on such grounds apply. The residence permit may also be converted into a residence permit for educational purposes, when its holder is enrolled in an official educational institution.

#### NGOs in focus: victim assistance programmes

The Department of Equal Opportunities of the Prime Minister's Office, which has direct responsibility for the fight against trafficking in human beings, coordinates the social protection programmes for victims of trafficking, as mandated by Article 13 of Law 228/2003 and Article 18 of Immigration Decree 286/1998. More specifically, the coordination body is the *Segreteria tecnica della Commissione Interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento* [Interministerial Commission for support to victims of trafficking and exploitation]. These programmes are implemented by local authorities and NGOs. According to research conducted for the Fundamental Rights Agency on child trafficking<sup>22</sup>, the system works in practice as follows: the Inter-ministerial Commission announces a call for tender in order to choose NGOs and local government bodies to be charged with the implementation of the two kinds of programmes provided by the Italian legal system; it evaluates and selects their proposals, then evaluates their implementation and effectiveness.

<sup>22</sup> Fundamental Rights Agency, *Thematic Study on Child Trafficking: Italy*, 2009, available at: [http://fra.europa.eu/fraWebsite/research/background\\_cr/cr\\_child\\_traff\\_0709\\_en.htm](http://fra.europa.eu/fraWebsite/research/background_cr/cr_child_traff_0709_en.htm)

In practice, it has become difficult for persons to be identified as victims and access victims' assistance programmes. Since the enactment of the 2009 legislation that criminalises "illegal entry and stay in the State territory", foreigners become immediately expellable (and subject to a fine) irrespective of their real living, social and work situation, which could be exploitative. Therefore, expulsion and criminalisation often become the first prerogative. Another problem is the lack of general and uniform guidelines throughout the Italian territory. This leads to prosecutors having different instructions regarding the grant of a residence permit.

#### 4. Protection for other vulnerable migrants

People in vulnerable categories who do not fall under international protection can be granted a "humanitarian residence permit". However, it is not considered as residence status, but rather a simple residence authorisation for humanitarian reasons given by at head of the police of the district (*Questore*). The "Guidelines for the evaluation of the applications for granting the refugee status" elaborated by the National Committee for the Right of Asylum of the Ministry of Interior in 2005 states that among the so-called "humanitarian cases" that may be included are persons with certain health, family or age conditions (e.g. children). Although limited and insufficient, specific services exist, especially in the field of reception, either within the SPRAR system or set up by NGOs.

In addition, a Prime Minister's Decree, issued on the basis of Article 20 of the Immigration law No. 286/1998, may provide temporary protection in case of "relevant humanitarian demands, in case of conflicts, natural disasters or other events of great seriousness in non-EU countries." The purpose of this decree is to maintain the integrity of the asylum system while at the same time coping with the arrival of large numbers of migrants. This provision was recently activated to grant some groups of persons fleeing unrest in Tunisia with temporary protection and residence permits of a limited duration.

#### 5. Referral to expulsion

Migrants who have not been identified as minors or asylum seekers under specific circumstances

are usually brought to a centre for identification and expulsion: CIE (*Centri di Identificazione ed Espulsione*). These centres often also host migrants who have been given rejection or expulsion orders but who are however still allowed to lodge an asylum request. Migrants are kept in administrative detention while waiting to be returned forcibly to their country of origin. The maximum duration of stay in a CIE was extended from 60 days to 180 days according to Law 94/ 2009. In addition, in June 2011, the government raised the detention period up to a maximum of 18 months with Decree No. 89/2011, which transposes the EU Returns Directive. The prolongation of detention will have to be approved by a “*giudice di pace*” (Justice of the Peace). The foreigner is transferred to the CIE following a decision of the head of the Police (*Questore*). This decision is taken when the immediate expulsion cannot be conducted – i.e. in the absence of identification documentation and inability to obtain it through the consulates, or because of lack of immediate transportation possibilities to return the person. Detention must be validated by the judge within 48 hours following the decision of the head of the Police.

If these conditions are not met after a maximum of 18 months, migrants are released with an obligation of leaving the territory (in the next 5 days). Of course, many stay in the country illegally and expose themselves to the risk of another incarceration in a CIE, if arrested by the police. CIEs are in fact populated mainly with foreigners transferred from prison and foreigners without the appropriate documentation having spent long periods in Italy. According to Caritas, about 10.539 people transited through CIEs in 2008. Less than half of the people detained in the CIE are effectively repatriated.

#### Detention conditions at CIEs

These closed centres are managed by private entities with the presence of both the police and sometimes the military to ensure the security of the centre. In its latest report,<sup>23</sup> MSF reviewed services provided in the CIE. Services provided within detention are the following:

- Legal assistance: In some CIEs there are free legal portals but provision of legal assistance is not systematic. In the framework of specific projects implemented only in some Regions, such as Praesidium, NGOs and IO are able to access a part of the detainees to support them. However, in general, there is lack of orientation, support and information about rights and possible protection.
- Social and psychological support: It is provided in the centre by a social worker and sometimes by a psychologist. However, there is a lack of protocol to identify and assist the vulnerable and link with services available on the territory.
- Medical assistance: In all CIEs, there are health clinic and minimum medical staff (doctor, nurses). However, it appears that this service provides minimal and short term medical services; there is a lack of adequate protocol for specific and special medical needs, in particular for contagious diseases.
- Cultural mediation: Cultural mediators are sometimes provided, often “on call/upon request” by the centres but generally there is a lack of staff in this area and few languages are covered.
- The existence and standards of services available in the CIEs are planned according to the national regulation on management of the centres. Although these services are available in theory, they are insufficient and inadequate, especially for vulnerable categories. Furthermore, no leisure activities or sports are planned in the centres.

NGOs and international organisations do not enjoy unimpeded access to the CIEs, which means monitoring by external bodies is extremely difficult. However, in the framework of the Praesidium project, IOM, UNHCR, and Save the Children enter CIEs to inform detainees about their rights and to conduct monitoring activities, notably in terms of erroneous children age assessments or identification of victims of trafficking or asylum seekers. In other cases, through individual agreements with the managing organisations, external actors conduct projects inside the CIEs. For example,

<sup>23</sup> Doctors Without Borders, *Abstract: On The Other Side Of The Wall-A tour of Italy's migrant centres*, January 2010, available at: <https://www.doctorswithoutborders.org/press/2010/MSF-On-the-Other-Side-of-the-Wall-report-summary.pdf>

with funding from the Department of Equal Opportunities, some non-governmental organisations have established an ad-hoc legal information and psychological support desk within CIEs. This programme disseminates written and oral information to potential trafficking victims. However, access to the centre remains difficult and depends on the will of the director of the

centre. In addition, such initiatives are dependent on project funding and do not form part of a permanent structure. It is important to note that it is also possible to ask for asylum once in a CIE but it is de facto more difficult.

## Part D: Comparative chart of rights attached to recognised beneficiaries of the categories above

	Refugees	Beneficiaries of Subsidiary Protection	Unaccompanied children
<b>Residence permit</b>	Yes, of a 5-year duration renewable	Yes, of a 3-year duration renewable	Yes, renewable until the coming of age**
<b>Right to Work</b>	Immediately upon recognition	Immediately upon recognition	Only apprenticeship
<b>Right to Social Support</b>	Immediately upon recognition*	Immediately upon recognition*	Yes
<b>Right to free Health Care</b>	Immediately upon recognition*	Immediately upon recognition*	Yes, if residence permit***
<b>Right to Education</b>	Immediately upon recognition*	Immediately upon recognition *	Yes, in the mainstream education system

\*Same level of treatment as for Italian citizens.

\*\*There is a possibility to further renew this permit if two criteria are fulfilled: that a child had been in Italy for at least three years at the time of application and involved in a social integration project for at least two years.

\*\*\*However all separated children have access to emergency health care, whether they possess a residence permit or not.

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Annex  
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Introduction



# Country report: MALTA

## Part A: Country context

### 1. Information on migration and asylum trends in Malta

- Malta, the European Union's smallest country, 316 sq km in size, with a population of around 410,000, is located at the periphery of the EU and in the centre of the Mediterranean Sea, 93 km to the south of Sicily and only 288 km south east of Tunis.
- Until 2002, Malta was considered mainly a country of origin, and arrivals of migrants by boat were rather limited.
- In view of its entry into the EU, Malta lifted its geographical reservation to the 1951 Geneva Convention in 2001 and established a fully operational refugee status determination (RSD) system in 2002. In 2004, the country entered into the European Union.
- EU Membership and access to Schengen (in December 2007) combined with Malta's geographic position at the external border between Africa and the EU led to a steady increase of irregular migration to the island.
- Malta has an extensive search and rescue zone of about 250,000 square km (roughly the size of the UK) which covers most of the central Mediterranean.
- In 2008, 2,775 boat arrivals were recorded, the highest number in one single year. The beginning of 2009 was also marked by a significant increase in the number of arrivals but numbers dropped in the second half of 2009 to around 1,500. This decrease was largely due to the readmission and cooperation agreement reached between Italy and Libya. According to the figures provided by the Ministry of Justice and Home Affairs (MJHA) these declining trends continued

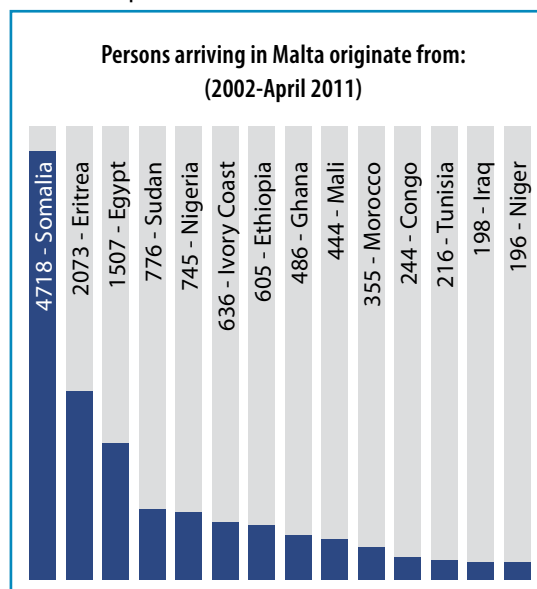
throughout the whole 2010 when only 47 migrants arrived on the island. However, the "Arab spring revolutions" have again marked an increase in the number of arrivals mainly from Tunisia and Libya with 1530 persons arriving between the end of March and July 2011.

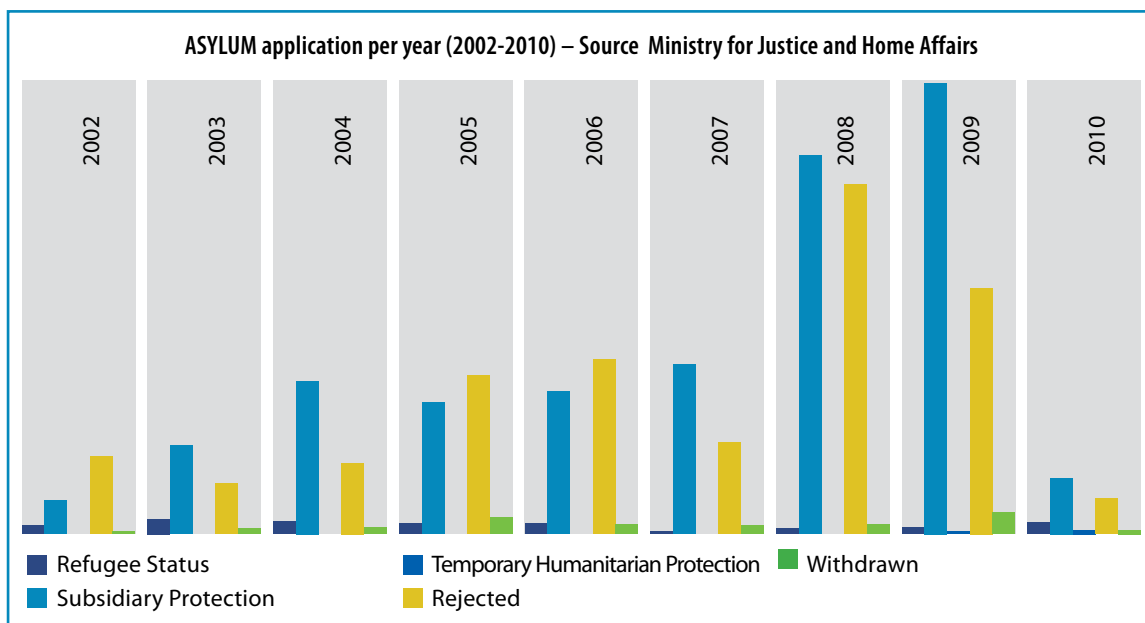
### Number of irregular migrants reaching Malta by boat between 2006 and 2009

2006	2007	2008	2009	2010	2011
Number of Boats					
57	68	84	17	2	5
Number of People					
1780	1702	2775	1475	47	1530

Source: JRS Malta, 2011

- Most migrants arriving irregularly in Malta come from African countries, the majority being Somalis and Eritreans as illustrated by the chart below (source: Ministry for Justice and Home Affairs) which covers the period 2002-April 2011.





