Durable Solutions for Separated Children in Europe

National Report: Malta
Durable Solutions for Separated Children in Malta

The People for Change Foundation
www.pfcmalta.org

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1. Introduction

1.1 Separated Children

Separated children, like adults, flee their countries for a number of reasons. While some travel to join their families who have previously migrated, others flee war, civil unrest, natural disasters, poverty or persecution. Children migrate in search of work, opportunity, education or an improved standard of living. Additionally, children may migrate unaccompanied to escape a difficult family environment. This can involve sexual or physical maltreatment or the prospect of forced marriage. Certain forms of persecution are specific to children and female children especially. Others may migrate to escape female genital mutilation, child marriage or conscription into formal or informal armed forces. Some separated children are also sent by their parents to pursue a better life, both for the child and their family. Children migrating separately from their parents and on grounds of one of the reasons mentioned above are called separated children or unaccompanied minors (UAMs) and constitute a particularly vulnerable group.

A significant body of research has emerged around the specific vulnerability of separated children, over recent years. The literature argues that separation from persons responsible for the child’s protection and physical and emotional well-being can be traumatic for children and thus increase their vulnerability, contending that separated children are at a high risk of experiencing:

• Sexual exploitation and abuse including early/forced marriage and human trafficking
• Military recruitment
• Child labour including forced domestic labour
• Discrimination
• Neglect
• Detention
• Violence


3. A separated child is a child under 18 years of age who has been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. Children are at an increased risk of being separated from their families or customary caregivers during the chaos of conflict, flight and displacement. Notably some do not travel alone but in the company of others, potentially including traffickers or smugglers. See: UN Committee on the Rights of the Child General Comment No. 6 on Treatment of Unaccompanied and Separated Children Outside their Country of Origin, Committee on the Rights of the Child, Committee on the Rights of the Child, 2005 (CRC/GC/2005/6).


Separated children, once in the country of arrival, are still particularly vulnerable because they lack essential adult care and the traditional support systems of parents and family.\textsuperscript{6} It is for this reason that the European Commission and others argue that a durable solution for separated children must be found as a matter of priority.\textsuperscript{7}

\subsection*{1.2 Durable Solutions: International Law and Guidance and the European Union}

The European Commission, in their ‘Mid-term report on the implementation of the Action Plan on Unaccompanied Minors’, identified ‘prevention, reception and identification of a durable solution’ as the main strands to focus on in respect of promoting a European-wide approach to the care of separated children, reiterating the need for European harmonisation.\textsuperscript{8} In order to harmonise the aforementioned strands across Europe, there must be an understanding of the key principles and terminology at play. In the case of ‘durable solutions’, there is a general lack of clarity around the term.

‘Durable solutions’, in the context of separated children, appears in a number of comments, reports and guidelines. The European Commission,\textsuperscript{9} UNHCR,\textsuperscript{10} SCEP,\textsuperscript{11} the Committee on the Rights of the Child,\textsuperscript{12} the European Commission’s Life Projects, UNICEF’s Child Notices,\textsuperscript{13} the Core Standards for Separated Children in Europe, the Fundamental Rights Agency, UNHCR and UNICEF’s Safe and Sound\textsuperscript{14} report as well as European legislation\textsuperscript{15} suggest that a durable solution which is in the best interests of the child should be found. UNHCR further notes that this principle applies both in the case of a child who has been granted asylum and one who has received a negative decision in relation to an asylum claim. UNICEF and UNHCR note the importance of considering child specific protection needs in the effort to determine durable solutions, particularly one which includes providing international protection (refugee or subsidiary/complimentary protection).\textsuperscript{16}

\begin{itemize}
\item \textsuperscript{8} Ibid.
\item \textsuperscript{9} Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors. Adopted by the Committee of Ministers on 12 July 2007 at the 10002nd meeting of the Ministers’ Deputies.
\item \textsuperscript{13} See, for example, UN Children’s Fund (UNICEF), Child Notice Afghanistan 2013, January 2013, available at: http://www.refworld.org/docid/5124c09e2.html [accessed 9 March 2015].
\item \textsuperscript{14} UN High Commissioner for Refugees (UNHCR), Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, October 2014, available at: http://www.refworld.org/docid/5423da264.html [accessed 9 March 2015].
\item \textsuperscript{16} UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: http://www.refworld.org/docid/4b2f4f6d2.html [accessed 9 March 2015].
\end{itemize}
Such a solution should be identified on a case-by-case basis and all aspects of the case should be duly weighed and considered in respect of the best interest of the child. The Life Project argue that solution must be ‘lasting’ for both Member States and the separated children themselves, meeting the challenges arising out of the migration of separated children. Additionally, the above named reports and guidelines argue that provision must be made


21. Ibid.


26. Ibid.

27. Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors. Adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers’ Deputies. A Life Project is a plan, drawn up and negotiated between the minor and the authorities in the host country. It is a mutual commitment that outlines step-by-step goals and defines the responsibilities of the minor and the relevant authorities.

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for progress, monitoring and reviewing or revising the project both routinely and in response to changes in the minor’s situation.

In summary, the existing guidance, research and projects tell us that a durable solution is a lasting solution, determined as early as possible with the possibility of review and revision, for the minor and the responsible country taking into account the child’s individual best interest by considering the child’s: family circumstances; background, including nationality, religion and culture; safety, including risks of trafficking; particular vulnerabilities and protection needs and their views in accordance with their capacity.28

However, the existing research does not provide a picture of what durable solutions determinations look like in practice. There are some exceptions, the national and international reports for the Core Standards project and the FRA Handbook both include State practice in their commentary. Both projects, however, only dealt with durable solutions on the periphery. It is the aim of this project to look at the existing insights and expand upon them with a strict focus on durable solutions in practice in Belgium, Cyprus, Germany, Greece, Ireland, Malta, the Netherlands, Slovakia, the United Kingdom. This project seeks to establish what the term ‘durable solution’ means in practice across Europe to find proactive and innovative examples of best practice.

1.3 Project Methodology
Desk research was undertaken to create a framework for the term ‘durable solution’ in caring for separated children in Europe. This was done by reviewing existing conceptualisations of the term in the United Nations Convention on the Rights of the Child (UNCRC), Comment No. 6 and the relevant Council Directives. Additionally, a review of the literature and case law was also carried out. The framework and brief literature review is included in the introduction of the national reports for each of the 9 partners and is expanded in the international report.

The Irish Refugee Council led on this project. The School of Applied Social Science at University College Dublin and the Social Work Team for Separated Children of the Child and Family Agency (Tusla) in Ireland both acted as consultants to the project and fed into its development and interim evaluation. Both also sat on the steering committee. The Separated Children in Europe Programme was also consulted and members provided feedback into the outline for the research. All three parties attended a meeting in London where all national partners reviewed national findings, discussed the best way to present findings and highlight best practice and also contributed to the development of the ‘Guide’.

28. Project definition.
1.4 National Methodology
A mixed method approach was applied for the national research in Malta. The People for Change Foundation carried out desk research which included an analysis of Maltese legislation, policies and existing data, established an advisory panel consisting of experts working in the field, held eleven interviews with service providers from governmental and non-governmental agencies, and convened a focus group with twelve separated children currently being hosted at Dar Is-Sliem, Santa Venera. The combination of tools and approaches allowed for the various perspectives to be collected and for a comprehensive review of the current state of play.

1.4.1 List of Advisory Panel Members
The advisory panel was made up of 8 members representing the various institutions involved in the migration management model especially relating to UAMs. A concern arose as regards the overlaps between members of the advisory panel and the representatives interviewed, and attempts were made to avoid overlaps of individuals even if the same institutions were represented in both. This arises in part due to the relatively small and highly concentrated context in Malta.
1.4.2 Service Providers

A total of 11 service providers were interviewed, which included a combination of state and non-state actors that are active in the field of migration in Malta and carry out work with separated children directly. The state service providers interviewed include the Office of the Refugee Commissioner (RefCom), the Agency for the Welfare of Asylum Seekers (AWAS) and the Children and Young Persons Advisory Board (Advisory Board). The non-state actors included a combination of three International Organisation (IOs) and four Non-Governmental Organisations (NGOs). The IOs consulted were the UNHCR, IOM and the Red Cross. The four NGOs consulted include the Integra Foundation, the Jesuit Refugee Service (JRS), Kopin and the Organisation for Friendship in Diversity (OFD).