- Fleeing conflict and persecution from countries including Eritrea, Somalia and Sudan, the great majority of those arriving apply for international protection. In 2008, official statistics show that 98.78% of arrivals (2,760 persons) applied for asylum. Protection rates are relatively high. Figures released by Malta's Office of the Refugee Commissioner (ORC) for the period January 2002 until February 2011 reveal that, out of 11,484 asylum seekers, 280 (2.43%) were granted refugee status, 5,845 were granted subsidiary<sup>24</sup> protection (50.8%) and 5,359 (46.6%) were rejected. It should be noted that subsidiary protection does not give access to permanent residence status, as compared to refugee status. This affects the integration prospects of the majority of beneficiaries of international protection in Malta.
- Since entering the EU, Malta has asked for special responsibility-sharing measures to assist the country with the disproportionately high number of asylum seekers that arrive due to its geographical position. Figures provided by UNHCR assessing the ratio of asylum seekers in comparison with

<sup>24</sup> The subsidiary protection status was introduced in 2008 after the transposition of the EU Qualification Directive. Previously the Refugees Act provided for temporary humanitarian protection, defined as special leave to remain in Malta for those persons who could not have returned safely to their country of origin. Therefore prior to 2008 numbers entitled subsidiary protection reflect in fact this category of protection beneficiaries.

total population between 2006 and 2010 in industrialised countries place Malta second after Cyprus (with a ratio of 19,2 asylum seekers /1000 inhabitants).<sup>25</sup>

- As a response, between 2007 and May 2011, 620 beneficiaries of international protection were resettled from Malta to the United States.
- A pilot intra-EU relocation programme (EUREMA) was implemented in 2010 involving some 250 recognised beneficiaries of international protection, most of them accepted for relocation in France and Germany. This relocation programme was renewed for 2011 in reaction to arrivals from Libya. In mid-May 2011, at least ten EU member states as well as several non-EU member states (e.g. Switzerland, Norway) agreed to relocate 323 asylum seekers who were currently in Malta during a Pledging Conference on Relocation and Resettlement held at the margins of the JHA Council meeting. Germany alone agreed to relocate 100 refugees.
- Since March 2010, Malta has refused to host FRONTEX operations, justifying its decision on the base of recently approved guidelines governing FRONTEX sea operations. These

<sup>25</sup> UNHCR, *Report on Asylum Level and Trends in Industrialized Countries 2010*, available at: <http://www.unhcr.org/4d8c5b109.html>

require that intercepted migrants be taken to the country hosting the mission under certain circumstances. The government of Malta also justified the decision with the argument that there was no longer a need for its cooperation because of the success of the Italy-Libya Treaty of Friendship.

- Since June 19 2011, Malta has hosted the European Asylum Support Office (EASO) based in Valetta. The agency will promote practical cooperation and the exchange of best practices among asylum authorities in Europe, the organisation of training at the European level, and the improvement of access to accurate information on countries of origin. In addition, it is expected to support resettlement and intra-EU relocation efforts.

## 2. Overview of the administrative and legal framework

### Legal framework on migration and asylum

Migration issues are regulated by the Immigration Act of 1970, Chapter 217 of the Laws of Malta, and the subsidiary legislation enacted on that basis.

Asylum issues are regulated by the Refugee Act 2000, Chapter 420 of the Laws of Malta, and related subsidiary legislation. The Refugee Act 2000 was later amended in order to transpose the relevant EU Directives: the Reception Conditions Directive in 2005 and the Qualification Directive and Asylum Procedures Directive in 2008.

In terms of administrative organisation, the Ministry of Justice and Home Affairs (MJHA) is responsible for the policy with respect to illegal irregular immigration and asylum as well as border control issues. The following bodies fall under the responsibility of the MJHA:

- The refugee determination bodies of Malta, namely the Office of the Refugee Commissioner also responsible for distributing in the Asylum Questionnaire in detention centres, and the Refugee Appeals Board, in charge of the determination of appeals.

- The Police Immigration Department, a part of the Police Special Branch is tasked with issues around irregular immigration and border control.
- The Detention Service set up in August 2005. The Service is responsible for managing the reception of persons who enter the country illegally while their applications for asylum are being examined or their return is facilitated. In practice, these facilities consist of closed centres where persons are being placed in administrative detention.
- The Agency for the Welfare of Asylum Seekers is tasked with the welfare of persons enjoying international protection and asylum seekers. It is responsible for the management of the open centres (either directly or by contracting their administration to non-governmental actors), the social and professional integration of recognised refugees and subsidiary protection beneficiaries as well as the support of asylum seekers in detention centres. As will be explained below the Age Assessment Team belonging to AWAS is responsible for the identification of unaccompanied minors and the Vulnerable Adult Assessment Team for the identification of vulnerable immigrants and asylum seekers.
- The Immigration Appeals Board, adjudicates appeals on detention and removal orders.

Apart from the MJHA, another important administrative unit is the Office of the Prime Minister, responsible for the Armed Forces of Malta which control Malta's external border and are in charge of the interception or rescue operations.

The Ministry for Education, Employment and Family, is tasked with the social welfare of unaccompanied minors, and takes on their guardianship.

## Part B: Current procedures and existing practices for migrants arriving by boat

### 1. Description of procedures

#### 1. 1. Interception at sea

Migrants are intercepted or rescued at sea by the Armed Forces of Malta. Once they are brought to shore, they are immediately passed on to the Immigration Police which becomes responsible for them. All go through a medical check conducted by a port health doctor from the health department. Those deemed severely sick, or with suspected tuberculosis are directly referred to a hospital. There is no access to immediate psychological assistance.

#### 1. 2. Transfer to the police station

Migrants who are certified as stable are escorted by the Immigration Police to the Police Headquarters in Floriana. There, they are immediately interviewed by the Immigration Police officers for registration purposes. The interview mainly consists of questions on basic details such as name, nationality, age, marital status and travel itinerary. It includes fingerprinting and EURODAC entries. The interviewees are also asked questions on the reasons for leaving their country, but at this point those questions serve mostly for records purposes.

#### 1. 3. Administrative Detention

Since 2002, irregular entry and unauthorised stay in Malta are no longer criminal offences, however they constitute administrative offences. All newly arrived migrants therefore are issued with a Removal Order by the Principal Immigration Officer.

Upon registration by the police, all migrants, including unaccompanied children, persons who belong to a vulnerable group and asylum seekers are led straight to administrative detention facilities.

For migrants who apply for asylum, detention lasts as long as it takes for their application to be examined if the examination is concluded within 12 months. Where an asylum application is not determined before the lapse of 12 months, the

asylum seeker concerned is released to await the outcome of their application in the community. The law stipulates that asylum seekers whose applications are rejected within 12 months as well as migrants, who have not applied for international protection, remain for 18 months in detention. Vulnerable migrants and asylum seekers however, can be released from detention if they are found to be in a particularly vulnerable situation by AWAS. After 18 months, those migrants who have not been returned to their country of origin and are still detained are released and placed in open centres.

#### Detention conditions

All three closed detention facilities- Ta'Kandja, Safi and Lyster Baracks: Hal Far, are managed by the Detention Service, within the MJHA. Ta'Kandja has recently been demolished, due to its insufficient facilities hosting 150 persons in three rooms. In Safi there are three centres; C Block (similar to Ta'Kandja), 2 warehouses which can hold up to 300 persons each and B Block, a two floors centre, with a capacity of 80 persons per floor. During the second half of 2008 and the first half of 2009, a period with a high number of boat arrivals, the detention centres were highly overcrowded. Hygiene and accommodation conditions have been widely documented as poor and vulnerable persons have no access to specialised medical and psychological services during their stay in detention. An MSF study reports that women and children were sometimes held in close confinement together with men, increasing the risk of sexual abuse in settings where violence among inmates is common.<sup>26</sup> However, after 2009, the detention centre at Lyster Barracks was renovated to house single women, couples and families. Yet unaccompanied children and other vulnerable adults are still not separated from the rest of the detained migrants.

#### NGOs in focus: services within detention

- Legal Assistance/Provision of Information: The Office of the Refugee Commissioner (ORC), NGOs (such as JRS Malta), faith-based groups, UNHCR and IOM have unlimited access to the detention centres. ORC, UNHCR and IOM are able to provide migrants with

<sup>26</sup> Medecins Sans Frontieres, *Not Criminals*, 2009, available at: [http://www.msf.org.uk/exposing\\_appalling\\_conditions\\_malta\\_20090416.news](http://www.msf.org.uk/exposing_appalling_conditions_malta_20090416.news)

relevant information with respect to asylum procedures. JRS Malta provides individual migrants with legal assistance.

- Social and psychological support is not provided by the state, but only by non-governmental organisations, faith-based groups and international organisations depending on available funding.
- Medical assistance: All migrants /asylum seekers are entitled to free medical treatment at any stage of the asylum process. In the detention centres services are provided by a private service provider under contract with the government. During 2008 and 2009, health services in the detention centres were supplemented by MSF. However in 2010 the organisation withdrew its presence from Malta.<sup>27</sup>
- Interpreters are made available by the ORC during information sessions they organise in the detention centres, when migrants fill in the Asylum Preliminary Questionnaire (PQ) and also during their asylum interview.
- A few NGO's provide cultural mediators when visiting detention centres and when seeing individual clients. The Migrant Health Unit (Floriana Health Centre) and Malta's general hospital, Mater Dei Hospital, both include cultural mediators in their medical teams.

#### 1. 4. Release from detention

After release from detention, migrants are assigned to an open centre. These centres consist of basic facilities and are called "open" centres because residents are free to come and go and are allowed to move out if they find independent accommodation. Most centres are run by the state, however a number are managed by NGOs (Malta Emigrants Commission, the Foundation for Shelter and Support of Migrants and the Peace Lab) which are primarily financed by the government. The capacity

<sup>27</sup> MSF began providing healthcare and psychological support to undocumented migrants and asylum-seekers in Malta in August 2008. At the end of 2010, after two-and-a-half years in Malta, MSF finalised its presence so that its presence would not become institutionalised and an excuse for the state not to take up the provision of such services.

of open centres vary; from large centres which can house up to 400 persons or more (such are the Marsa Open Centre, Hangar Open Centre, Hal Far Tent Village), to smaller centres (such as Hal Far Reception Centre [HFRC], Hal Far open centre Dar Liedna, Dar is-Sliem, Good Shepherd Home – Balzan, Peace Lab). The centres are located in remote locations where public transport facilities to the capital are insufficient and run infrequently.

The (large) majority of migrants are adult males. Some of the centres, particularly the smaller ones, are specifically set up to accommodate families, minors and single women. Out of the nine centres currently in use, there is one open centre for single women (HFRC); one for families (part of Dar Liedna); another for families and single women (Good Shepherd Home, Balzan – Women's Section); and two homes for separated children (part of Dar Liedna and Dar is-Sliem). Persons suffering from mental health problems, persons with disability and persons with chronic illness will usually be housed in one of the larger centres, which are not geared to cater for their needs. These larger centres, particularly the Hangar Open Centre and the Hal Far Tent Village, are generally overcrowded, resulting in problems with basic hygiene, security and insufficient capacity to provide an adequate level of services.

When allocated to an open centre, migrants sign an "Integration and Service Agreement" with AWAS, which guarantees accommodation and a financial allowance.<sup>28</sup> Only persons accommodated in open centres can receive the allowance, which is modest and cannot cover their basic needs. As pointed out in a JRS Malta study for the ANDES Network, service agreements have on occasion been terminated through an unclear procedure and without taking into

<sup>28</sup> The following are the per diem amounts granted (in euro) to migrants depending on their legal status: Asylum seekers: 4.66, Refugee status: 4.08 until they start receiving social security benefits, Rejected asylum seekers: 3.49, Returnees: 2.91, Subsidiary protection or temporary humanitarian protection: 4.66, In employment: 0.00 and they have to pay: 1.16 contribution to the cost of material conditions, Termination of employment: 4.08, Children (until 17 years): 2.33. Source: AWAS Integration and Service Agreement (as mentioned in JRS, *A report on a pilot study on destitution amongst the migrant community in Malta*, March 2010)



account a person's vulnerability.<sup>29</sup> When the agreement has been terminated, persons are only readmitted into the system on an exceptional basis. In addition, those returned to Malta under the Dublin Regulations receive a reduced allowance merely because they travelled outside Malta.

## 2. Identification and referral procedures for people with specific needs

### 2.1. Identification at arrival

#### Asylum seekers

Upon arrival at the coast and during the registration performed by the Immigration Police in the first hours after arrival, there is no possibility to request for asylum.

#### Unaccompanied children

During the registration interview with the police, newly-arrived migrants are asked to declare their age. In the cases where the person declares that they are below eighteen, the Immigration Police informs the detention service as well as AWAS. However, alleged minors are automatically detained and remain in detention and are not provided with any specific services pending the examination of their claim.

#### Victims of trafficking in human beings

According to governmental authorities, trafficking in human beings does not seem to be a prevalent problem and only one irregular immigrant victim of trafficking has been recognised as such or received protection in Malta.

#### Persons belonging to a vulnerable group

Cases of evident medical emergency are led immediately to the hospital. However, there is no identification procedure for individuals in vulnerability at arrival. According to the Immigration Police, it is possible for individuals to raise their specific needs/vulnerability during the registration interview. The police will then consult and inform the relevant governmental department. However, as it became clear during the *Migrants Survey* Conducted in Malta, this is not always the case.

<sup>29</sup> JRS, *A report on a pilot study on destitution amongst the migrant community in Malta*, March 2010.

According to the authorities, newly-arrived migrants receive an information booklet "*Your Entitlements, Responsibilities and Obligations while in detention*" at the Police Head Quarters. This booklet is published by the Ministry of Justice and Home Affairs and is available in English, French and Arabic. It also contains information on the way one can apply for asylum whilst in Malta. However, the *Migrant Survey* revealed that information is often provided at a later stage. Information is also provided orally in response to queries raised individually.

Assistance of independent interpreters or cultural mediators is not available in this first phase of arrival and registration. In order to perform the registration, the police may seek interpretation informally, using the assistance of English-speaking immigrants who are on the same boat. NGOs or representatives of international organisations (UNHCR, IOM) are not present and cannot provide information and assistance to those newly-arrived. Interviewees, including unaccompanied children and those who claim to be vulnerable are thus not given any legal assistance or the assistance of a guardian at this point.

## 3. Identification within administrative detention:

#### Asylum seekers

The ORC, responsible for the examination of asylum claims at first instance, makes direct contact with migrants inside the detention centres in the first days after their arrival. It provides all migrants with information, in written, oral and audio visual form, on their right to apply for asylum, the procedure in case they are a minor, the Dublin Procedure as well as their rights and obligations. Those wishing to apply for asylum can register with the ORC by filling a form known as the "Preliminary Questionnaire" (PQ). Migrants receive the PQ which is translated in 13 languages and potential asylum seekers can then be assisted by interpreters, provided by the ORC Office, to fill their PQ. The above procedures were instituted as part of an ERF-funded project that started in 2009.

#### Persons belonging to a vulnerable group

During detention, there is a relatively structured

vulnerability assessment procedure under the responsibility of AWAS. Identification and referral to the vulnerability assessment procedure may be made by state authorities (immigration, detention staff, and medical personnel), international organisations, NGOs as well as the individuals concerned or fellow detainees. If the VAAT (Vulnerable Adult Assessment Team) from AWAS assesses that the detainee concerned is vulnerable, they issue a recommendation for release from detention. This practice is laid down in a government policy document entitled: *"Irregular Immigrants, Refugees and Integration"*, published in January 2005, stating that vulnerable persons shall not be detained. As is specified by the questionnaire used by VAAT for identification, vulnerable categories include: accompanied minors; pregnant women; persons with a disability; those suffering from chronic illness or mental health problems and elderly persons.

The legislation in Malta gives a rather broad interpretation of vulnerability, including persons suffering from psychological or mental health problems and serious acute and/or chronic illness. However, pending the outcome of the vulnerability assessment, individuals remain in detention. During this period, they continue to be held in the same facilities as other detainees and are not provided with any special care or support by the authorities. If the procedure identifies the person as vulnerable, the person will be released. It must be noted that the existence of a vulnerability assessment is a positive aspect of the detention procedure, although the assessment procedure is informal and lacks the implementation by experienced staff and adequate human resources. Finally, there may be a possibility to appeal a decision by the VAAT before of the Immigration Appeals Board<sup>30</sup>. In reality, an appeal is very unlikely to succeed given the short deadlines, the fact that the reasons for rejection and possibility to appeal are not communicated to the applicant, and that the decision is not provided in writing.

### **Unaccompanied children**

Figures collected by MSF in 2009 state that approximately 8% of all applicants are formally identified as children. The age assessment procedure is carried out by AWAS, and in particular the Age Assessment Team (AAT). According to governmental authorities, migrants who declare to be of minor age when registered by the police are interviewed straight after their arrival in detention by the AAT on the basis of this declaration. In reality this is rarely the case. Also even when children do not identify themselves as such, referrals can be made to AWAS at any point by actors working in detention.

The initial age assessment is done through an individual interview with AWAS staff. If the age stated by the child is not disputed by AWAS, he or she is released from detention within two weeks. However, according to the experience of civil society organisations such as JRS, declarations of minor age are almost always disputed and quick release applies to only a very small number of children, if any. Where the testimony and evidence presented by the alleged minor is considered insufficient to support a finding of minor age, AWAS refers the case to a medical age assessment procedure (X-ray of the bones of the wrist). Referral to a bone test takes around three to six weeks or often even longer, and thus increases the period in detention. Re-examination of the case by AAT is not possible, even if the person produces new evidence, such as a birth certificate. However, the age assessment decision can be appealed to the IAB. However, it should be noted, that as explained above regarding appeals against the vulnerability procedure, due to short deadlines, lack of well-reasoned decisions and inadequate information, this option is not very available in practice.

<sup>30</sup> The law is not clear at all in this regard, as it refers simply to the possibility to appeal from a decision taken in pursuance of the Reception of Asylum Seekers (Minimum Standards) Regulations. Given that the vulnerability assessment procedure is not established by the said law, but simply mentioned there in passing, the possibility of appeal in terms of this article is questionable.

# Part C: Referral to procedures and related services

## 1. Protection for asylum seekers and refugees

### 1.1. Asylum procedures

Unlike other EU countries, asylum claims are not examined under an accelerated status determination procedure when they are made at borders. However, according to the law, they might be treated in an accelerated procedure if other circumstances apply— e.g., in the case of asylum seekers from country considered as a safe country of origin. The authority responsible for examining claims at first instance is the Office of the Refugee Commissioner. This Office holds interviews with applicants, which are conducted by fully trained staff with the assistance of freelance interpreters. There is no deadline for the examination of claims. The law mentions only that where a decision is not taken within 6 months, the asylum seeker has the right to ask for information regarding when he can expect a decision. The Office is not bound by this timeline. In case of a negative answer, applicants have 15 days from notification to lodge an appeal in front of the Refugee Appeals Board, a 3-person committee appointed by the Prime Minister.

Although an applicant may not qualify for international protection, the Refugee Commissioner has the discretion to grant them with Temporary Humanitarian Protection (THP). THP was introduced in December 2008 as a policy and not a legal instrument. THP however, falls in the asylum policy framework and can be granted when returning an applicant to their country of origin is prohibited due to medical reasons or other humanitarian considerations.

### 1.2. Material conditions

Asylum seekers remain in detention pending the examination of their asylum claim, unless they are released because they are children or identified as belonging to a vulnerable group. If the asylum procedure lasts more than 12 months, they are allocated a place in an open centre<sup>31</sup>.

<sup>31</sup> See Part B, Section 1 for details regarding conditions and services available in detention and open centres.

### 1.3. Access to employment

While in detention, asylum seekers have of course no access to the labour market. If released (e.g., in case the examination of their claim has lasted for more than 12 months) they can seek a job. If they find employment, their employer can apply for a 3-6 month renewable (but non-transferable) work permit.

### 1.4. Legal aid

Non-governmental organisations such as JRS, and international organisations such as UNHCR and IOM are able to provide asylum seekers with legal information- on the asylum procedure as well as on the rules regulating immigration and detention in Malta. This is very important, since the State only provides free legal aid at the appeal stage of the asylum procedure.

## 2. Protection for unaccompanied children

### 2.1. Guardianship

The responsibility for the social welfare of identified children falls under the Ministry for Education, Employment and Family (MEEF). This Ministry takes on the guardianship of children through the issuing of a document certifying that the child is now under the care of the state.

### 2.2. Accommodation

Unaccompanied children are housed in one of 2 centres with a capacity of around 20 persons each that were specifically set up to accommodate this category of migrants. These centres are run by AWAS. In practice, legal representation (guardianship) and social work services are not carried out by the MEEF but provided by staff at the centre where they are accommodated. Children receive a residence permit that is renewed until they become 18. After that they have to leave the centre and are given a place at an open centre.

### 2.3. Access to health care

Children receive similar access to Health Services as Maltese citizens and are provided with free medication. Public health care facilities are very restricted, making it necessary for the state to provide funding for psychologists from the private sector.

#### 2.4 Education and access to the labor market

Although children are entitled to free education and are legally obliged to attend school, hardly any of the unaccompanied children, who are often 16 to 18 years old, attend school, due to obstacles to accessing the mainstream school system, despite efforts that have been undertaken by the personnel of centres to enrol them. From the age of 16, children have legal access to the Maltese labour market.

From the information obtained in the field, “Best Interest Determination” Procedures are conducted only by UNHCR in the framework of the resettlement procedure.

### 3. Protection for victims of trafficking in human beings

In general, Malta’s legal framework for human trafficking adopts a criminal law approach that focuses solely on the prosecution of perpetrators rather than a prevention and protection of victims approach.

A formal process of proactively identifying victims of trafficking is not yet in place. However, a number of initiatives have been undertaken in relation to the identification and treatment of victims of trafficking, such as the signing of a Memorandum of Understanding between the Malta Police and the then Ministry for Social Policy (now known as the Ministry for Education, Employment and Family), through *Aġenzija Appoġġ* (the national agency for social welfare) to ensure that actual and potential victims of trafficking receive the necessary services and care.

The Malta police is the authority responsible for officially identifying victims of trafficking. As there is no proactive identification procedure in place there would have to be a self-referral or referral by NGOs to the police. The law provides a reflection period for potential victims of trafficking of no more than 2 months. When cooperating with the authorities in the framework of investigations or judicial proceedings, victims can receive a renewable residence permit, valid for an initial period of six months. However, this permit can be withdrawn under certain circumstances. There are also no dedicated centres for

victims of trafficking in Malta. They are currently accommodated in shelters for victims of domestic violence run by *Aġenzija Appoġġ*.

### 4. Protection for vulnerable categories

Vulnerable persons recognised as such by AWAS are released from detention. However, their recognition does not in itself automatically lead to any status or specific rights. They are then housed in open centres, where the staff to resident ratio is extremely small and little support is given for their specific needs. In particular, persons with psychological problems remain unattended and uncared for.

### 5. Expulsion

All migrants intercepted or apprehended entering irregularly are automatically detained upon arrival with a view to being returned. However, very few are effectively returned<sup>32</sup> and as mentioned above, a high number obtain a form of international protection.

<sup>32</sup> According to the EMN National Contact Point the number for 2008 was 780 migrants. EMN, *Programmes and Strategies in Malta Fostering Assisted Return to and Re-Integration in Third Countries*, 2009, available at: [http://www.mjha.gov.mt/MediaCenter/PDFs/1\\_EMN\\_Assisted%20Return%20Study%20\\_Final\\_%2009%20%28a%29.pdf](http://www.mjha.gov.mt/MediaCenter/PDFs/1_EMN_Assisted%20Return%20Study%20_Final_%2009%20%28a%29.pdf)

## Part D: Comparative chart of rights attached to recognised beneficiaries of the categories above

	Refugees	Beneficiaries of Subsidiary Protection / Temporary Humanitarian Protection	Unaccompanied children	Belonging to a Vulnerable Category
<b>Residence permit</b>	Yes, of a 3-year duration renewable	Yes, of a 1-year duration renewable	Yes, until they reach majority	No***
<b>Right to Work</b>	Yes, 1-year renewable work permit	Yes, 1-year renewable work permit *	For those over 16 years old.	Possible****
<b>Right to Social Support</b>	Immediately upon recognition	Yes, but only core social welfare benefits**	Services provided in the centre	Allowance if accommodated at open centre
<b>Right to free Health Care</b>	Immediately upon recognition	Yes, but only core state medical care	Yes	N/A
<b>Right to Education</b>	Immediately upon recognition	Immediately upon recognition	Yes, in the mainstream education system	N/A

\* Subject according to the law to labour market considerations.

\*\* In practice they do not receive any mainstream social welfare benefits – just the per diem allowance.

\*\*\*Only Temporary Humanitarian status in the framework of an asylum procedure.

\*\*\*\*Irregular migrants, particularly rejected asylum seekers, may be issued with a temporary renewable 3 month work permit. These permits are not subject to a labour market test and are issued to the employer.



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Annex  
TOOLS

Country report  
SPAIN

Country report  
MALTA

Country report  
ITALY

Country report  
GREECE

Conclusions &  
Recommendations

Situation in  
Southern Europe

Identification,  
differentiation  
and referral

Mixed  
migration

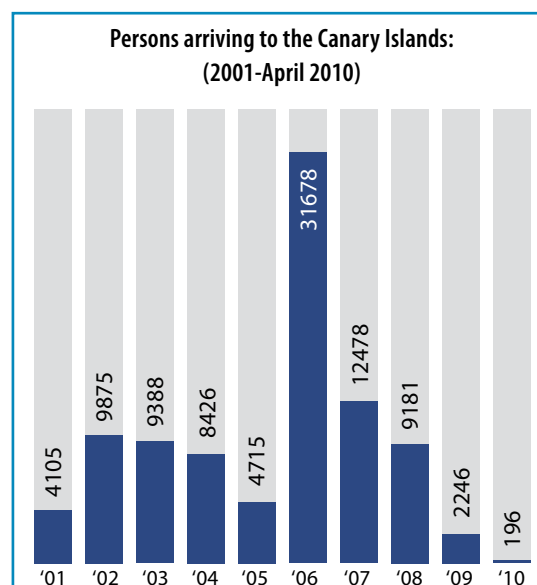
Introduction

# Country report: SPAIN

## Part A: Country context

### 1. Information on migration and asylum trends in Spain

- Spain is located in the south-west corner of the European Union. It also has two land borders with Morocco, the two Spanish enclaves of Ceuta and Melilla, whose combined length is only 18 km. Its maritime borders with Africa however, cover more than a thousand kilometres both along the South coast of the mainland and around the Balearic and the Canary Islands. Because of its strategic location and historical and cultural links with Latin America, Spain has been a destination country for migrants for decades.



Source: Ministry of Interior: Lucha contra la inmigración ilegal-Balance 2010 (Elaboración CEAR)

- Boat arrivals into Spain from 2000 onwards were mainly to the coasts of the Canary Islands and to a lesser extent to Andalusia. Arrivals reached a peak in 2006 when 39,180 persons arrived at the Spanish coast. Figures have fallen steadily since. The table below provides an overview of trends in boat arrivals per region for the period 2004-2010, as reported by the Ministry of Labor and Immigration.