<table>
<thead>
<tr>
<th>Name</th>
<th>Position of the respondent</th>
<th>Date of the interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jon Hoisaeter</td>
<td>UN High Commissioner for Refugees</td>
<td></td>
</tr>
<tr>
<td>Fr Savio Vella</td>
<td>Dar Osanna Pia/National Commission Unaccompanied Minors Working Group</td>
<td></td>
</tr>
<tr>
<td>Mario Friggieri</td>
<td>Office of the Refugee Commissioner</td>
<td></td>
</tr>
<tr>
<td>Sarah Borda Bondin</td>
<td>Agency for the Welfare of Asylum Seekers</td>
<td></td>
</tr>
<tr>
<td>Mario Gerada</td>
<td>National Commission for the Development of a Strategy and Policy for Children</td>
<td></td>
</tr>
<tr>
<td>Lorna Muscat</td>
<td>Representative of the Commissioner for Children</td>
<td></td>
</tr>
<tr>
<td>Ritianne Ellul</td>
<td>Integra Foundation</td>
<td></td>
</tr>
</tbody>
</table>

29. The questionnaires for service providers can be found in the Annex.
30. For a more complete overview of the entities and their specific roles see Section 3 Country Information, 3.2 Actors Involved in Malta.
1.4.3 Focus Group Participants
On 6 December 2014, in the common room of the Dar is-Sliem reception centre in Santa Venera, Malta, a group of twelve separated children participated in a Young Persons Focus Group in which we explored what they understand by the term ‘durable solution’ and in practice what this would mean for their future. The participants were all boys between 15 and 17 years old from Egypt (6), Somalia (2), Mali (1) and Sudan (1); two did not declare their country of origin. The separated children had been in Dar is-Sliem for a period ranging between three months to one year and a half, following a period in detention between one day and three months. The gender dynamic, whereby all participants were male is a limitation of the research that arose from the reality at the centre at the time when the focus group was run.

<table>
<thead>
<tr>
<th>Gender</th>
<th>Average Age</th>
<th>Number of Attendees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>17</td>
<td>12</td>
</tr>
</tbody>
</table>

1.5 Project Outputs
This report is a key output of the research component of the project run in Malta. Beyond this national output, the international report is a synthesis report, which provides a framework for conceptualising the ‘durable solution’ in caring for separated children in Europe. Additionally, and appended to the international report, a Best Practice Guide for the Identification, Implementation and Review of Durable Solutions for Separated Children in Europe is produced. This Guide provides a template including a checklist for those responsible for determining, implementing and reviewing the durable solution.

1.6 Report Structure
Chapter 2, ‘Building Blocks for Determining Durable Solutions’ introduces the building blocks to creating space and opportunity for best interest determinations as well as durable solution planning. This chapter contends that in order to create durable solutions studies have shown that there needs to be a robust legal framework, which places the child firmly at the centre, that guardians of separated children have relevant competences and ability to build trusting relationships with separated children and that the various important actors in the child’s life need to be taken into account.

Chapter 3, ‘Country Information’ provides statistics to put the issue of separated children in Malta into context, as data demonstrates that in recent years the issue of separated children has become increasingly relevant and important. Statistical data pertaining to number of separated children in Malta was collected through the Eurostat Database while the Office of the Refugee Commissioner, provided statistics on asylum decisions of separated children in Malta by gender. An outline of the major service providers and their specific roles, responsibilities and tasks with separated children is then provided, all of whom have been interviewed for the purpose of this research. The next section provides a general analysis of the legal framework that regulates the procedure for claiming asylum in Malta generally and specifically for separated children. Chapter three then concludes with information on the care arrangements currently in place for separated children, including the legal framework surrounding care orders, the roles of legal guardians and the detention of separated children.

Chapter 4, ‘Durable Solutions in Malta’ covers the different durable solution processes that are implemented for separated children in Malta. These processes are clarified through a legal analysis of the procedures currently in place as well as through an assessment of the main authorities that participate in the process. Currently, the three options for separated children are: Remaining and integrating in Malta, being resettled to a third country or returning to the country of origin.

31. A more in depth look at their roles with regards to separated children can be found in 5. Durable Solutions: Main Actors and their Roles in Practice
Chapter 5, ‘Durable Solutions: Main Actors and their Roles and Practices’ discusses how the different options are implemented in practice in Malta through an analysis of the main roles and responsibilities undertaken by different authorities and organisations and how the different actors contribute to the implementation of different durable solutions for separated children. Furthermore, possible challenges connected to the implementation of the process are discussed to provide space for the best practice determination.

Chapter 6, ‘Durable Solutions in Consultation’ provides an in depth analysis of the focus group that was held with twelve separated children being hosted at Dar Is-Sliem, Santa Venera. The chapter gives an inside view into what these separated children believe a durable solution would truly mean for their long-term plans, what issues are most affecting their present lives in Malta and what the authorities should be doing in order to help the separated children achieve their goals, how they feel their situation can be improved and which services they would ask the authorities to be provided with.

1.7 Conclusion
This project seeks to establish a framework definition for the concept of ‘durable solutions for separated children in Europe’ taking into account: law and guidance already in existence; other projects that deal with durable solution planning, such as the Life Projects, Child Notices; Core Standards for Separated Children in Europe; among others; the views of young people participating in the project and also practice in the nine European Countries involved in the project.

The Maltese National Report, outlines current practice and interpretation of the concept of Durable Solutions in Malta. This research then feeds into the wider project to produce a comparative study as described above and aims to define ‘durable solutions for separated children’ in Malta.

2. Building Blocks for Determining Durable Solutions
Determining durable solutions for separated children is a process involving many actors and many steps. However to arrive at the point where determining a durable solution is possible, certain conditions must be met. This section introduces the building blocks to creating space and opportunity for best interest determinations as well as durable solution planning.

Firstly, the Life Projects contend that a robust legal framework, which places the child firmly at the centre is essential, in addition to policies that actively support any legislative measures. Several reports argue that the legal framework must include: provision for the appointment of representatives responsible for separated children; allocating legal authority to the representative to determine the child’s best interests and durable solutions; and general child care law which safeguards and protects separated children.

Secondly, the Life Projects, the FRA handbook and numerous other studies argue that guardians of separated children need to have relevant competences to be able to determine durable solutions for separated children considering their best interests. Some reports refer to a background in social work or social care as the most relevant competency. Some argue that the guardian should have a legal background. Many studies also argue that in addition to the requisite qualification, relevant competencies also include targeted professional development training and courses. This might include attending training events on trafficking, trauma,

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asylum law, among other themes.\textsuperscript{36}

Thirdly, a growing body of research also looks at the guardian’s ability to build trusting relationships with separated children. Several reports and studies have shown that relationship building is a critical component of determining the best interest of children. Care planning with separated children and on their behalf is enhanced if it is happening in the context of a positive relationship, based on trust.\textsuperscript{37} Studies have shown that difficulties in truth telling on the part of the child and difficulties in believing on the part of guardians have presented as barriers to determining what is in the best interest of the child.\textsuperscript{38} It therefore seems important that the State must also enable the guardian to establish trusting relationships with separated children. Some reports argue that independent guardianship is one way to assist in making guardians seen as ‘on the child’s side’ while also considering the child’s best interest.\textsuperscript{39}

Lastly, the same studies and reports cited throughout also highlight the vast number of important actors in the child’s life. See, for example the diagram from the FRA Handbook\textsuperscript{40} and a diagram drawn by young people in a focus group for the Core Standards\textsuperscript{41}:

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{diagram.png}
\caption{Diagram showing the guardian’s role and interactions with various actors in the child's life.}
\end{figure}

\textsuperscript{36} Ibid.
\textsuperscript{38} Ibid.
\textsuperscript{40} Handbook 2014, p 91.; Interestingly the Handbook does not include the role of the parents
The above-mentioned studies argue for a multidisciplinary approach to determining best interests, durable solutions and making other decisions, notable in absence of the parents. These prerequisites to determine durable solutions are discussed throughout. This report discusses to what extent these building blocks are in place in Malta and it is dealt with further in the international report.

3. Country Information
This section provides statistical data to help frame the situation regarding separated children in Malta. The data was collected through the Eurostat Database while the Office of the Refugee Commissioner, provided statistics on asylum decisions of separated children in Malta by gender. A brief outline of the major service providers and their roles are generally explained as a basis for the general analysis of the legal framework that regulates the procedure for claiming asylum in Malta generally and specifically for separated children. This section also includes information on the care arrangements currently in place for separated children, including the legal framework of Care Orders, the roles of legal guardians. The second deals with the practice of detention as applied until February 2015, and then introduces a new model of reception for separated children which came into play at the end of February 2015.

3.1 Demographics
Whereas according to Eurostat, in 2013 there were a total of 2245 asylum applications in Malta with 335 of applicants claiming to be separated children, the Joint Technical Mission between IOM and UNHCR Malta revealed slightly different numbers with a total of 2008 asylum applications in Malta with 443 of applicants claiming to be separated children. Both numbers represent a significant increase in the number of asylum applicants claiming to be separated children (14.9% of all applicants) when compared to 2012. In 2012, out of 2080 asylum applications, 105 applicants claimed to be separated children when arriving in Malta (5% of

42. Inside circle: ‘Us’ representing the young people in the focus group. Outside circle: ‘Church, Hostel workers, Lawyers, Social workers, Project workers (aftercare workers), Police, General Practitioner, Community Groups, Foster Families, Teachers’ representing those involved in the lives of the separated children in the focus group.
44. A more in depth look at their roles with regards to separated children can be found in 5.Durable Solutions: Main Actors and their Roles in Practice
45. Eurostat 2014, “Asylum and asylum applicants by citizenship, age and sex”.
The top five countries of origin of separated children asylum applicants coming to Malta in 2014 were Somalia, Gambia, Nigeria, Mali and Senegal. The rise in the number of irregular migrants claiming to be children, especially separated children, is a cause for concern due to their greater vulnerability.

Chart 2: Asylum applicants considered to be separated children in Malta by gender (Source: Eurostat)
Between January and November 2014, figures show that 62% of those asylum-seekers who arrived in Malta were granted some form of international protection, 25% were rejected and 13% of the applications were withdrawn either for implicit or explicit reasons. Comparable percentages for asylum applicants claiming to be separated children are the following: 60% were entitled to protection, 16% were rejected and 24% withdrew their application.

Chart 1: Total number of asylum and new asylum applicants in Malta by gender (Source: Eurostat)

47. Eurostat 2014, “Asylum and asylum applicants by citizenship, age and sex”.
48. See Appendix 1 for the comprehensive overview of the nationalities of minors applied for asylum in 2014.
49. Situation until 1.11.2014. This information was provided by the Refugee Commissioner.
50. Ibid.
51. This information was provided by the Refugee Commissioner for the period until 1st November 2014
52. Ibid.
**Table 1: Social Work Assessments**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Refugee</th>
<th>Subsidiary</th>
<th>Temp. Humanitarian</th>
<th>Provisional**</th>
<th>Rejection (incl. Admissibility)</th>
<th>Withdrawn</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>30</td>
<td>125</td>
<td>23</td>
<td>8</td>
<td>60</td>
<td>32</td>
<td>279</td>
</tr>
<tr>
<td>Female</td>
<td>95</td>
<td>671</td>
<td>130</td>
<td>21</td>
<td>369</td>
<td>203</td>
<td>1490</td>
</tr>
<tr>
<td>Total</td>
<td>125</td>
<td>796</td>
<td>153</td>
<td>29</td>
<td>429</td>
<td>235</td>
<td>1769</td>
</tr>
</tbody>
</table>

* Including pending cases from previous years

** Form of temp. protection pending full determination of an individual case and decided by the Refugee Commissioner

### 3.2 Service Providers in Malta

The service providers in Malta include a mixture between state and non-state actors all of which, in some way or another contribute toward the fulfilment of a durable solution for separated children. This section provides an overview of the particular organisations that are currently operating in the field in regards to identifying and implementing durable solutions for separated children and also some information on the work they carry out more generally.

The main state service providers that work with separated children within the reception, asylum, and guardianship processes include; the Office of the Refugee Commissioner (RefCom), the Agency for the Welfare of Asylum Seekers (AWAS) and the Children and Young Persons Advisory Board (Advisory Board).

AWAS is responsible for the provision of a range of services to asylum seekers, including the identification, social work assessment and care of vulnerable persons such as separated children. Following age assessment it requests the Ministry for Family and Social Solidarity to issue a Care Order, following which a recommendation for the appointment of a legal guardian is forwarded to the Advisory Board. Furthermore, AWAS is also responsible for the management of open centres. As part of its interventions with separated children, a full social work assessment is conducted and a system of case conferences and reviews is implemented whereby a care plan is established and put forward to the Advisory Board for approval. This Care Plan is reviewed every six months or before if required. To illustrate, the Advisory Board members are appointed by the Minister responsible for Social Welfare and, according to the law, it needs to consist of a mother, a person that has an adequate knowledge of psychology, social workers and administrators. The Advisory Board’s role is to advise the Minister on the best methods for dealing with each child or young person, to promote their...
welfare, and to formally appoint a legal guardian for separated children.\textsuperscript{57}

RefCom is the highest authority responsible for determining the status of persons seeking asylum in Malta; all cases are handled through RefCom, and include the assessment of applications, hearings and decisions (also reconsideration of applications), including those of separated children.\textsuperscript{58} Decisions can be appealed to the Refugee Appeals Board.

While The President’s Foundation for the Wellbeing of Society does not have a role in the determination and assessment of durable solution for separated children it does aim to raise the profile of asylum seekers in the public sphere and to facilitate discussion between different stakeholders in the field, including ministries, IOs and civil society and recently it has facilitated the IOM-UNHCR Joint Technical Mission in discussing alternatives to separated children detention in Malta.\textsuperscript{59}

The non-state actors in the field include a combination of three International Organisations (IOs) and three Non-Governmental Organisations (NGOs). The IOs consulted were the UNHCR, IOM and the Red Cross. The UNHCR’s mandate is to provide protection to migrants and its specific roles are then determined by the specific durable solution option, which is carried out through the UNHCR’s Protection Unit and Durable Solutions unit.\textsuperscript{60} However, the UNHCR recognises the importance of durable solutions in the provision of long-term security and coincides with their long-term objective of achieving a ‘normal life’ situation for migrants as opposed to the exceptional one with refugee status. The UNHCR also carries out advocacy work and supports and facilitates the processes of AWAS, RefCom and the Advisory Board in the assessment of durable solutions.

The main channel for repatriation is through IOM’s Assisted and Voluntary Return and Reintegration (AVRR).\textsuperscript{61} IOM Malta provides assistance in voluntary returns and reintegration of migrants within the country of origin upon request. This assistance comprises of counselling, pre-departure and departure assistance and training conducted prior the departure to facilitate the reintegration process. AVR is not available for separated children. IOM is also not involved in on-the-ground reception of asylum seekers (including that of separated children) and only those interested in voluntary repatriation are referred to IOM.

The Malta Red Cross attempts to provide empowerment services to migrants through a number of projects, including the education and psychosocial support of children living in detention centres around the island and in restoring families who have been separated from each other as a consequence of migration, conflicts and disasters.\textsuperscript{62} This is done through the Restoring Family Links programme, which is a general term for a range of activities aimed both at preventing separation and disappearance and of restoring and maintaining contact of family members. This involves an interview alone with the minor before reunification along with a two-week ‘cooling off’ period, always on the basis of informed choice. Often, this means the use of international social work contacts and DNA testing. Cases of reunifications and movement of separated children are considered unique and on a case-by-case basis. However, several things are taken into account; namely, the genuine wish of the minor to find his/her relatives, the right not to be found according to the minor’s wishes and the full confidentiality of data used.

\begin{itemize}
\item \textsuperscript{57} Chapter 285, Article 11(3), Laws of Malta
\item \textsuperscript{58} The Office of the Refugee Commissioner
\item \textsuperscript{59} IOM-UNHCR (2014), Joint Technical Mission Malta: Unaccompanied Migrant and Refugee Children: Alternatives to Detention in Malta.
\item \textsuperscript{60} UNHCR Malta
\item \textsuperscript{61} IOM Malta
\item \textsuperscript{62} Red Cross Malta
\end{itemize}
The four NGOs that offer direct services to separated children include the Dar Osana Pia, Integra Foundation, the Jesuit Refugee Service (JRS), and the Organisation for Friendship in Diversity (OFD). Dar Osana Pia offers residential services for separated children together with other (Maltese) young persons in need of similar assistance and support. The hostel accepts young men from 18 years onwards with particular needs, or going through situations that require immediate intervention and shelter. Those seeking help come from all walks of life, facing crises such as family breakdowns, homelessness, difficulties integrating into society and/or experiencing other traumatic situations. The hostel provides a family type environment where a person is helped to feel welcomed and accepted. Residents are challenged to acquire the necessary social skills to understand who they are, what crises they are facing, what their strengths are and empower them to plan their future with tranquility and the required professional help.

Integra’s role is mainly to provide support, counselling and outreach services for young migrants in order to empower these young migrants and adults in different ways. Therefore, Integra’s body of work focuses on the successful integration of youth within the host country through education and community development by doing on-the-ground work, especially separated children between the age of 15-17 housed in Dar is-Sliem, with the Foundation aiming to provide a permanent point of reference for young migrants. Such work involves language courses, providing guidance in the procurement of work permits, employment and education as well as sharing information about workers’ rights. Integra also works closely with other organisations and should the need arise refers separated children to other NGOs or IOs depending on the particular situation.

The Jesuit Refugee Service in Malta serves and defends the rights of asylum seekers and forcibly displaced persons who arrive in Malta. JRS operates in the detention centres, providing legal, psychological and social assistance for migrants, including separated children and young people. JRS can informally facilitate the best interest assessment through round-table discussions with the legal guardian, the minor and a JRS-representative and informal support can be provided for family reunification when requested.