- In recent years, considerable financial and human resources were invested by Spanish authorities in border control and the fight against irregular migration. For example, according to the Spanish Ministry of the Interior, there was a 60% increase in the number of police officers dealing with immigration and border controls between

REGION	2004	2005	2006	2007	2008	2009	2010	TOTAL
CANARY ISLANDS	7.543	3.918	30.627	10.702	8.664	2.251	157	63.862
SOUTH COAST	6.059	6.195	7.130	4.987	3.672	4.340	2.327	34.710
EAST COAST	0	0	0	270	218	670	450	1.608
CEUTA	0	0	0	26	98	103	15	242
MELILLA	0	0	0	32	29	0	0	61
BALEARIC ISLANDS	0	0	0	0	9	79	0	88
Total Arrivals per year	13.602	10.113	37.757	16.017	12.690	7.443	2.949	
Total Arrivals 2004-2010	100.571							

Source: Ministry of Labor and Immigration, Presentation in the regional experts workshop "Responding to boat arrivals and mixed migration flows in the Mediterranean", organised by ICMC in the framework of the DRIVE Project, 10-13 May 2011, Catania, Sicily.

2003 and 2010.<sup>33</sup> The EU supported Spain's activities by allocating the country financial assistance from its External Borders Fund.

- Collaboration with FRONTEX, set up in 2006, was also intensified through a number of operations by the Spanish coasts (*operations Hera, Hermes, Indalo* etc). In addition to patrolling, co-operation with the EU agency includes the use of advanced technical equipment for the detection of irregular migrants. More specifically, the Integrated External Surveillance System (SIVE) that exists for every Spanish Mediterranean coast and in the Canary Islands has been reinforced by a more recent communication exchange system, the "Sea Horse", which is now set up in the regions of Andalusia, the Canary Islands, and more recently in Murcia and Valencia as well as in countries of origin, such as Mauritania, Morocco, Senegal.
- Spain has increased its collaboration with some of the main countries of origin and transit of migrants, usually in the framework of general co-operation which includes both collaboration on returns and development projects. In that respect, many memoranda of police co-operation were signed between Spain and some of these countries on various issues, including the fight against irregular migration. In addition Spain has worked to conclude numerous bilateral readmission agreements for example with Morocco (signed: 06/03/2007), Mauritania (provisional agreement: 01/07/2003), Algeria (in force: 18/02/2004) and Nigeria (signed: 12/11/2001).
- In addition to increased border control and co-operation with countries of origin and transit, it is thought that Spain's economic crisis may have also made it less attractive as a destination country for migrants.

<sup>33</sup> Ministry of Interior: *Lucha contra la inmigración ilegal-Balance 2010*, available at: [http://www.interior.gob.es/DGRIS/Balances/Balance\\_2010/Balance\\_lucha\\_inmigracion\\_ilegal\\_2010.html](http://www.interior.gob.es/DGRIS/Balances/Balance_2010/Balance_lucha_inmigracion_ilegal_2010.html)

## 2. Overview of the administrative and legal framework

Spain is comprised of seventeen autonomous communities (*comunidades autónomas*) and two autonomous African cities ('ciudades autónomas'): Ceuta and Melilla. The communities have their own parliaments and regional governments with wide legislative and executive powers. This decentralised administrative structure has a strong impact on the way migration and asylum issues are managed. On one hand, the federal government - namely the Ministry of the Interior, the Ministry of Foreign Affairs and Co-operation and the Ministry of Labor and Immigration - has the general competence for policy-making in asylum and migration issues. On the other hand, the autonomous communities are largely responsible for local socio-economic and cultural-educational integration policies, such as the accommodation of asylum seekers and migrants. In certain instances, they are also responsible for guardianship of minors and social and labour integration programmes.

The general rights of asylum seekers and migrants are guaranteed by the Spanish Constitution. The basic instruments currently in place to apply this constitutional mandate are the Organic Law 2/2009 (Immigration law) and the Law 12/2009 (Asylum law), complemented by implementing Regulations and Royal Decrees. The most important legal changes in both fields took place in 2009 when both instruments were reformed in order to ensure compatibility with EU legislation.

**Principal legislation on asylum and migration**  
Law 12/2009, of 30 October 2009, governs the right to asylum and subsidiary protection. This law replaces the earlier Asylum Law (5/1984), by introducing important reforms, and fully implements the European Union's legislation and policy on asylum (transposition of the Qualification Directive, the Asylum Procedures Directive and chapter 5 of the Family Reunification Directive). It includes the notion of subsidiary protection and broadens the grounds for granting refugee status or subsidiary protection to include individuals persecuted on the grounds of gender, gender identity and/or sexual orientation, as well as guarantees the following rights: the right to free legal aid, the right to have an

interpreter and the right to healthcare. With respect to covering the basic needs of asylum seekers, these are also guaranteed by this law as well as by Royal Decree 203/1995 (modified by Royal Decree 2393/2004) which transposes into Spanish law the EU Reception Conditions Directive. The regulation to implement the law is pending approval, thus the previous regulation (RD 203/1995) is still temporarily in use, as far as it does not contradict the new law. In case of contradiction, the new law is applied directly.

Organic Law 4/2000, of January 11th, modified by Organic Law 2/2009, of December 11th (Aliens Law), covers the rights of migrants (including unaccompanied foreign children and trafficking victims). The new law introduced provisions on the identification and protection of both trafficking victims and foreign victims of domestic violence. However it also introduced provisions that restrict the rights of migrants. Such examples are: the introduction of integration conditions as a prerequisite for the granting or renewal of residence and work permits and the restriction of the rules on family reunification. In addition, the law extended administrative sanctions against irregular migration, the prime example being the extension of the maximum duration of detention of irregular migrants in administrative detention centres from 40 to 60 days.

## Part B: Current procedures and existing practices for migrants arriving by boat

### 1. Description of procedures

#### 1.1. Interception at sea

Spanish naval units are responsible for carrying out interception and rescue at sea operations. Migrants are then handed to the Civil Guard or the National Police. The National Police controls the access of foreigners to Spain through official Border Control Points. The Civil Guard is on duty to control the shore including ports, and

is responsible for the interception and arrest of irregular migrants.

#### 1.2. Immediate humanitarian assistance at the coast

In the very first two hours of arrival – and often at shore, migrants are provided with first humanitarian assistance (clothes, food, hot drinks) by the Spanish Red Cross, which deploys its ‘on call’ Emergency intervention teams (ERIES). These teams also conduct individual health assessments and provide basic health care. If urgent medical cases or particularly vulnerable individuals are identified, they are referred to the hospital for urgent treatment. The role of the Red Cross is institutionalised - interventions are not of an ad-hoc basis - and financed by the Ministry of Labour. At this stage, initial informal profiling is done by the police and children are separated from the adults.

#### 1.3. Transfer to the police authorities

Those who have not been brought to the hospital are brought to the closest National Police station which is tasked with their registration and the determination of nationality. During the initial interview, fingerprints are taken and basic data is obtained from the migrants such as name, nationality, age, identity of parents, place of origin, travel and journey details.

Migrants can remain at police stations without being brought before a judge for a maximum of 72 hours. In these proceedings before a judge, which will determine whether migrants will be placed in administrative detention or not, migrants have a right to free publicly funded legal assistance and access to interpreters. In practice, legal aid and lawyers are hired on a contract basis through the Bar Association they belong to. As a study conducted by UNHCR on the situation at the Canary Islands in 2009 revealed<sup>34</sup>, each attorney is assigned five or six persons to represent during the proceedings and may be assigned many more in the case of a larger number of arrivals. Therefore, it appears that often attorneys provide little more than physical pre-sence during both the return and detention proceedings<sup>35</sup>. In most cases, migrants

34 UNHCR, *Refugee protection and international migration: a review of UNHCR's role in the Canary Islands, Spain*, April 2009, at p.11, available at: <http://www.unhcr.org/4a1d2d7d6.pdf>

35 Ibid.



are placed in administrative detention while at the same time an expulsion procedure is commenced. This procedure may even end with an expulsion to a transit country under readmission agreements which allow for the return of non-nationals, as mentioned above, and a re-entry ban.

Apart from the Red Cross, no other international organisations or NGOs have access to the newly-arrived migrants in the first hours after their arrival.

#### Procedures in Ceuta and Mellila

Migrants arriving in Ceuta and Mellila are brought to a specific type of centre: the CETI (*Centro de Estancia Temporal de Inmigrantes*). Under the authority of the Ministry of Labor and Immigration, the CETIs are open centres. However, since Ceuta and Melilla are not part of the Schengen zone, migrants cannot leave the city making it for many a de facto open air prison. Few are transferred to the mainland and only in specific cases (e.g. health issues). Before 2010, asylum seekers whose application was found to be admissible were allowed entry into the Spanish mainland. According to the Ministry of Labour and Immigration, persons in these centres have access to social and legal services as well as to leisure and cultural activities.

#### 1.4. Administrative detention

After the registration procedure at the police departments and the issuance of a judicial order authorising their detention, irregular migrants are led to centres of administrative detention, the so-called CIEs (*Centros de Internamiento de Extranjeros*). Currently, there are 9 official CIEs in Spain which cover the whole territory, except Ceuta and Melilla which have a special status: Barcelona (Zona Franca), Canary islands (Matorral in Fuerteventura, Barranco Seco in Gran Canaria), Tenerife (Hoya Fría), Málaga (Capuchinos), Madrid (Carabanchel), Valencia (Zapadores), Murcia (Sangonera la Verde) y Algeciras (La Piñera). Minors who have already been identified as such by the authorities and pregnant women at a late stage of pregnancy are not detained. Children can only be put in detention centres at the request of their parents if they are also inside the centre and if the detention centre has facilities that guarantee family unity. Illegal entry is not criminalised

and CIEs are formally not considered as detention centres but as “internment” centres where persons are kept until their legal situation is resolved.

These administrative detention centres are under the responsibility of the Ministry of Interior, and in particular the Directorate General of the Police and the Guardia Civil-General Commissariat for Immigration and Borders. The Ministry is responsible for all aspects of the management of the CIEs, from the security to the provision of all services available inside the centres e.g., medical, social etc.

The maximum duration of detention in the CIEs was raised from 40 to 60 days in 2009, after the transposition of the EU Returns Directive. If the detention has already been ordered when an application for asylum is lodged, the asylum seeker will remain in the CIE until the final decision on the admissibility of the application is taken. This could lead to a situation where the final placement period in the CIE may be increased, effectively making it last 60 days plus the duration of the admissibility procedure.

#### Services within detention centres

Order 22/1999 established standards for provision of services and regulated the functioning of the CIEs but currently no Decree exists. At present, none of the Spanish NGOs or international organisations have unlimited access to CIEs but some have signed ad-hoc individual memoranda of understanding to provide certain services within the centres.

Services offered and quality of standards vary significantly within different CIEs, with regards to material conditions, presence of non-governmental organisation representatives who can provide legal and social assistance and the presence of translators and interpreters.

- Legal assistance: Migrants have a general entitlement to free legal assistance provided by the State. In addition, they may in some cases receive legal assistance from NGOs, if they specifically request their assistance.
- Social support: According to the law (Article 13 of Order 22/1999), the CIEs should employ social workers among their staff. It states that social assistance

should exist and that it can be outsourced to NGOs. However, not all the CIEs are currently implementing this measure. In some centres the Red Cross is intervening, providing social support to the detainees.

- **Medical assistance:** all newly arrived migrants have the right to emergency health care and continuity of such care until their release. There is a medical examination upon arrival (within 24 hours) to assess possible physical or mental illnesses or a drug addiction, provide adequate treatment and, if necessary, isolation or hospitalisation (new Article 66 of Law 2/2009 and Articles 12, 14(1), 14(5) and 22 of Order 22/1999). Within the internment centres the medical assistance is provided by the sanitary department of the police and more serious cases are referred to public hospitals. The provision of medical and social services is the responsibility of the Ministry of the Interior which may however arrange that these services are provided by other ministries or nonprofit, public or private entities (Article 6(1) of the Order 22/1999).
- **Psychological support:** Psychological support is not available inside the CIEs and no special service is geared towards people with trauma and victims of torture.
- **Interpretation/cultural mediation:** There is no uniform practice regarding the presence of cultural mediators and interpreters at the CIEs. Research conducted by both UNHCR at the Canaries<sup>36</sup> and the DEVAS research conducted by CEAR<sup>37</sup> attest to the fact that there are varying arrangements according to the funding available and depending on the management of the centres. In practice, the role of interpreters is often undertaken by fellow detainees who are able to speak some Spanish.

- Within detention people with special needs have no access to specialised services (notably medical or psychological). If a person is identified to have specific medical needs they will be addressed within the medical care system available at the centre or through the corresponding hospital if needed.

#### 1.5. Release from detention:

A person might be released from detention if they applied for asylum and their application was found to be admissible. In that case the same NGO that assisted the person will inform them of the possibility to find a place in a shelter for refugees. If the person is interested, their request for accommodation will be communicated to the Asylum Office (under the Ministry of Interior), where the Social Work Unit (itself attached to the Ministry of Labor and Immigration) will refer that person to the centre (which might be run by the administration or specialised NGOs such as ACCEM, Red Cross, CEAR). This referral is done both on the basis of vulnerability of the particular individual and the available space in the centres.

If they do not ask for asylum, migrants detained in CIEs are either returned to their country of origin or in some cases to the country through which they transited. Although subject to an expulsion order, those who cannot be returned are released, for example where there is no readmission agreement with their country of origin or a lack of documentation proving their nationality. They can be offered emergency reception which is a first reception that lasts a maximum of 15 days. During that time, people are assisted with their basic needs and receive legal advice. A priority at this stage is to enable migrants to get in touch with their family or friends already living in Spain that may facilitate the process of social integration. Administratively, they become undocumented migrants and their only possibility to regularise their administrative status is to apply for a residence and work permit available to persons who have lived in Spain for 3 years and have a one-year term offer for a full time job.