The OFD Works with migrant children and young people, and seeks to empower them in their everyday life situations; it works with both migrant and local communities to foster diversity and promote social inclusion at a grassroots level. Similarly to Integra, the OFD’s focus is that of providing durable solutions in the field of integration. This is primarily done through homework support for migrant families, intercultural activities such as summer camps for both migrant and Maltese children, sporting activities and other informal activities and general advocacy work in support of their general aim of social inclusion.

The entity which is predominantly responsible for the promotion of children’s rights in Malta is the office of the Commissioner for Children, which was established by law to promote and advocate for the welfare of children and compliance with the UNCRC. Whilst not a service provider, the Commissioner for Children plays a supervisory role. The Commissioner has engaged with various issues of child integration and has made formal recommendations to the relevant ministries for migrant children not to be held in detention centres. The Office has also taken an official stand against pushback and for children born in international waters who reach Maltese territory to be registered in order to address the issue of stateless children. The Office has also cooperated with the European Network of Ombudspersons on issues concerning child migrants and has also

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63. In the context of NGOs there are also other organisations that indirectly contribute to the durable solution process. The mentioned NGOs were interviewed for project purposes and are used to illustrate the role of the NGO-sector in the field.

64. Integra Foundation (2015)


67. The Commissioner for Children
collaborated with other entities and sponsored NGOs working on education and child integration.

3.3 Background to the Refugee Procedures

3.3.1 Refugee Procedures in General
The Maltese Refugee Act (Chapter 420) sets out the legal framework that regulates the procedure for claiming asylum and the reception conditions in Malta. The Refugee Act establishes the Office of the Refugee Commissioner (RefCom) and the Refugee Appeals Board as well as outlining the rights and responsibilities of asylum-seekers and refugees, including separated children. RefCom is the authority responsible for examining and determining applications for international protection at first instance and it is the only entity authorized by law to receive applications for international protection. If the individual expresses a need for international protection at the border, this information is passed on to RefCom, which would then analyse the case. RefCom is also charged with the provision of legal and procedural information to actual and prospective asylum seekers.

Asylum applications in Malta consist of three stages; a ‘Preliminary Questionnaire’ (PQ), another similar questionnaire which is to be filled out before a recorded interview, and the notification of final decision. The PQ is provided to asylum seekers following an information session given by RefCom staff members. The PQ is considered to be the official registration of the asylum seeker’s intent to seek international protection. After completing the second application which is similar to the PQ, the recorded interview takes place. Finally, the applicant is notified about the final decision of his asylum status.

3.3.2 Refugee Procedures for Separated Children
Unaccompanied asylum seekers who claim to be below the age of eighteen upon arrival or in the PQ are immediately referred to the AWAS for an Age Assessment Procedure which was developed and implemented with a view to assessing claims of children. However, the procedure is not regulated by law and the only legal reference to the procedure is found within Subsidiary Legislation 420.07 (Procedural Regulations) Article 15, stating that “a medical examination to determine the age of separated children within the framework of any possible application for international protection may be carried out.” In practice, these individuals, placed in Initial Reception Centre (IRC), are referred to AWAS by the Immigration Police, by RefCom or by other entities working in the detention centres, such as detention service staff, UNHCR or NGOs working in the field. Following the referral, an initial interview is conducted by a panel of three AWAS staff members. The individual is in the meanwhile placed in in a centre for separated children pending Age Assessment Team (AAT) result. If after the initial interview some uncertainties persist, the AAT conducts a second interview and where the panel is convinced that the individual concerned is not a child, the minority age

68. Chapter 420, Refugees’ Act, Laws of Malta.
69. Chapter 420, Refugees’ Act, Article 4 and Article 5, Laws of Malta.
70. Ibid.
71. Chapter 420, Refugees’ Act, Article 4, Laws of Malta
73. See Appendix 2 ‘Asylum application procedure for Separated Children in Malta’ for a comprehensive overview of the asylum procedure.
74. da 2014, p. 13
75. Ibid.
76. Subsidiary legislation 420.07, Article 15, Laws of Malta
78. The Age Assessment Team is a panel of 3 persons.
claim is rejected\textsuperscript{79} and the application process continues with the normal adult procedure.\textsuperscript{80} If doubt remains, the applicant may be referred for a Further Age Verification (FAV) test, which essentially consists of a wrist X-ray.\textsuperscript{81} The AAT is not restricted by the results of the test, which is used as a last resort and only to grant benefit of the doubt.\textsuperscript{82}

If the individual is found to be a minor based on the interview, on the documentation provided by the applicant or on a medical examination, a Care Order is issued for the minor.\textsuperscript{83} The Care Order is officially issued by the Minister of Social Welfare, within the Ministry for the Family and Social Solidarity (MFSS). The separated child is then appointed a legal guardian and placed in an appropriate non-custodial residential facility, where the separated child then proceeds through the rest of the asylum process with the recorded interview and waits for notification for the status of the application. If a separated child’s asylum application is rejected, they still benefit from temporary protection.

### 3.4 Care Arrangements for Separated Children

#### 3.4.1 Guardianship Procedures

After the issuance of a Care Order based on the decision from AWAS, the MFSS is granted full parental authority over the child.\textsuperscript{85} After a legal guardian has been assigned, the Advisory Board informs RefCom of the decision and the asylum procedure resumes. It is specified in the ‘Procedural Standards in Examining Applications for International Protection (Procedural Regulations)’ that the appointed legal guardian is responsible for informing the minor about the asylum procedure, preparing the minor for the personal interview and accompanying the minor during the interview.\textsuperscript{86} Recent studies have shown that in practice information and advice regarding the asylum procedure is often provided to the minor by NGOs upon referral.\textsuperscript{87}

It is important to note that a separated child will not have a person responsible for them between the issuance of a Care Order and the assignment of a legal guardian from the Advisory Board. This is due to the fact that under current legislation there is no person assigned responsibility towards separated children during the time they await an age assessment in the case of doubts with regards the person in question age.\textsuperscript{88} This delayed assignment of guardianship can lead to a situation where a minor has to wait for an unreasonably long period of time (one month or longer) before their age is determined and are subsequently assigned a legal guardian by the Advisory Board.\textsuperscript{89} In practice, the legal guardian is appointed by AWAS and is a member of their staff. Children consulted in the course of this research commended the work of the legal guardian and social worker but lamented that due to the number of children assigned to each social worker and legal guardian respectively, they often do not have the required time for individualised attention.

Maltese legislation currently does not set out any specific requirements with regards to the qualifications of

\textsuperscript{79} Aida 2014, p.34
\textsuperscript{80} EMN 2009, p. 20.
\textsuperscript{81} MJHA and MFSS, January 2005. In order to avoid abuse by individuals who make false claims about their age to benefit from the protection provided to children the “shall, in those cases where there is good reason to suspect the veracity of the minority age claimed by the immigrant, require the individual concerned to undertake an age verification test as soon as possible after arrival
\textsuperscript{82} Ibid. AWAS Input.
\textsuperscript{83} Chapter 285, Laws of Malta,
\textsuperscript{84} Aida 2014, p. 35 and MJHA 2005, p. 13–14.
\textsuperscript{85} Chapter 285, Article 4(1), Laws of Malta
\textsuperscript{86} Subsidiary Legislation 420.07 (Procedural Regulations), Article 15A (1a).
\textsuperscript{87} IOM-UNHCR (2014).
\textsuperscript{88} Aida 2014.
\textsuperscript{89} See Aditus 2014b, 16–17 for further information.
the legal guardian. In practice the guardian is forced to perform several roles including a social worker, representing the minor in all legal and administrative procedures and assessing any needs the minor may have.90 The signature of the legal guardian is required for a number of legal and administrative procedures, such as hospitalisation, school enrolment, application for school fees exemption, or issuance of a police record if the separated child is apprehended for alleged criminal activity.91 The precise role and scope of responsibility of the legal guardian is not clearly specified within the legislation. Technically, the Minister for Social Welfare has the highest responsibility to take care of the minor, but there is a lack of further assignment of responsibilities and duties in national legislation for the legal guardians who take care of the separated children. The roles of the social worker and the legal guardian need to be separated in order to avoid creating a conflict of interest, as the current system effectively means that the person conducting the age-assessment is the same one requesting the minor’s release, while at the same time providing guardianship and carrying out administrative tasks.92

A recent policy development that may affect the responsibilities towards separated children is the new Child Protection Bill that is currently being discussed in the House of Representatives. The new bill contains provisions relating to the assignment of a guardian and other persons with responsibilities and duties toward the minor including a repertoire of Child Protection Services (CPS), such as listening to the child and arranging for the provision of support services for the separated child while taking into account his/her special needs.93 However, the additions provided in the bill refer mainly to the responsibilities without assigning specific authorities to implement these provisions. Furthermore, the proposed Child Protection Bill also fails to address the problem that separated children do not have a person responsible for them between the issuance of a Care Order and the assignment of a legal guardian from the Advisory Board.

3.4.2 Detention of Separated Children and Material Reception Conditions

Detention and asylum procedures in Malta are directly related, as an applicant’s detention is dependent upon the time required to finalise the asylum application.94 Asylum-seekers who arrive in Malta without the required documentation are classified as ‘prohibited immigrants’ and are detained upon arrival in immigration detention facilities where they remain throughout the entirety of their asylum application process.95 It is important to note that separated children are not being places in a detention facility anymore in Malta. Regarding the previous detention practice of separated children in Malta, a 2014 joint technical report by IOM and UNHCR discovered that until the Age Assessment Procedure is finalised the ‘alleged child’ was held in a detention centre, normally together with adults.96 If the child was clearly under the age of 18, then the release procedure could be fast tracked, taking only a couple of days. However, when there was doubt as to whether the individual is actually below the age of 18, then the procedure often took longer.97

Once the age of the child was determined and the necessary health checks had been completed, the child was removed from the detention centre and placed in an open centre facility for separated children that are 16-17 years old.98 The Home Affairs Ministry outlines how “irregular immigrants who, by virtue of their age and/or physical condition, are considered to be vulnerable are exempt from detention and are accommodated

90. See Aditus 2014a, p. 42 and Aida 2014, p. 35 for more information.
91. Aditus 2014a, p. 43
92. Aditus 2014a, p. 35
93. MFSS 2014, Article 4(5) and See also Aditus 2014b, p. 16.
94. Aida 2014.
95. MJHA 2005, pg.11, see also Immigration Act 5(1).
96. IOM-UNHCR (2014)
97. Ibid.
98. Information provided by AWAS.
in alternative centres.” As previously mentioned, throughout the Age Assessment Procedure, separated children do not have any legal person assigned to them and were only released from detention once AWAS recommends early release to the Principal Immigration Officer. It is only at this stage that separated children began receiving targeted support.

In February 2014 the Maltese Prime Minister Joseph Muscat made a pledge to end the detention of migrant children in Malta. The same policy consideration was also included in the 2015 Budget document. The current system concerning separated children is currently under review with the draft Child Protection Bill being discussed in The House of Representatives, it is one example of a positive development to create a policy framework offering more protection for separated children, especially for those arriving to Malta in an irregular manner. The draft bill states that “it is not acceptable that minors are placed in detention centres. It is thus proposed that alternatives to detention are found, ensuring that closed centres are only a last resort.” The draft Bill aims to bring about a change in the disembarkation procedure whereby children will not be simply placed into systematic detention, but in a determination centre where an age assessment decision will be taken within 2 weeks. The determination centre will allow for the assessment of a care plan tailored to each child’s individual needs, including possible contact with the child’s family members and when in the best interests of the child, family reunification. The new draft Child Protection Bill also mentions the establishment of a Child Assessment Centre and a Children’s House to reduce trauma caused to children by the investigative process.

An important recent development which began in February 2015, is the setting up of a new reception centre for persons claiming to be separated children. The aim of the Initial Reception Centre (IRC) is to have a fast through-time during which age assessment, medical clearance and some initial checks by immigration authorities can be carried out. UNHCR has been given space at the centre to provide information and the Red Cross might be given access to facilitate contact with families. NGOs have not been given such access. A consolidated briefing is being prepared, including various stakeholders to develop a 10-minute video to run on loop presenting some basic information for the children dealing with issues such as where am I? What happens at the reception centre and what happens after? The idea of the reception centre is that separated children will only be there for 48-72 hours, therefore eliminating the detention of separated children and addressing a critical concern in Malta's approach to separated children. The centre is still being developed and it is therefore quite early to assess its procedures especially when considering the number of migrant arrivals in Malta since it was set up in February 2015.

Although the debate on a national level has largely focused on the need to not detain migrant children, stakeholders have also been expressing their concern over the fact that the current conditions providing alternative accommodation for separated children do not meet a satisfactory standard. One of the main

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100. UNHCR 2013, p. 18.
101. Times of Malta, 19.7.2014, “Human rights NGOs call for end to child detention – NGOs call on Prime Minister to honour commitment to end child detention”; See also Ministry for Finance 2014, 60 stating that: “It is the Government’s declared policy that immigrants who are minors will not be put in detention centres on their arrival in Malta.”
102. IOM-UNHCR (2014)
103. Ibid. According to the presentation by the Drafting Commission.
104. Ibid.
105. As part of AMIF funds 2014-2020, AWAS has embarked on a project of building a new reception centre from scratch that would be planned and developed according to specific requirements and national standards.
106. IOM-UNHCR (2014) established a causual link between a decrease in arriving migrants by boat and the Italian-led Mare Nostrum operation at sea which has led to a significant increase in disembarkations in Sicily.
107. IOM-UNHCR (2014)
challenges for the Maltese government and national stakeholders is the physical infrastructure to accommodate and adequately care for migrant and refugee children as well as a lack of trained, dedicated personnel corresponding the needs and amount of separated children in Malta.\textsuperscript{108} Along with the current changes being implemented due to the new reception centres, plans are also underway for more suitable accommodation to be developed and for changes in the present framework however these are slow processes and no details were available at the time of writing.

3.4. Concluding Remarks

A key priority over the next few years is to improve the current reception system for separated children arriving in Malta, in line with the requirements of the application of the best interests principle as provided for in the UNCRC and reflected in the EU asylum aquis. This includes the procedures in place for handling first reception, age assessment, the capacity to provide appropriate care arrangements and solutions and alternative accommodation.

Separated children going through the asylum process are faced with pressing issues that must be further addressed to ensure they are properly protected through law, policies and practice. The Age Assessment Procedure has often been criticised for being a lengthy procedure that includes a lack of adequate practical guarantees, including a lack of information about the procedure itself and the possibility of appeal.\textsuperscript{109} In 2014, some of these concerns were addressed by a working group involving AWAS, UNHCR and NGOs. Another issue is that there is no real possibility to challenge the decision taken by the Age Assessment Team and no reasons are ever given for decisions. In addition, until recently, migrants undergoing Age Assessment Procedures were detained throughout the procedures, usually in centres with adults without any special consideration for the fact that they are children.\textsuperscript{110} It should be stated however that Article 15 of the Reception Regulations acknowledges that “an unaccompanied minor aged sixteen years or over may be placed in accommodation centres for adult asylum-seekers,”\textsuperscript{111} and that the draft Child Protection Bill aims to create new procedures that will hopefully be strong enough to ensure migrant children, especially separated children are not kept in detention. This issue has now been addressed through the setting up of the initial reception centre for persons claiming to be separated children.

Although the draft of the new Child Protection Bill has addressed some of the problems related to assigning guardians for separated children, it is still too early to adequately assess whether the measures being proposed are going to be beneficial enough in identifying durable solutions for separated children. More steps must be taken to reform the Age Assessment Procedure and to assure the presence and assistance of a legal guardian throughout the status determination interviews. The legislation needs to clearly define the roles of the legal guardian and more attention needs to be paid at the policy level, with more resources and personnel needed to ensure separated children are properly cared for and that the legal guardian is not also the social worker. The shift away from the policy of detention for separated children is an important step in the process, however stakeholders and government authorities should now also begin focusing their attention on improving alternative accommodation centres and creating an appropriate environment that helps establish a holistic durable solution process that is in the best interests of the child.

\textsuperscript{108} See Chapter 6, Durable Solutions in Consultation (Young Persons Focus Group) for more information and an insider’s view of the current accommodation facilities.

\textsuperscript{109} See also: NGO Statement – World Refugee Day 2014: Words to Action: End the detention of children

\textsuperscript{110} Aida 2014

\textsuperscript{111} Subsidiary legislation 420.07, Article 15, Laws of Malta
4. Return, Resettlement, Integration
This section covers the durable solution processes that are implemented for separated children in Malta. The process implemented in the national context are clarified through a legal analysis of the procedures currently in place as well as through an assessment of the main authorities that participate in the process. The three options for separated children in Malta are returning to the country of origin, returning to a third country, or remaining in Malta.

Interviews were conducted with various stakeholders in Malta to gauge various understandings of the term Durable Solutions. The term was mainly understood as a category of different practices with the common aim of providing long-term and stable living conditions for separated children. AWAS view the term as “a care arrangement or care option that gives good protection and care to the minor.” The stakeholders emphasized the importance for long-lasting positive results, especially in the context of separated children and care arrangements, determining the best interest of separated children, and their general protection.