36 UNHCR, *Refugee protection and international migration: a review of UNHCR's role in the Canary Islands, Spain, 2009*, at p.11, available at: <http://www.unhcr.org/4a1d2d7d6.pdf>

37 CEAR, *Situación de los centros de internamiento para extranjeros en España, Informe Técnico realizado por la Comisión Española de Ayuda al Refugiado (CEAR) en el marco del estudio europeo DEVAS, 2009*, available at: <http://www.inmigrapenal.com/Areas/Cies/Documentos/InformeCearCIESdic09.PDF>

## 2. Identification and referral procedures for people with specific needs

### 2.1. Identification at arrival

There are no precise or well-defined formal identification procedures at arrival on the part of the authorities. There is a lack of formalised procedures and agreed indicators for the proactive identification of victims by front-line officers. Therefore, there is the danger that migrants will be immediately referred for return without having been able to access protection.

#### Asylum seekers

Migrants may apply for asylum at the police station or during the detention hearing process. However, police authorities are generally not trained, nor required to proactively identify asylum seekers and questions related to the reasons they left their country of origin are not raised during the registration interview. If the request for international protection was made during the interview at the police station, the obligation of the agents would be to refer this person to a reception centre during the examination of their claim. However, in reality, the lack of these units leads to the placement of asylum seekers in a CIE.

#### Unaccompanied children

The referral process to protection will start only in clear-cut cases, where the person expressly states that they are a minor.

In cases where the police have no doubts about a person who declares to be minor at arrival, the child's age is recorded at the registry of unaccompanied foreign children of the General Directorate of the Police and Guardia Civil and they are referred to centres for unaccompanied children.

When minority cannot be established with certainty, the police will inform the public prosecutor, who is responsible to oversee the age-assessment procedures. According to the European Migration Network study on unaccompanied children, while tests are carried out to determine the child's age, the state security forces or local and autonomous police should contact the competent public child protection Services to inform them of the fact and

pre-assign them a place in the reception centre as well as provide immediate assistance when necessary.<sup>38</sup>

#### Age-assessment tests

The age-assessment method employed is an X-ray exam of the left wrist (Greylich-Pyle method). These tests have a margin of error of at least two years. According to the research conducted by I-RED, France Terre d'Asile and CIR<sup>39</sup> the margin of error is indicated in the report but not necessarily taken into account in the young person's favour. In addition, there seems to be no formal appeal procedure to contest the decision of the administration on a person's age. As the Spanish Ombudsman report on the rights of foreigners notes, the medical report itself is taken as the basis for the person's age and no formal age declaration is issued by the prosecutor. Consequently it is not officially communicated to the child. Only an official administrative document as such could be legally challenged before the courts.

#### Victims of trafficking in human beings

No system of proactive identification of victims exists. Most victims of trafficking in human beings are identified and provided with protection at a later stage rather than upon arrival.

#### Other vulnerable persons

There is also no formal identification and referral process for other types of vulnerable categories/medical cases at arrival. However, through the Red Cross, persons with evident urgent medical needs are taken to the hospital for treatment. In addition, women in late stages of pregnancy are exempt from administrative detention.

<sup>38</sup> EMN, *Policies on Reception, Return and Integration Arrangements for Unaccompanied Foreign Minors: Spain*, at 2009, p. 35, available at: <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=115>

<sup>39</sup> I-Red, CIR, France Terre d'Asile, *The Reception and Care of Unaccompanied Minors in Eight Countries of the European Union: Comparative Study and Harmonisation Prospects-Final Report*, 2010, at p. 87, available at: <http://www.cir-onlus.org/the-reception-and-care-of-unaccompanied-minors-in-eight-countries-of-the-eu-final-report-en.pdf>

## 2.2. Identification within administrative detention:

Upon arrival in a detention centre migrants should, according to law (article 62.4 of Law 14/2003), receive information on their rights and obligations. This is done through a leaflet entitled "Rights and Obligations Information Bulletin" on the rules and rights in detention as well as an "asylum leaflet" in a language they understand which they should receive upon arrival at a CIE. In practice, these leaflets are usually available in Spanish, French, English and Arabic. Research conducted both in the framework of the DRIVE<sup>40</sup> and DEVAS projects<sup>41</sup> revealed that a significant number of migrants lacked understanding of their rights. Furthermore, it was found that most of those questioned did not have a clear understanding about the content of the information they received. That was due to the fact that it was explained in a language they did not understand or because of the technical language used.

### Asylum seekers

As migrants may lodge an asylum application only if they specifically raise their claim with the authorities rather than being proactively identified, the majority may experience difficulties getting access to the asylum procedure. The research conducted by CEAR illustrated that 1 out of 4 migrants interviewed within the CIE had one or more reasons to apply for asylum. This number was twenty times higher than the number of persons that actually did manage to apply for asylum.<sup>42</sup>

### Unaccompanied children

With regards to unaccompanied children who have not been identified as such before being placed in the detention centres (CIE), they may be referred to the public prosecutor for age assessment tests to be carried out. Depending on the results, the person will be placed under the care of the minors' guardian or remain in the detention centre if not found to be a minor.

40 *Migrants Survey*, Interviews with 100 migrants including unaccompanied children and asylum seekers.

41 CEAR, *Situación de los centros de internamiento para extranjeros en España, Informe Técnico realizado por la Comisión Española de Ayuda al Refugiado (CEAR) en el marco del estudio europeo DEVAS, 2009*, available at: <http://www.inmigrapenal.com/Areas/Cies/Documentos/InformeCearCIESdic09.PDF>

42 Ibid

## Victims of trafficking in human beings and other vulnerable groups

No specific measures or procedures on the identification of these categories of persons exist within the CIE.

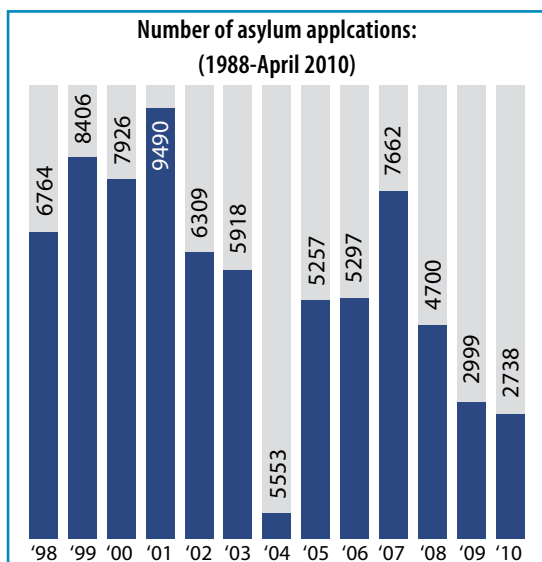
## Part C: Referral to procedures and related services

### 1. Protection for asylum seekers and refugees

#### Asylum: key figures and facts

- Regarding the refugee population, according to statistics provided by the Ministry of Interior for 2010, there were 3,970 recognised refugees in Spain and 2,738 asylum seekers, a drop from 2009, when 2,999 applications for asylum were received.
- In terms of asylum applications, the numbers of applications are low, especially when compared to the total numbers of migrants arriving to Spain.
- The top five nationalities of asylum seekers were (numerical order, highest first): Cuba, Nigeria, Algeria, Guinea and Cameroon.
- In 2010, according to the Ministry of the Interior, Spain granted international protection to 610 out of 2,785 applicants at first instance, a recognition rate of 22%. It should be noted however that Spain also applies an initial admissibility screening to all claims. According to data released by CEAR, (2010 Annual Report), 52% of all asylum applications were found inadmissible in 2009.
- According to the same organisation, in 2010, 300 asylum applications had been submitted at the borders and 213 at the administrative detention centres, the CIEs.

The chart on the next page illustrates the steady drop in the number of asylum applications from 1998-2010.



Source: Ministerio del Interior.

### 1.1 Asylum procedure

#### Admissibility procedure

As described above, migrants arriving at a port or at the coast may claim asylum during the process of identification and registration of nationality, at the police station or during the detention hearing process as well as inside the detention centres (CIE). However, different procedures apply for the treatment of such claims. Although not officially referred to as an accelerated procedure, their examination must be completed within extremely short deadlines. The procedure includes a decision on whether they are eligible to enter the territory in order to apply for asylum (*admission a tramite*). This stage must normally be completed within 4 days from the point of filing the application (UNHCR can ask to prolong this term for 10 days more).

The application is examined by the OAR (*Oficina de Asilo y Refugio*), an office which falls under the responsibility of the Ministry of Interior. UNHCR is also informed and can provide an opinion on the claim. The OAR makes a recommendation on whether to admit the applicant to the normal procedure or not and the formal decision regarding the claim is made by the Minister of the Interior. Claims may be either found to be inadmissible, for instance because a different member state or third country is considered responsible to examine the claim, or may be refused when the statements are found to be incoherent or contradictory with existing country of origin information. Asylum seekers may request a re-examination of the negative decision within 2

days of the notification. The request for a re-examination by the Minister of the Interior has a suspensive effect. The Minister has to pronounce his decision within 2 days. A further appeal to the Ministry of Interior (1 month deadline) or at a tribunal (2 months deadline) is possible in case of a negative decision; however any recourse after the re-examination does not have an automatic suspensive effect. There is a possibility though for an emergency petition to the National Court to suspend the return while the case is substantiated, considering that there is sufficient evidence that the person would face a real risk of suffering torture/inhuman degrading treatment in the event of return. This request is called "*measure cautelarísima*" and resolved within 3 days. In reality few decisions are positive, even when a favourable opinion from UNHCR has been provided.

During the period of examination of the claim the asylum seeker remains at the border post facilities or within the CIE-according to where they made the application. In case of a positive decision entry into Spain is authorised and the person is released from detention.

#### First instance examination

The first instance examination authority is the OAR. It is assisted by the Interministerial Commission on Asylum and Refugees (*Comision Interministerial de Asilo y Refugio, CIAR*), a body assigned to the Ministry of the Interior. The Committee consists of one representative of each of the following ministries: Ministry of Interior (chair), Ministry of Foreign Affairs, Ministry of Justice, Ministry of Labor and Immigration and the Ministry of Equality. UNHCR Spain participates in a consultative capacity. CIAR submits a proposal for a decision to the Ministry of Interior on the basis of the information produced by the applicant, the OAR's report and UNHCR's opinion in addition to information provided by NGOs. The Minister then decides on the outcome of the claim.

#### Appeal

An appeal against a negative decision on the merits of the claim can be filed with the Administrative Chamber of the National High Court. This appeal is not limited to points of law but also extends to the facts, therefore the Court may re-examine evidence submitted at first instance. If the Court finds that the applicant should be granted protection it has the



power to grant status to the applicant and it is not necessary to return the case to the Ministry for review. In case of a rejection of the appeal a further onward appeal is possible in front of the Supreme Court, which in case of a positive finding has the power to grant the application with an international protection status.

#### **Residence on exceptional/humanitarian reasons**

In addition, at the proposal of the Inter-Ministerial Commission on Asylum and Refuge (CIAR), the Ministry of the Interior may grant a residence permit on exceptional/humanitarian reasons. That is the case when, notwithstanding the person does not qualify for international protection, they would either be in danger if returned to their country of origin (due to war or widespread violence that does not fall under the ambit of subsidiary protection) or due to individual humanitarian grounds (age, health etc). This procedure is discretionary.

#### **1.2 Residence**

Once the asylum application has been accepted for consideration, the applicant for asylum is documented as such and receives a residence permit for a period of at least 6 months (regular procedure). However, those who had been in Spain for more than one month before submitting the application - a circumstance that could occur in case of being admitted to a CIE - receive a residence permit valid for three months (emergency procedure). In both cases, residence is renewed until a final decision upon the claim is taken.

#### **1.3. Free legal aid**

Like all arriving migrants, asylum seekers have a right to free legal assistance. The Spanish Asylum Act stipulates that legal aid is mandatory when claims for asylum are made at the border. Free legal aid is available to asylum seekers during all possible stages of the asylum procedure, including a final appeal to the Supreme Court.

#### **1.4. Free health care**

Asylum seekers have access to health care through the "*tarjeta individual sanitaria*" which they can obtain after registering at their local civil registry and proving that they lack adequate economic resources (Article 14 of Law 2/2009). Children and pregnant women do not have to meet these specific requirements.

#### **1.5. Access to the labour market**

Persons seeking international protection shall be authorised to work in Spain under the conditions set forth in regulations.

#### **NGOs in focus-material reception conditions**

Asylum seekers who are considered to be in a situation of economic and social vulnerability are housed in CAR (*Centros de Acogida de Refugiados*). Four CARs are run by the Ministry of Labor and Immigration (2 in Madrid, 1 in Valencia and 1 in Sevilla), but most of them are run by NGOs – i.e. Spanish Red Cross, ACCEM, CEAR. Referrals to a CAR can be made by the Social Work Unit in the Oficina de Asilo y refugio (OAR). Although every organisation has developed its own approach in managing these centres, all have to respect minimum standards set up by the government.

According to the resolution of July 1998 by the IMSERSO (Institute of migrations and social services) of the Ministry of Labor, priority for reception centres for refugees should be given to:

- couples with minor children,
- single parents with minor children,
- persons or families facing a serious risk because of the socio-political situation in their country of origin,
- persons with non-infectious chronic diseases when they don't need special medical care,
- persons with special psychosocial risks,
- persons mentioned in special programs adopted by the Spanish government.

The centres provide the following services: accommodation and meals; information and socio-cultural guidance; legal assistance; literacy and language courses; financial support for transport, hygiene or clothing, translation interpreting and intercultural mediation, counselling and job placement. Legal assistance this is provided not by the state but by specialised NGOs. In general the centres are considered to have quite high standards and NGOs and the Ministry of Labor seem to collaborate efficiently.

Asylum seekers can usually stay for six months in a centre; but this period can be prolonged for another six months or more for social reasons. After that, they have to make their own arrangements regarding accommodation.