4.1 Return to Country of Origin
The Maltese Immigration Act states that Third Country Nationals (TCNs) who do not fulfil the conditions for entering or staying in the Malta will receive a return decision, which the authorities may enforce if it is not complied with voluntarily. The return process is regulated by the European Council Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals which aims to provide clear rules for the return and removal of migrants and the use of coercive measures while fully respecting human rights and fundamental freedoms of those concerned. Malta adopted Subsidiary Legislation 217.12 that transposed the directive and declares that the implementation of a return decision must respect the principle of non-refoulement and consider the best interests of the child, family life and the TCNs’ health status. This legislation specifically stresses the importance of the right of separated children to apply for asylum and to be assisted, according to the Care Order Act, before applying any return decision on the subject in question. According to the Care Order Act, the separated child is not supposed to be removed from Malta before the Principal Immigration Officer in cooperation with the diplomatic representation of the third-country in question “[are] satisfied that he [or she] will be returned to a member of his [or her] family, a nominated guardian or adequate reception facilities in the State of return.” Furthermore, “an applicant shall not be removed from Malta before his application is finally determined and such applicant shall be allowed to enter or remain in Malta pending the final decision of his application.”

The durable solution process of returning the minor to his or her country of origin is generally considered in cases where the minor either did not apply for asylum or due to family reasons. This is because separated children benefit from more comprehensive protection than other adult applicants because even if a minor’s asylum application has been rejected, the separated child is still entitled to a form of temporary protection until he or she is 18-years-old. Therefore, there must be a good understanding that the return to the country of origin is seen as a durable solution and is in the best interest of the child before any practical measures

112. For information about the stakeholders, see Annex 4. Table 3
113. Information provided by AWAS
114. Chapter 217, Laws of Malta.
116. Non-Refoulement refers to a principle defined in Article 33 of the 1951 Convention relating to the Status of Refugees that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened.
117. Subsidiary Legislation 217.12, Article 3 & 4, Laws of Malta
118. Ibid, Article 8(2).
119. Subsidiary Legislation 420.07, Article 12(1), Laws of Malta
120. Information provided by UNHCR Malta.
are implemented. It must be noted however that there is no legal basis for the temporary protection which is granted ex gratia by the office of the Refugee Commissioner. The entitlements associated with the status are broadly the same as those associated with subsidiary protection, however with no legal basis for the status, it is difficult to see how these entitlements might be enforced in the case of difficulties.

Even in cases where the separated child does not submit an application for protection, the separated child is still placed under a Care Order, which means that after completing the Age Assessment Procedure, the separated child is appointed a legal guardian and accommodated in a specialised centre for separated children. Depending on the age and maturity of the separated child, their views must also be taken into account when determining who will be entitled to assume the custody. As stated by AWAS in order to achieve a durable solution “a trusting relationship is very important in order to have a reliable and valid assessment of the situation. If the relationship is professional and for example based on professional boundaries then it should not affect one’s ability to determine durable solutions.” The Integra Foundation expressed this same sentiment highlighting that “building up the trust with children is a slow process that requires time and it is always up to the individual that how much they want to share of their experiences.”

An initial Best Interest Assessment is carried out within a month from the issuance of the Care Order and a care plan is agreed upon during a case review meeting, which is held every six months if no extraordinary situation arises. The care plan is forwarded to the Advisory Board who then meets the minor, accompanied by the legal guardian. After this meeting the recommended plan of action is endorsed and recommendations for further actions are made in the name of the Minister for Family and Social Solidarity. Before considering returning the minor to the country of origin, “proper family tracing and assessment exercise is carried out,” often in cooperation with IOs or NGOs. Furthermore according to AWAS, “differences in views are resolved through discussion and further assessments if required. The minor’s opinion and wishes also carry considerable weight according to his/her age and maturity.”

### 4.2 Resettlement to Third Country

The Durable solution process of returning separated children to a third country is only practiced in Malta for family reunification. This option is primarily implemented by returning the separated child to another EU Member State, or in some cases to non-EU countries. The type of family reunification procedure depends on the receiving country. Despite the Dublin III regulations, there are no standard procedures for family reunification and specific methods differ amongst EU Member States. This issue is even more prominent when family reunification requests are sent to non-EU countries and the exact procedures are framed by bilateral agreements between the two countries in question.

121. Refugees Act, Article 13(3), Laws of Malta.
122. Chapter 285, Laws of Malta.
123. Information provided by AWAS.
124. Information provided by Integra Foundation.
125. Information provided by AWAS.
126. Ibid.
127. Ibid.
128. Ibid. See section 5 about ‘Durable Solutions’ in practice for further information about this procedure.
129. Information provided by AWAS.
130. Family reunification is defined in EU legislation to refer to “the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident’s entry” (EC Directive 2003/86/EC, Art2(d)).
131. Information provided by UNHCR Malta.
132. Ibid.
4.2.1 Family Reunification into a European Union Member State

Family reunification is inextricably linked to the asylum application process previously described. The Dublin III regulation provides that separated children can be legally transferred to another EU Member State where their relatives live.\(^{133}\) The process is always based on an individual examination of the separated child to determine if the relative can take care of the minor.\(^{134}\) The Dublin III regulation emphasizes that the Member State where the minor is seeking asylum is responsible for uniting the minor with his or her family, provided it is in the best interests of the minor.\(^{135}\) The Dublin Unit in each Member State is primarily responsible for taking actions for uniting separated children with relatives within the EU. Furthermore, the Dublin Unit is responsible for confirming the identity of the relative and assessing if they are capable of taking care of the child. Upon receiving sufficient proof of the family relationship, the requested Dublin Unit gives a decision on the request and the minor must be transferred “as soon as practically possible, and at the latest within six months of acceptance of the request.”\(^{136}\) The respective Dublin Units must make a decision regarding unification with two months.\(^{137}\)

The family reunification process in Malta begins when a minor fills in the PQ provided by the RefCom. The PQ allows the minor to declare if he or she has a relative in another EU Member State that is a signatory to the Dublin III regulation.\(^{138}\) After completing the PQ, the RefCom transmits the request for family reunification to the Maltese Dublin Unit which is responsible for submitting the request to the Dublin Unit of the Member State where the relative is based.\(^{139}\) Maltese legislation requires the minors’ best interest to be taken into account within the family reunification. The Family Reunification Regulations state, “When examining an application, the best interests of minor children shall be taken into consideration.”\(^{140}\) This is evident also in the context of the family tracing procedure concerning a minor, where international protection is granted. The authority is responsible for the provision of services to separated children and has “[to] proceed with the tracing of the family members of the unaccompanied minor, provided that this is in the best interest of the child.”\(^{141}\) The Family Reunification Regulations also allow the state to seek assistance and support of IOs in family tracing procedures.\(^{142}\)

Due to the geopolitical location of Malta as a frontier state, it normally is the submitting country of the Dublin request and incidences where family relative(s) come to Malta for family reunification reasons are extremely rare.\(^{143}\) However, Maltese legislation provides the same rights and benefits for the family members as for the person granted refugee or subsidiary protection requiring that they are/were in Malta at the time the protection decision was taken or if they joined them in Malta afterwards to maintain family unity.\(^{144}\)

\(^{133}\) EC Regulation, N°604/2013

\(^{134}\) Dublin III –regulation defines family members or relatives to cover parents, siblings, adult aunt or uncle or grandparents requiring that they live legally in another EU Member State (EC Regulation N° 604/2013, Article 2(g) and (h)).

\(^{135}\) EC Regulation, N°604/2013, Article 8(2).

\(^{136}\) EC Regulation, N°343/2003, Article 19(3)

\(^{137}\) EC Regulation, N°343/2003, Article 15(3) and 18(1).

\(^{138}\) EC Regulation, N°604/2013, Article 8(2).

\(^{139}\) The national Dublin Unit is currently in process of being set up in Malta. In the current situation the Immigration police has its own appointed officer working with Dublin tasks, and the responsibility in the context of family reunification cases is shared with RefCom (Information provided by the Immigration Police).

\(^{140}\) Laws of Malta, Subsidiary Legislation 217.06, Article 10.

\(^{141}\) Laws of Malta, Subsidiary Legislation 420.07, Article 15 (3).

\(^{142}\) Subsidiary Legislation 420.07, Article 15(3), Laws of Malta.

\(^{143}\) EUROSTAT does not provide information about Malta when it comes to Dublin requests (incoming or outcoming)

\(^{144}\) Laws of Malta, Subsidiary Legislation 420.07, Article 14(3).
4.2.2 Family Reunification in a Non-EU Country
If family reunification takes place in a non-EU country, the asylum procedure follows the same process as
detailed above. First, an Age Assessment Procedure is carried out, a care order is issued and a legal guardian
is appointed. When filling in the PQ provided by the RefCom, the minor has the possibility to inform the au-
thorities about other family members in a non-EU country. After a separated child identifies a relative outside
the EU, the procedure varies depending on the target country for possible reunification, as these situations
fall outside the scope of Dublin III. Family reunification in a non-EU country takes place based on bilateral
agreements and the specific criteria for this procedure depend on the specific target country, for example
when it comes to the required documentation and how to prove the family relationship. In Malta, the Advi-
sory Board is responsible for making a decision about family reunification to a state outside the EU and must
always consider the best interest of the separated child. However, family tracing and general condition
assessments must be completed before the Advisory Board can make a decision about family reunification.
Maltese legislation also allows for IOs to assist in this process.

4.3. Stay in Malta
The durable solution process of staying in Malta must be understood within a framework were integration is
not currently prioritised. Current policies in Malta that address the integration of all TCNs are limited and fail
to specifically address the particular needs of separated children. In recent years there has been an increase
in government efforts and political will seems to be in favour of developing policies that safeguard the rights
and promote integration of migrant children in Maltese society. Currently, no ministry within the Govern-
ment of Malta takes overall responsibility for the integration of the migrant community, nor that of separated
children specifically. Ministries indirectly take responsibility for the integration of migrants by focussing on
specific aspects that fall within their portfolio. Government stakeholders in the field of integration include
the Ministry for Home Affairs and National Security, the Ministry for Education and Employment, the Minis-
try for Foreign Affairs, the Ministry for the Family and Social Solidarity, and the Ministry for Social Dialogue,
Consumer Affairs, and Civil Liberties. This fragmented approach both reflects and is a result of the current
lack of an integration policy and strategy yet to be adopted at the national level.

Education is one of the focal elements in the integration process for separated children which is the respon-
sibility of the Ministry for Education. The Reception Regulations mentions both minors of asylum-seekers
and asylum-seekers in terms of access to education. Under this legislation, separated children must have
access to the education system under similar conditions as Maltese nationals as so long as an expulsion
measure against them or their parents is not actually enforced. Furthermore, the same article specifies
that “access to the educational system shall not be postponed for more than three months from the date the
application for asylum was lodged by the minor or the minor’s parents.”

AWAS believe that “The main challenges are the fact that for most minors their prime interest is to seek em-
ployment, while many do not want to stay in Malta or never intended to come to Malta which has an impact

145. Laws of Malta Subsidiary Legislation 420.07
146. EC Regulation, N°604/2013.
147. Information provided by various stakeholders.
148. Information provided by AWAS.
149. Laws of Malta, Subsidiary Legislation 420.07, Article 15 (3).
150. Malta is currently in the process of developing a National Integration Policy, which is set to be launched at some
    stage in 2015.
151. Subsidiary Legislation 420.06, Laws of Malta
152. Subsidiary Legislation 420.06, Article 9(1), Laws of Malta.
153. Ibid, Article 9(2).
on how they view education." Both the UNHCR and IOM Malta believe that a lack of policy framework especially in the context of integration poses a big problem. UNHCR feel that “more needs to be done” and that “the current situation is quite minimal or non-existing,” while both expressed there is a “lack of resources to develop processes” and a “need for more funding and actual capacities to implement integration related activities.” Another issue is the “mentality in general towards migration, with the prevailing discussion about migration framing the phenomenon as a problem, and Malta’s location as a frontier state emphasises this challenge.”

Cultural knowledge and language barriers complicate the integration of migrant children into the Maltese educational system especially as they are expected to follow the same curriculum as the other children. To remedy this situation, the Ministry for Education recently introduced induction classes for TCN children. The programme works to support TCN children by means of a 6-week induction programme which aims to strengthen the linguistic capacity of TCN children, with the ultimate goal of integrating children within mainstream schooling more effectively. The enrolment for the course occurs every sixth week, while the course itself takes place in a school environment to familiarise the children to the school setting that will follow the programme. However, during this induction course the minor does not follow the national curricula because the primary focus is providing the TCN with enough skills to be able to communicate. The class level assessment is done based on the children’s age, but the skill level is followed when the child enters the school and is re-adjusted if it is seen as necessary on a case-by case basis.

Notwithstanding this positive development, language is still one of the factors that presents a particular challenge, especially for separated children to attend school. After the induction course has taken place it is mainly the responsibility of the individual teacher to assess the needs of the child for further linguistic or other support, and to generally assess the child’s capacity to follow the curricula. If the child faces learning problems due to language or other reasons, they may request to have a Learning Support Assistant (LSA) in the classroom, as is a general practice for all students with learning difficulties, not only for vulnerable TCN children. Recognising the particularly vulnerable position of separated children, the Ministry of Education has assigned a specific teacher to support separated children in their daily education needs including activities such as homework and linguistic support as well as social support when taking the first steps in the new social and educational environment.

Due to the increasing number of migrant minors, especially separated children coming to Malta, child statelessness is an ever-growing concern for the authorities which still needs to be tackled to be completely eliminated. Citizenship in Malta is regulated through the Citizenship Act and Subsidiary Legislation issued thereunder, which is managed by the Department of Citizenship and Expatriate Affairs. Malta has not ratified the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, however international obligations may be derived from other international human rights treaties especially the Convention on the Rights of the Child of 1989.

154. Information provided by AWAS.
155. Information provided by UNHCR.
156. Ibid
157. Information provided by IOM Malta.
158. Information provided by UNHCR Malta.
159. Information provided by IOM Malta.
161. IOM/UNHCR 2014, 8..
162. Chapter 188, Laws of Malta.
Safeguards against child statelessness, though partly in place, are in practice largely ineffective due to a lack of awareness on the implementation of safeguards against statelessness. 163 Recently UNHCR has called for Malta to consider establishing an effective statelessness determination procedure which would ensure the identification of stateless persons in its territory. Currently living irregularly, lacking birth registration and linkages to family and the country of origin are great risk factors for statelessness and separated children living in an undocumented situation are particularly vulnerable. 164 Malta’s Commissioner for Children has repeatedly called for measures protecting migrant children from statelessness. Children born or found on unregistered vessels in international waters or those born stateless in Malta when the parents cannot pass on nationality are, under current law and practice, are at great risk of statelessness. The Commissioner’s 2013 annual report, called for “migrant children born at sea to be granted the nationality of the first port of call making it possible for migrant babies born on boats carrying irregular immigrants to Malta to avoid becoming stateless, thereby enjoying their fundamental right to a nationality.” 165

5. Durable Solutions: Main Actors and their Roles in Practice
This chapter discusses how the different durable solution processes are implemented in practice through an analysis of the main roles and responsibilities undertaken by different authorities and organisations. This is done with an in-depth look at how the different actors contribute to the implementation of different durable solutions. 166 Furthermore, possible challenges connected to the implementation of process are discussed in order to provide space for the best practice determination.

5.1 Return to Country of Origin
Although returning separated children to their country of origin is a rarely implemented durable solution process in Malta, when this is implemented, it is primarily at the discretion and implementation of the Ministry for Family and Social Solidarity (MFSS) and the Advisory Board. 167 Other relevant actors involved in returning separated children to their country of origin include the Immigration Police, RefCom, and AWAS. 168 In the case of voluntary repatriation from Malta, IOs provide support for separated children throughout the process. UNHCR provides support for returning separated children to their country of origin, but is not involved in the actual repatriation process and is only involved when requested by the Immigration Police, the RefCom or the MFSS. UNHCR primarily helps by communicating with the minor and/or their legal guardian helping to ensure that the separated child is fully aware of what repatriation implies, whether the opted solution truly reflects the will of the separated child, and whether the minor is knowledgeable about the situation on the ground in his or her country of origin. 169

The International Organization for Migration (IOM) provides for the possibility of voluntary return through their AVRR programme. The AVRR is a structured procedure that is implemented throughout the course of being returned to the separated child’s country of origin. In the pre-departure stage, IOM conducts a Best Interest Assessment. In practice, the Best Interest Assessments are conducted by the IOM office in the country of origin following a request by IOM Malta. 170 IOM provides further departure assistance and actual transportation to the country of origin. Follow-up measures and re-integration assistance are provided in the post-arrival stage.

164. Ibid.
166. See Table 3 for further information.
167. Information provided in various stakeholder interviews. Specific statistics are not available.
169. Information provided by UNHCR Malta.
170. See IOM 2011 for further information.
As current practice does not require the presence of IOM Malta during the asylum reception process, persons who are interested in their assisted voluntary return are normally referred to IOM Malta by other IOs such as the Red Cross or NGOs operating in the detention centres and working with separated children. NGOs and organisations working on the ground operate on a case-by-case basis, referring individuals to IOM if they are interested about the possibility of Assisted Voluntary Return or informing them about their rights if they would consider this alternative.\textsuperscript{171} Instances where the AVRR procedure is implemented for separated children are rare.\textsuperscript{172} The table below provides information on the overall total AVRR carried out by IOM Malta and demonstrates how in recent years the number of individuals applying for AVRR has been increasing. During the period indicated (2010-2014), no separated children were assisted to return to their countries of origin under IOM Malta’s AVRR programme. According to IOM “in the context of separated children it is not common practice (for AVRR to take place) but few instances appear,”\textsuperscript{173} such as in 2015 when one separated child was assisted to return to Egypt.