## 2. Protection for unaccompanied children

### Unaccompanied children:

#### Key Figures and facts

- The public child protection services are managed by local authorities in Spain, and data is not centralised.
- Data on the local level provided by NGOs or national institutions is characterised by lack of uniformity on the indicators and sometimes differing calculations according to the regions.
- The most recent figure has been provided by the European Migration Network National Contact point which estimated that in December 2008 around 6,000 separated children were being cared for in Spain.
- The same study further indicated that all unaccompanied minors in Spain come from only 8 African countries (Algeria, Gambia, Guinea, Guinea Bissau, Mali, Mauritania, Morocco, and Senegal).
- It is likely that other nationalities are also present (particularly from Asia and Eastern Europe), as indicated in the study carried out in 2007 by the General Council of the Spanish Bar.

### 2.1. Guardianship

All recognised children are referred to the Child Protection Services of the autonomous communities who are the competent bodies for looking into their particular situation, the situation in their country of origin, and for their care. According to the EMN research, the Spanish government is the competent body for deciding the return of unaccompanied foreign minors to their country of origin with their family or, in the absence of these options, to public institutions responsible for the child's guardianship in their country of citizenship.<sup>43</sup>

Only if the child's safety were at risk is staying in Spain to be considered. To address this issue, Spain signed bilateral agreements with Morocco and Senegal and financed the construction

<sup>43</sup> EMN, *Policies on Reception, Return and Integration Arrangements for Unaccompanied Foreign Minors: Spain*, at 2009, p. 46, available at: <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=115>

of reception facilities for returned children in Morocco. Research conducted by Human Rights Watch in the Canary Islands in 2008 has however revealed that the Spanish government fails to regulate procedures for repatriating children which means that best interest determination is not conducted properly.<sup>44</sup> The fact that child protection services may initiate repatriation procedures and yet are also responsible for representing children highlights a conflict of interest. The situation became very serious, particularly in the Madrid, where expulsions of children took place without efforts to contact their families or social services in their home countries, and without assessing their psychosocial situation. If investigation leads to the conclusion that the children are abandoned, the Child Protection Services must declare this situation and assume guardianship of the minors.

### 2.2. Reception

Although according to the law all self-declared minors should be automatically referred to protection services even if their age is being assessed, many are held in police stations for weeks with no access to services. In certain cases, they are transferred to centres for immediate reception, the CAI (*centros de acogida inmediata*), where they are placed at a short notice and for up to 30 days until they are definitely referred to a specialised residential care facility.

Accommodation for recognised unaccompanied foreign children is usually provided in a network of residences specifically assigned for this category of persons and attending to their basic needs. These residences fall under the responsibility of the Autonomous Communities and Cities but often managed by NGOs or public entities. These are the CAME (*centros de acogida para menores extranjeros*) which are long-term, small-scale shared housing facilities for up to 12 children.

### 2.3. Status

Children receive a renewable residence permit. This permit is timed to expire when they turn 18 years old. There is a limited possibility to renew the residence permit beyond 18 years. To do so, they must prove adequate financial means, an

<sup>44</sup> Human Rights Watch, *Returns at any Cost. Spain's Push to Repatriate Unaccompanied Children in the Absence of Safeguards*, March 2008, available at: <http://www.hrw.org/en/reports/2008/10/17/returns-any-cost-0>

employment contract of at least one year, and social and family links with Spain.

#### Children in the Canary Islands

In the Canary Islands there are around 250 places offered in either CAME or CAI. From March 2006 but the Island's Child Protection Directorate opened a total of four special large-scale emergency centres (*Dispositivo de emergencia de atención de los menores extranjeros no acompañados en Canarias DEAMENAC*). According to Human Rights Watch research in 2007 these centres are actually converted makeshift facilities located in isolated areas distant from residential neighbourhoods and municipal services.<sup>45</sup> The organisation documented serious allegations of ill-treatment, substandard accommodation conditions and neglect, and authorities' failure to oversee these emergency centres institutions and protect children from harm. Although designed as a temporary solution to cope with the number of arrivals, they have de facto become permanent as follow-up research in by Human Rights Watch revealed in 2010.<sup>46</sup>

### 3. Protection for victims of trafficking in human being

#### Victims of trafficking in human beings: key figures and facts

- According to figures released by the Ministry of Interior, there were 1.300 identified victims of human trafficking in Spain in 2009, of whom 95 percent were reportedly female victims of sex trafficking.
- However, although a national referral mechanism exists there are no available data on whether the majority of identified victims were actually referred to care and protection or had access to residence permits.
- The 2010 Action Plan in combating trafficking for sexual exploitation released by

the Ministry of Equality stated that the main countries of origin of victims were: Brazil, Bulgaria, Colombia, Croatia, Czech Republic, Dominican Republic, Hungary, Morocco, Nigeria, Poland, Russia and the Ukraine.

In terms of regulation, Spain enacted legislation in 2009 which specifically includes all forms of trafficking. In addition, it established a period of recovery and reflection of at least thirty days for identified victims of human trafficking. The authority responsible for formally identifying victims of trafficking is the *Delegado o Subdelegado del Gobierno* after receiving the reasoned opinion of the police officer who conducted the interview with the potential victim.

#### 3.1. Status and rights during the reflection period

In recent years, Spain has made positive steps towards the protection of identified victims of trafficking. During the reflection period, victims are granted temporary residence (but not a residence permit), and there is a suspension of any administrative process that might have been initiated against them as well as suspension of any removal or return orders. If the victim was identified in a CIE, the granting of a reflection period automatically means that the person is released from administrative detention and referred to specialised NGOs where the person will be accommodated in secure conditions.

#### NGOs in focus providing services to trafficking victims

The Aliens Law mentions that the police may cooperate with non-governmental organisations in providing accommodation and protection to victims of human trafficking. In addition the Ministry of Labour and Immigration prioritised programmes for the labour integration of identified female victims of THB.

NGOs such as ACCEM, *Proyecto esperanza* and APRAMP (*Asociación para la prevención, inserción y atención de la mujer prostituida*) are very active in the field of assistance to victims of trafficking victims. The government has also created a victim assistance fund (2 million euros, under the Ministry of Equality) to improve protection for trafficking victims. Through this fund, 36 projects run by civil society organisations and focusing on providing services (medical and

45 Human Rights Watch, *Unwelcome Responsibilities. Spain's Failure to Protect the Rights of Unaccompanied Migrant Children in the Canary Islands*, July 2007, available at: <http://www.hrw.org/en/reports/2007/07/25/unwelcome-responsibilities>

46 Human Rights Watch, *Eternal Emergency: No End to Unaccompanied Migrant Children's Institutionalization in Canary Islands Emergency Centres*, June 2010, available at: <http://www.hrw.org/node/90993>

psychological support) as well as vocational training and accommodation to victims of trafficking have been supported. NGOs are also active with advocacy and information campaigns.

A network of 18 Spanish NGOs- *Red Espanola contra la Trata de Personas*, was created to coordinate actions in the field. Beyond coordinating their activities in the framework of working groups on specific topics, such as identification and referral, the NGOs implement capacity building activities, feed into national policies and provide information on latest developments in Spain.

#### 4. Protection for vulnerable categories

Persons who are not returned to their country of origin for practical reasons and are allowed to remain in Spain may have access to a residence permit for exceptional humanitarian reasons.

##### Humanitarian residence status

Such a permit can be handed out unrelated to an asylum process on a discretionary basis when the authorities, the *Delegado* or *Subdelegado de Gobierno*, consider that a person should not be returned to their country of origin on humanitarian grounds in view of the person's individual circumstances, e.g. age, health, dependents, etc.

The residence permit can also be given to foreigners who are able to prove they are suffering from a serious illness requiring specialised healthcare that cannot be accessed in their country of origin.

In addition, the Law on Rights and Integration of Foreigners grants temporary residence permits for foreign victims of domestic/gender-based violence, even when they are irregularly in the country.

##### NGOs in focus providing services to migrants in vulnerability

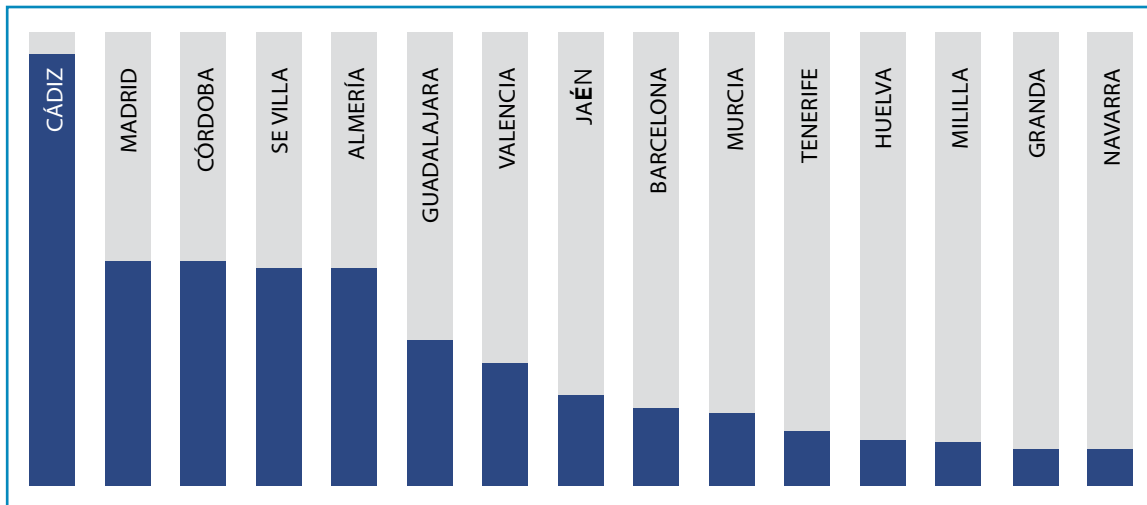
Many vulnerable person, unable to access a specific protection scheme find themselves destitute. In addition, undocumented migrants who are not returned and released face social exclusion and also find themselves in a situation of vulnerability.

Depending on their degree of vulnerability and shelter places at disposal, such persons may be eligible to access temporary shelter for a few months. These are residential facilities, usually in the form of shared flats, managed on the Spanish territory by NGOs that are financed by central or regional authorities. People can stay in these flats from 15 days to 6 months and receive social and legal help during that period. They are further eligible to benefit from the basic financial aid scheme (PAHI). This scheme consists of the delivery of financial assistance to address specific situations of economic difficulty. It usually helps pay the rent for the room destitute migrant persons occupy. After this period no additional services are available to them. Whether they have access to basic social services such as health care or housing depends very much on the rules and practices applicable in the different regions.

These centres are run by NGOs and financed by the Ministry of Labor and Immigration according to Royal Decrees, the first of which was adopted in 2005 (Real Decreto 1453/2005). This Decree was adopted as a response to the humanitarian emergency facing persons who were released to the mainland from the Canary Islands and Ceuta and Mellila lacking the social network and resources to sustain themselves. The decree targeted as a group migrants in vulnerability and aims for the provision of emergency reception, medical assistance, material to cover basic needs (food, blankets, clothing), basic cultural orientation and temporary accommodation.

This type of support is extremely important and helps to alleviate exclusion and poverty, at least temporarily. However the capacity of such support programmes is continuously diminished due to financial cuts in the publicly-funded social sector. In 2010 the government asked NGOs to reduce the number of months of accommodation/services available for migrants from 6 to 3 months, making it available for more people but for less time. The support provided is thus temporary and most persons in vulnerability who exit these centres end up in the streets.

The Chart below, provided by the Ministry of the Labor and Immigration, shows the number of migrants that received assistance in different regions of Spain.



## 5. Return

By Spanish law, migrants can be forcibly returned to their country of origin or a country of transit by an administrative expulsion order delivered to them at arrival. In order for a person to be returned, a nationality determination needs to take place as most migrants carry no identification or other travel documents. In practice, rules on return seem to be relatively arbitrary and the information provided to migrants unclear. Nationality determinations are made both upon arrival at the police station with the use of interpreters and within the CIEs, where national consulates visit the facilities and conduct interviews with migrants in order to confirm nationality. Research undertaken by both UNHCR<sup>47</sup> and CEAR<sup>48</sup> has highlighted that in the absence of clear, written standards govern nationality determinations, these are often flawed, with the result that migrants have been misidentified and even returned to the wrong country. No information was found on the number of people housed in CIEs expelled from the country.

47 UNHCR, *Refugee protection and international migration: a review of UNHCR's role in the Canary Islands, Spain*, April 2009, available at: <http://www.unhcr.org/4a1d2d7d6.pdf>

48 CEAR, *Situación de los centros de internamiento para extranjeros en España*, December 2009, available at: <http://www.cear.es/informes/Informe-CEAR-situacion-CIE.pdf>



## Part D: Comparative Chart of rights attached to recognised beneficiaries of the categories above

	Refugees/ Beneficiaries of Subsidiary Protection	Unaccompanied children	Victims of Human Trafficking	Belonging to a Vulnerable Category*****
<b>Residence permit</b>	Yes, permanent	Yes, temporary and renewable **	Yes, temporary 1-year duration ****	Yes, temporary of an initial 1-year duration, renewable
<b>Right to Work</b>	Immediately upon recognition*	For those over 16 years of age if permission of guardian***	Yes, on the basis of exceptional circumstances	N/A
<b>Right to Social Support</b>	Immediately upon recognition*	Yes, services in the centre.	N/A	N/A
<b>Right to free Health Care</b>	Immediately upon recognition*	Yes, universal sickness cover	Yes, if residence permit	Yes, if residence permit
<b>Right to Education</b>	Immediately upon recognition*	Yes, in the mainstream education system.	N/A	N/A

\*On the same terms as nationals. In addition, the public administrations have the possibility to set up programmes that will target recognised beneficiaries who find themselves in a situation of social or economic exclusion and destitution.

\*\*There is a limited possibility to renew the residence permit beyond 18 years (see details earlier).

\*\*\* Work permits are subjected to a labour market test which is however not applied in case the employment is considered to facilitate the integration opportunities of the migrant child.

\*\*\*\*The permit is premised on the co-operation of the victim with law enforcement officers for the prosecution of perpetrators. It is renewed for a further two years if the victim obtains employment during the first year and can be turned into permanent residency if the victim secures a second renewal.

\*\*\*\*\*See section earlier for the understanding of vulnerability by the Spanish law.

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Annex  
TOOLS

Country report  
SPAIN

Country report  
MALTA

Country report  
ITALY

Country report  
GREECE

Conclusions &  
Recommendations

Situation in  
Southern Europe

Identification,  
differentiation  
and referral

Mixed  
migration

Introduction

# ANNEX: Relevant tools & guidelines

## 1. On mixed migration

### UNHCR - The 10 Point Plan in Action

The 10 Point Plan in Action was developed by UNHCR to assist governments and other stakeholders to incorporate protection of refugees and other vulnerable migrants considerations into practical migration policies and mechanisms. The document is structured around the 10 action points defined in the initial policy document (see part 1 of the report), completed by suggestions for stakeholders and defining the support UNHCR can provide to partners. Every point is also illustrated by practical tools and examples of practices from the field.

Available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>

### The Praesidium project (CRI, IOM, Save the Children, UNHCR) - Recommendations and good practices for the management of mixed migration flows

This document, not yet available on-line, draws from the five years experience of the Praesidium team in dealing with mixed migration flows in Lampedusa, in Southern Italy. The manual is divided according to the different phases of the process: rescue at sea; assistance to boat arrivals and transfer to the reception facility; identification and first reception; information, profiling and treatment of the different categories of migrants; transfer to other structures and to the mainland. Each chapter presents recommendations and good practices pertaining to the different phases.

## 2. On humanitarian/ psychosocial emergency responses

START - Identifying and prioritising medical needs in emergencies

START (Simple Triage and Rapid Treatment) is one of the methods used to effectively and efficiently evaluate all victims during a mass casualty incident. The first-arriving medical personnel will use a 'triage tag' to categorise the victims by the severity of their injury. The victims will be easily identifiable in terms of what the appropriate care is needed by the triage tags they were administered. The whole evaluation process should be conducted in 30 seconds per victim.

Available at: <http://www.start-triage.com>

### The Spanish Red Cross - Teams for immediate response in emergencies for psycho-social interventions - Manual for the volunteer

This practical guide is to be used by the volunteers working in the Red Cross - "Psycho-social interventions in emergencies - Manual for the volunteer" emergency teams. It focuses on psychosocial interventions and gives guidelines on conditions of intervention, ways to detect needs and how to respond to them. The manual is available in Spanish only.

Available at: [http://www.orientamur.murciadiversidad.org/gestion/documentos/5-equipo\\_de\\_respuesta\\_inmediata.pdf](http://www.orientamur.murciadiversidad.org/gestion/documentos/5-equipo_de_respuesta_inmediata.pdf)

### The Spanish Red Cross - Training manual: Psychological Support

A training manual on how to best provide psychological support was produced in the framework of the Red Cross's activities in the field. The manual is available in Spanish only.

Available at: [http://www.orientamur.murciadiversidad.org/gestion/documentos/6-formacion\\_en\\_apoyo\\_psicologico.pdf](http://www.orientamur.murciadiversidad.org/gestion/documentos/6-formacion_en_apoyo_psicologico.pdf)

*A range of guidelines have also been developed for emergency interventions outside Europe (conflicts or natural disasters), many of which valuable elements which could be transposed to the situation of boat arrivals in Europe, including:*

**IASC - Guidelines for Mental Health and**

### Psychosocial Support in Emergency Settings

Initiated by World Health Organisation (WHO) these guidelines include a matrix, with guidance for emergency planning, of actions to be taken in the early stages of an emergency and comprehensive responses needed in the recovery and rehabilitation phases. The Guidelines give humanitarian actors useful inter-agency, inter-sectoral guidance and tools for responding effectively to the psychosocial needs of the beneficiaries in the midst of emergencies.

Available at: [http://www.who.int/mental\\_health/emergencies/9781424334445/en/index.html](http://www.who.int/mental_health/emergencies/9781424334445/en/index.html)

### The Sphere Handbook - "Humanitarian Charter and Minimum Standards for Disaster Response"

The Sphere Project<sup>49</sup> is an initiative to define and uphold the standards by which the global community responds to the plight of people affected by disasters, principally through a set of guidelines that are set out in the Sphere Handbook. The project also provides in depth training materials.

Available at: <http://www.sphereproject.org/>

## 3. On border management/detention

### IDC - Detention Monitoring checklist

This checklist outlines broad areas that should be considered in the framework of monitoring visits in detention. It draws upon general international detention standards.

Available at: [http://www.scribd.com/full/55084721?access\\_key=key-12imeupcxiryf0mdio55](http://www.scribd.com/full/55084721?access_key=key-12imeupcxiryf0mdio55)

### IOM - "Guidelines for Border Management and Detention Procedures Involving Migrants"

The guidelines have been designed primarily to support the capacity of border management personnel to deal with migration health concerns and public health risks related to

<sup>49</sup> was launched in 1997 by a group of humanitarian NGOs and the Red Cross and Red Crescent movement. It

migration and to promote good practices and standards for border management and health personnel working and dealing with significant health risks. The guidelines should be of use to anyone working in a border region, in detention/reception facilities: health professionals, social workers, public health authorities, staff of non-governmental organisations and policy-makers, volunteers, etc.

Available at: <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/health/Guidelines-Border-Management-and-Detention-Procedures-Public-Health-Perspective.pdf>

### UNHCR "Training Manual for European Border and Entry Officials"

The manual is designed to contribute to the training of European border and entry officials on the rights of refugees and asylum-seekers in the context of mixed migration movements. It is available for use by staff of European border authorities, as well as UNHCR and partners, such as non-governmental organisations. This manual is also designed to be used by regional bodies, such as FRONTEX, in particular in terms of the training of the Rapid Border Intervention Teams (RABITs) and FRONTEX Joint Support Teams.

Available at: <http://www.unhcr.org/4d948c736.html>

## 4. On identification of vulnerable asylum seekers

### EVASP- Enhancing Vulnerable Asylum Seekers Protection: The Training Package

EVASP is an EU-funded initiative aimed at enhancing the conditions under which vulnerable asylum seekers can effectively be identified and supported in presenting and pursuing their claims and receive an adequate response to their psychosocial and mental health needs. The project has developed a training package which aims to assist all those who work with asylum seekers in various capacities, contexts and settings to develop a clearer and better understanding of what constitutes vulnerability in asylum seekers,



how to ascertain the degree of this vulnerability and, consequently, be enabled to assess better the asylum seekers' needs and design services to address them more effectively.

Available at: <http://www.evasp.eu>

#### **UNHCR "Heightened Risk Identification Tool" (HRIT)**

The HRIT and its User Guide have been developed to enhance UNHCR's effectiveness in identifying refugees at risk by linking community-based participatory assessments and individual assessment methodologies. They have been designed for use by UNHCR staff involved in community services and/or protection activities (including resettlement) and partner agencies.

Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=46f7c0cd2>

## **5. On identification of trafficking victims**

#### **AGIRE- "A training manual on identification of children victim of trafficking"**

The Italian Agency for Emergency Response (AGIRE), is a network of 12 Italian NGOs (including Save the Children Italy), working to address humanitarian emergencies. The manual aims to improve key stakeholders' capacity to identify child victims or potential victims, and guarantee minimum levels of assistance and protection in line with child rights standards. It provides useful operative tools to enhance evaluation of possible trafficking and exploitative situations, and to increase cooperation between private and public actors. In particular, the Manual is to be used in conjunction with the AGIRE Methodology and Standard Operating Procedures, which provide guiding principles and practical knowledge in each partner country of the identification and first assistance process, emphasising the cooperative modes between private and public actors.

Further details can be found on Save the children Italy's website: [http://www.savethechildren.it/IT/Tool/Press/Single?id\\_press=275&year=2010](http://www.savethechildren.it/IT/Tool/Press/Single?id_press=275&year=2010)

Save the Children Italy has produced in Italian a protocol for the identification and assistance for children victim of trafficking and exploitation available at: [http://images.savethechildren.it/IT/f/img\\_pubblicazioni/img65\\_b.pdf](http://images.savethechildren.it/IT/f/img_pubblicazioni/img65_b.pdf)

#### **Anti-Slavery International- "Protocol for Identification and Assistance of Trafficked Persons and Training Kit"**

This provides basic and practical information to those most likely to encounter victims of trafficking and aims to help make the difficult task of identification easier. The manual includes lists of indicators, checklists and recommends questions for interviewing trafficked people.

Available at: [http://www.antislavery.org/includes/documents/cm\\_docs/2009/p/protocoltraffickedpersonskit2005.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/p/protocoltraffickedpersonskit2005.pdf)

#### **IOM – "Caring for Trafficked Persons" Handbook**

The handbook provides practical, non-clinical advice to help the concerned health provider understand human trafficking, recognise some of the associated health problems and consider safe and appropriate approaches to providing health care for trafficked persons. Although the guide focuses on trafficked persons, it provides information that may be useful for meeting the health needs of other marginalised or abused populations.

Available at: <http://www.iom.int/jahia/Jahia/activities/by-theme/migration-health/caring-for-trafficked-persons/>

#### **IOM – "Direct assistance for victims of trafficking" Handbook**

This Handbook provides guidance and advice necessary to effectively deliver a full range of assistance to victims of trafficking, from the point of initial contact and screening and up to the effective social reintegration of the individuals concerned.

Available at: [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/books/CT%20handbook.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf)

#### **Red Española contra la Trata de Personas – "Guía Básica para la Identificación, Derivación y Protección de las personas víctimas de trata con fines de explotación"**

This guide, in Spanish, was produced by the

Spanish NGO Network against Trafficking in Human Beings. It specifically aims to provide guidance on how to identify and refer trafficking victims.

Available at: [http://www.apramp.org/upload/doc131\\_Gu%C3%ADa%20b%C3%A1sica%20para%20web%20actualizada%202009.pdf](http://www.apramp.org/upload/doc131_Gu%C3%ADa%20b%C3%A1sica%20para%20web%20actualizada%202009.pdf)

## 6. On identification and protection of children

### Separated children in Europe Programme- “Statement of Good Practice” –

The Statement aims to provide a straightforward account of the policies and practices required to implement and protect the rights of separated children in Europe. The Statement is principally informed by the UN Convention on the Rights of the Child (CRC) and two other documents : UNCRC General Comment No 6, on the *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin* (2005) and UNHCR’s *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* of February (1997).

Available at: [http://www.savethechildren.net/separated\\_children/good\\_practice/index.html](http://www.savethechildren.net/separated_children/good_practice/index.html)

### UNHCR “Guidelines on Determining the Best Interests of the Child” and “Field Handbook for the Implementation of UNHCR BID Guidelines”

The publication offers guidance on how to apply the best interests’ principle in practice, and defines the situations in which UNHCR must undertake a “best interest” determination. While these Guidelines are primarily intended as a tool for UNHCR and its partners in the field, its contents may also be helpful to States when extending their domestic child protection systems to displaced or stateless persons.

Available at: <http://www.unhcr.org/4566b16b2.pdf>

The 2008 Guidelines remain the authoritative guide, but the Field Handbook published in August 2011 is a complementary source of guidance that offers additional advice on how to carry out best interest determination

process in practice and operationalise the principles in everyday work.

Available at: <http://www.unhcr.org/refworld/docid/4e4a57d02.html>

## 7. On identification of torture victims

### Italian Council for Refugees (CIR)-

*“Soppravvisuti a torura e violenza estrema problematiche e specificita”*

This guide, in Italian, aims to explain the consequences and manifestation of torture and trauma in order to better identify and take care of victims. It is mainly geared towards eligibility officers conducting refugee status determination in Italy.

Available at: [http://www.cir-onlus.org/broch\\_sopravissutiallaviolenza\[1\].pdf](http://www.cir-onlus.org/broch_sopravissutiallaviolenza[1].pdf)

CIR is currently finalising an instrument for the early identification of torture survivors (Early Torture Survivors Identification).

### The PROTECT project- A tool to identify victims of torture

Funded by the EU, the PROTECT project is developing a tool for early recognition and orientation of torture victims or victims of serious forms of psychological, physical or sexual violence. It aims at helping national authorities in charge of the determination of refugee status and the reception of asylum seekers to identify the vulnerable persons having suffered severe traumatic experiences in order to provide them with: adapted support throughout their asylum application, appropriate medical care and adapted reception conditions. The Questionnaire is supported by a “Frequently Asked Questions” list to assist the interviewer. The list elaborates on how to ask the questions in a proper way, clarifies their meaning and gives suggestions as to how to respond in case of unforeseen behavioural problems.

For more information, contact Parcours d’exil, the project leader: <http://www.parcours-exil.org>

## UNHCR/IOM Profiling Questionnaire

Date: .....

Name of Interviewer: .....

Organization: .....

RISK RATING:

LOW

MEDIUM

URGENT

**! URGENT ACTION REQUIRED BY:**

## UNHCR/IOM PROFILING QUESTIONNAIRE

*For first contact and referral purposes only  
Not for actual status determination and not to be used to limit claims or rights in later processes.*

Variables	Details
<b>I. INTERVIEW</b>	
Profile	1. Name 2. Sex 3. Date of Birth 4. Place of Birth 5. Nationality/Place of habitual residence 6. Ethnicity 7. Religion 8. Language/Literacy Level 9. Marital Status 10. Accompanying Family 11. Documentation 12. Medical Conditions 13. Medical Emergency
Migration Process	14. – 19.
Situation in Host Country	20. Date of arrival, status and living conditions
Prospects	24. Onward movement, voluntary return, fear of return
<b>II. CASE ANALYSIS</b>	
Needs Assessment	28. Profile Indicated
Response	29. Assistance Provided
Referral	30. Referral for Additional Assistance

## I. INTERVIEW

### Profile

1.	Name (family, given)		
2.	Sex	Male	Female
3.	Date of Birth (dd/mm/yy)	Minor (<18)	Elderly
Circle if applicable: Travels with parent(s) / Travels with family member(s) / Travels alone / Travels with adult non family member <sup>†</sup> / Does not demonstrate knowledge of the accompanying adult <sup>†</sup> / Travels with non family member(s) and does not know exact destination <sup>†</sup>			
		unaccompanied/separated	
4.	Place of Birth		
5.	Nationality/place of habitual residence		
6.	Ethnicity		
7.	Religion		
8.	Language/Literacy		
9.	Marital status		
10.	Traveling alone or with family or others?		
Name(s) and relationship of accompanying family member:			
11.	Documentation (Indicate issuing country, number, expiry date). Indicate if docs retained by agents/employers <sup>†1</sup>		
12.	Medical Conditions	Pregnant woman Disability (please specify) Other (please specify)	
Circle if applicable: Obviously confused thinking (such that responses are often incoherent) / Obvious loss of contact with / reality (behaviour which is regarded as nonsensical or bizarre by the person's own community) / Clearly peculiar behavior (e.g. hyperactivity, impulsivity, oppositional behavior) / Risk of harm to self or others			
		Victim of Trauma	

<sup>1</sup> Possible indication that the individual may be a person of concern to UNHCR and that UNHCR should be notified.

<sup>†</sup> Possible indication that the individual may be a trafficked person and that IOM should be notified.

## Migration Process

13. When did you leave your place of origin?

.....  
.....

14. Why did you leave your place of origin? circle relevant option(s):

Educational opportunity / Visit family or friend / Family reunification / Work opportunity / Marriage / False promise or Deception† / Flight from harm or fear of harm\* / indiscriminate violence\*/ armed conflict\*/ disruption of public order\*

If other, please specify: .....

15. How did you leave your place of origin? circle relevant option(s):

Self / Facilitated or assisted†/Involuntary (kidnapping, coercion, sold by family, sold by non-family†)/ Adoption / Other

If other, please specify: .....

16. Did you spend any time in transit place(s) / country(ies):                      Yes                      No

If yes, please specify in chronological order

.....  
.....  
.....

17. Did you engage in any activity in transit place(s) / country(ies)?                      Yes                      No

If yes, please specify (circle one):

Agricultural work / Begging / Child care / Construction / Domestic work / Factory work / Fishing / Lowlevel criminal activities / Mining / Entertainment/Prostitution / Restaurant and hotel work / Study / Small street commerce / Trade / Transport Sector /Other

If other, please specify: .....

18. Where did you live? .....

## Situation in the Host Country

19. When did you arrive in the host country? .....

20. What is your status in the host country? .....



**21. What activity have you undertaken since your arrival in the host country?**

circle relevant option(s):

Agricultural work / Begging / Child care / Construction / Domestic work / Factory work / Fishing / Lowlevel criminal activities / Mining / Entertainment / Prostitution / Restaurant and hotel work / Study / Small street commerce / Trade / Transport Sector /Other

**22. During this activity, did you experience any of the following:**

circle relevant option(s) if applicable:

Physical abuse / Psychological abuse / Sexual abuse / Threats to individual / Threat of action by law enforcement / Threats to family / False promises/deception / Denied freedom of movement / Giving of drugs / Giving of alcohol / Denied medical treatment / Denied food/drink / Withholding of wages / Withholding of identity documents / Withholding of travel documents / Debt bondage / Excessive working hours / If exploited for prostitution (sexual exploitation): Denial of freedom to refuse client OR Denial of freedom to refuse certain acts OR Denial of freedom to use a condom

**23. Did you experience exploitation or threat of exploitation †, arrest, detention, violence†, fear during travel† and/or in the host country†?**

Yes No

**Prospects**

**24. Do you intend to stay here?**

Yes No

**25. Do you intend to move to another country? (circle one):**

Yes No

If yes, please specify:

.....

**26. Do you want to return to you country of origin?**

Yes No

**27. What do you think will happen to you if you return to your country of origin?**

Please circle all those that apply:

Detention / Prosecution /Physical violence†\* / Sexual Gender-based violence†\* / Fear of retaliation†\* / Fear of return\* / Inability to return\*/ Other (Please specify) .....

Observations (please provide brief explanation of each indicator circled above):

.....  
.....  
.....  
.....

## II. CASE ANALYSIS

### Profile Indicated

28. Please tick all those that are INDICATED (even if not entirely proven; this is not a final status determination):

Asylum-seeker	
Victim of Trafficking	
Minor (Please indicate if: unaccompanied / separated)	
Woman at Risk	
Older People at Risk	
Victim of Violence or Trauma	
Health and disability	
Other (please specify):	
Explain briefly:	
.....	
.....	
.....	
.....	
.....	
.....	

### Assistance Provided

29. Please indicate immediate assistance provided:

Nature of assistance	Organization	Contact name(s)	Contact details
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

### Referral for Additional Assistance

30. Will the individual be referred for additional assistance?      Yes      No  
 If yes, please tick the appropriate box(es) on the next page

Categories of persons with needs	Asylumseeker	Victim of Trafficking	Woman at Risk	Minor	Older person at Risk	Other
Individual referred to:						
Emergency relocation						
Reception services (accommodation, Hygiene kit, Clothing, Food...)						
Immediate medical attention						
Referral to VoT process		e.g. IOM				
Referral to Asylum Process	e.g. UNHCR					
Family tracing / Reunification						
Best Interests Determination						
Other (please specify):						

**! URGENT ACTION REQUIRED BY:**

.....

# Overview of DRIVE project partner organisations

## ICMC



Responding to the needs of people on the move since 1951,

the International Catholic Migration Commission (ICMC) serves and protects uprooted people: refugees, internally displaced persons and migrants, regardless of faith, race, ethnicity or nationality.

Working directly with migrants and refugees in more than 40 countries, ICMC responds to the challenges faced by people on the move and their communities by implementing and advocating for rights-based policies and durable solutions, together with its worldwide membership of Catholic Bishops' Conferences, and alongside government and non-governmental partners.

Based in Geneva, Switzerland, the ICMC Secretariat is directly supported by the work of liaison offices in Brussels, Belgium (ICMC Europe) and in Washington, D.C, USA (ICMC, Inc.). In addition to ICMC field offices located in Greece, Indonesia, Jordan, Lebanon, Malaysia, Pakistan and Turkey, ICMC deployees play a key role in identifying and assessing refugees for resettlement at field offices of the UN High Commissioner for Refugees (UNHCR) throughout Africa, Asia, Europe, Latin America and the Middle East.

ICMC Europe works closely with the ICMC Secretariat and field offices to promote protection and humanitarian assistance for migrants and refugees who are especially vulnerable. In addition to the DRIVE project, under the lead coordination of the Brussels office, ICMC has joined with the International Organization on Migration (IOM) and UNHCR to implement a programme on practical cooperation in

resettlement in the EU to enhance the capacity of resettlement providers in 10 EU countries. ICMC Europe further supports the work of its sister offices in Indonesia and Malaysia in combating the cross-border trafficking and debt bondage of Indonesian women and girls in South East Asia and, together with the ICMC Middle East office, works to link humanitarian assistance (ECHO) programmes for Iraqi refugees to other durable solutions, including increased mobility and refugee resettlement.

[www.icmc.net](http://www.icmc.net)

## ACCEM



ACCEM is a Spanish NGO founded in 1991 that works to promote the rights of asylum seekers and migrants

and ensure their effective integration. ACCEM is active in the field of migrant reception and provides shelters to the most vulnerable ones. ACCEM also provides direct care and training to refugees and migrants and has designated many tools to enhance migrants' skills. ACCEM activities include also awareness-raising activities, social mobilisation and public participation.

[www.accem.es](http://www.accem.es)

## CEAR

(The Spanish Commission for Refugee Aid)



CEAR is a Spanish NGO founded in 1979 and based on voluntary action, humanitarian principles, independence

and pluralism. The organisation works to protect the right to asylum and rights of refugees, asylum seekers, vulnerable migrants and stateless persons. CEAR also aims to contribute to the

eradication of reasons for forced displacement. Its activities include management of centres for asylum seekers and vulnerable migrants, and social care aiming at integration of migrants into civic, labour, social, cultural and political life of Spain. The organisation runs a law clinic where more than 150 lawyers provide legal support to migrants in need. CEAR has also developed a series of migrant solidarity campaigns.

[www.cear.es](http://www.cear.es)

## CIR

(The Italian Council for Refugees)



The Italian Council for Refugees is an independent, humanitarian, non-profit organisation, founded in 1990 to coordinate actions in defence of refugees and asylum seekers' rights in Italy. CIR is a member of the European Council for Refugees and Exiles (ECRE). CIR has been lobbying with the Parliament and the Government for the approval of a national comprehensive law on asylum. CIR provides social protection and legal assistance at its main office in Rome and through a network of offices all over Italy, particularly at border points, such as the main airports and ports. CIR works through funding from the United Nations and the European Union on projects in favour of vulnerable groups, such as women, victims of gender violence, unaccompanied children and victims of torture.

[www.cir-onlus.org](http://www.cir-onlus.org)

## ECRE



ECRE is a pan-European network of 69 refugee-assisting non-governmental organisations that promotes a humane and generous European asylum policy. Together with its members, it promotes the protection and integration of asylum-seekers, refugees and internally displaced persons (IDPs) based on values of human dignity, human rights and an ethic of solidarity. The organisation focuses on action-oriented research

aiming always to propose specific recommendations and firmly based in international human rights and refugee law. It carries out advocacy and public awareness actions both on EU and national levels.

[www.ecre.org](http://www.ecre.org)

## JRS Malta

Jesuit Refugee Service Malta



JRS is an international Catholic organisation working in over 50 countries with a mission to accom-

pany, serve and defend the rights of refugees and forcibly displaced people. JRS Malta was set up in 1993 to support the first influx of asylum seekers to the island from crisis areas in the Mediterranean and Eastern Europe, mainly from Iraq and Bosnia. Although the situation is now very different, with asylum seekers and forcibly displaced people arriving mostly by boat from the African coast, JRS Malta continues to respond to existing needs. Currently, JRS Malta conducts work in detention centres, providing social services, facilitating access to health care and identifying the most vulnerable migrants. It lobbies for improved protection of refugees, asylum seekers and forced migrants. The organisation provides also legal services and pastoral care and tries to raise awareness about refugee issues.

[www.jesuit.org.mt](http://www.jesuit.org.mt)

## PRAKSIS



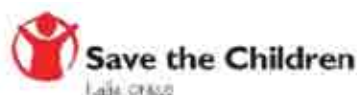
Founded in Greece in 2004, PRAKSIS (Development, Social Support and Medical Cooperation Programs) is an independent, non-profit, non-governmental organisation. Its overall objective is the mitigation of social exclusion and support to vulnerable groups by the provision of medical, legal/advocacy and psychosocial services. Its beneficiaries include every economically and socially excluded population, both natives and foreigners, such as regular or irregular economic migrants, asylum seekers/refugees, trafficking



victims, homeless persons, prison and ex-prison inmates, and street children that are subject to discrimination and face limited access to labour, health and housing services; psychosocial care and legal support. PRAKSIS provides its services according to a holistic approach, and irrespective of the origin, religion, gender, race, cultural and linguistic diversity of its beneficiaries. The work of PRAKSIS extends throughout Greece but focuses on two polyclinics in Athens and Thessaloniki. The organisation also works through specific projects at entry points at the Greek borders.

[www.praksis.gr](http://www.praksis.gr)

## Save the Children Italy



Save the  
Children is  
the world's  
Leading

independent organisation for children whose mission is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives. It was founded in 1919 and today is made up of 29 national organisations working together to deliver programmes in 120 countries around the world. Save the Children believes in a world in which every child attains the right to survival, protection, development and participation. It delivers – in close cooperation with local communities – medium and long-term programmes and responds to emergencies caused by conflicts and natural disasters. Save the Children works in the following sectors: health, emergencies response, education, protection, economic development and food security, children's right and participation. In all its programmes and projects it adopts a child-rights based approach, basing all interventions planned upon the principles established in the UN Convention on the Rights of the Child, and in particular the best interest of the child, the non-discrimination principle, the right of children to participate, and their right to survival and development.

[www.savethechildren.it](http://www.savethechildren.it)

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MAYDAY!—the universal distress call, broadcast by those on ships or planes in mortal distress, and urgently in need of assistance.

MAYDAY! From the French “Venez m’aider”:  
 come help me! This is the call of boat people today, and those in governments, civil society and humanitarian actors at all levels concerned that the times, the facts, the laws, and the practical responses to boat people and other migrants traveling and arriving in distress require examination and improvement.

This report is produced in the framework of the project “DRIVE” (Differentiation for Refugee Identification and Vulnerability Evaluation”), supported by the European Commission and implemented by ICMC Europe in partnership with ACCEM, CEAR (Spanish Commission for Refugee Aid), CIR (Italian Council for Refugees), ECRE (European Council on Refugees and Exiles), JRS (Jesuit Refugee Service) Malta, PRAKSIS and Save the Children Italy.