<table>
<thead>
<tr>
<th>Year</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number of AVRR returnees</td>
<td>36</td>
<td>29</td>
<td>39</td>
<td>55</td>
<td>72*</td>
<td>9**</td>
</tr>
<tr>
<td>Separated children assisted as AVRR</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: IOM Malta

* + 3 children assisted to return with their parents.

**This is the total number of AVRR returnees for the period 1 January 2015 until 22 May 2015.

### 5.2 Return to Third Country

In Malta, returning a separated child to a third country is only practiced on the basis of family reunification under the Dublin III system. The governmental actors who help facilitate this process include the MFSS, AWAS, RefCom and the Immigration Police. As previously mentioned, these governmental actors facilitate the arrival procedures for separated children. If the initial PQ indicates that the separated child has a family member in a third country, it is the government’s duty to reunite the separated child with the relative if this is in the best interest of the child. If the PQ indicates that the separated child has a relative who is not a signatory of the Dublin III Regulations, Maltese law allows the support of IOs and NGOs to help the reunification process. If the relative is in another European Member State who is a signatory to the Dublin III Regulations, RefCom transmits the request for reunification to the Maltese Dublin Unit who contacts the respective Dublin Unit in the Member State where the relative is based.\textsuperscript{174}

IOs are important actors in the family reunification occurring in countries outside the EU. Various IOs and NGOs facilitate and support this process upon request of the Maltese government including, but not limited to; the Red Cross Malta (RC Malta), IOM, and UNHCR. All of these have a wide-ranging organizational network, which can help governments in a number of ways, including the provision of assistance of legal guardians or in the facilitation of the evaluation of the overall situation in the third country.\textsuperscript{175} For instance, it is recorded that in the case of resettlement to the United States, UNHCR can facilitate the process by collecting

\textsuperscript{171} Information provided by various NGOs.
\textsuperscript{172} Information provided by IOM Malta.
\textsuperscript{173} Information provided by IOM Malta.
\textsuperscript{174} Information provided by various NGOs.
\textsuperscript{175} Information provided by IOM and UNHCR Malta.
the necessary information and possibly participating in the best interest determination process.¹⁷⁶

Upon the request of the Maltese government, various IOs and NGOs facilitate and support the family reunification process. Both IOM and UNHCR have expressed their willingness to assist the Maltese governmental authorities to identify vulnerable groups, including separated children, who are eligible for family reunification and to help facilitate that process.¹⁷⁷ Furthermore, RC Malta has a family tracing unit in place to assist in restoring family links, both in cases of repatriation and family reunification, as soon as the minor informs the RefCom about a family member in an EU Member State or third country. It is not part of the RC Malta’s mandate to participate in the family reunification process, according to Dublin III, but they provide assistance if requested to do so.¹⁷⁸ Furthermore, IOM is facilitating the family reunification process on a political level in the form of the on-going PRUMA-project, which will provide Standard Operation Procedures (SOPs) for the national reunification process with a special focus on the Best Interest Assessment, family tracing and transfers to other EU Member States under the Dublin III procedure.¹⁷⁹

UNHCR stated that “another challenge is to determine the actual willingness of the migrant towards a durable solution.”¹⁸⁰ For example in case of resettlement, limited social services and education possibilities need to be taken into account both in case of migrants and migrant youth/minors. Therefore there is the need to recognize the wider social environment of the location where a durable solution takes place.

There are also a limited number of NGOs that work in detention centres, which can provide support for family reunification, if necessary. UNHCR has a general mandate to monitor the situation of persons of concern, which is done in part through outreach work carried out in the detention centres.¹⁸¹ Upon request of AWAS, UNHCR is in a position to provide further support by carrying out age assessments although AWAS has never made such a request.¹⁸² The participation of NGOs in detention centres is not standard and it depends on specific cases.

5.3 Stay in Country of Arrival
As previously mentioned, the option of staying in the country of arrival is directly related to the integration policies in place. However, there is no integration policy and strategy in Malta which creates a situation with multiple actors taking on various aspects of integration for separated children. Similar to the two previous processes, governmental actors include the AWAS, the MFSS, the Ref Com and the Integration Police. However when this process is chosen for a separated child, more actors help facilitate integration, such as the Ministry for Education.

In terms of social inclusion the draft Child Protection Bill that is currently being discussed in the House of Representatives could create a more cohesive strategy by transferring the responsibility afforded by the Care Orders from the Advisory Board (under MFSS) to the Family Court, which would also create the possibility of appeal.¹⁸³ The Child Protection Bill would also apply to all minors without distinguishing between Maltese children and migrant children.¹⁸⁴

¹⁷⁶. Information provided by UNHCR Malta.
¹⁷⁷. IOM/UNHCR 2014.
¹⁷⁸. Information provided by Red Cross Malta.
¹⁷⁹. IOM 2014.
¹⁸⁰. Information provided by UNHCR Malta
¹⁸¹. Information provided by UNHCR Malta.
¹⁸². Such a request was never made by AWAS - Information provided by AWAS.
¹⁸³. MFSS (2014); Further information provided by the President’s Foundation for the Well-being of Society.
¹⁸⁴. MFSS 2014.
Currently, IOs and NGOs perform a remarkable role in offering services and assistance with integration-related issues. Both UNHCR and IOM assist in policy-drafting and are actively participating in advocacy work supporting the Maltese government to develop an integration policy.\(^\text{185}\) In addition to the policy level advocacy work, UNHCR operates directly with migrant children and their families who live in the open centres and organizes information sessions, educational visits to the centres and refugee consultation groups, which specifically target separated children.\(^\text{186}\)

Integra Foundation carries out on-the-ground work especially with migrant youth who are between 15 and 17 years-old and located in Dar is-Sliem. Integra is working on a ‘meet the needs’ basis, providing language courses for migrant youth and adults as well as assistance in organising necessary documentation and guiding them to acquire working permits, find employment, education and sharing information about working rights. Another important activity especially within the integration aspect is to “provide a permanent point of reference for migrant youths so that feel they can have assistance if they are in need.”\(^\text{187}\)

However, the incoherence of Malta’s integration policy and the selective use of IOs and NGOs creates several barriers for utilizing this process for separated children. One of the challenges includes the nature of housing solutions. Although there are residential homes for migrant minors and young people between 17–18 years of age, when the minor reaches the age of 17 the person in question has to leave the residential home designed for separated children and move through a care plan to an open centre designed for adults. While the young adult is also referred to a care team and followed up by a welfare officer,\(^\text{188}\) living in an open centre does not offer the same level of individual care as the residential home.\(^\text{189}\) Cooking and sanitary facilities are generally more basic than in residential homes designed for migrant children and youth.\(^\text{190}\) In addition to this, a recent report by Integra Foundation and UNHCR highlights that minors, both unaccompanied and accompanied, have been found to be exposed to physical violence in open centres, and that unaccompanied minors experience alcohol abuse by others as well as among themselves.\(^\text{191}\) This predominantly happens to be the case in the evening when the office of the service provider has closed and merely security is present at the premises.\(^\text{192}\) When the minor leaves his or her residential home and moves into an open centre or a privately rented accommodation, NGO-staff have difficulties keeping in contact with the minor, which further complicates the provision of individual assistance and undermines the established trust-relationship with the minor.\(^\text{193}\) There have also even been reported cases where separated children were relocated to adult centres as a punishment for breaking rules in the residential home which may leave a lasting impression on the minor, whereby associating living in the open centre would be associated as being some sort of punishment.\(^\text{194}\)

Another challenge in relation to the successful integration of separated children is the limited number of social and youth workers available in the detention and open centres, whose services are necessary in order to facilitate the personal, social and educational development of separated children.\(^\text{195}\) The addition of more social and youth workers would partially solve the problems with inconsistency when monitoring the minor’s

\(^{185}\) For example, in 2010, IOM carried out a project entitled, ‘Consultative assessment of Integration of Third Country Nationals’, and hosted a meeting entitled, ‘Pan-European Conference – Work: a Tool for Inclusion or a Reason for Exclusion?’, which was followed by a two-year project (Information provided by IOM).

\(^{186}\) Information provided by UNHCR Malta.

\(^{187}\) Information provided by Integra Foundation.

\(^{188}\) Information provided by AWAS.

\(^{189}\) Ibid.

\(^{190}\) EMN 2009, p. 25.

\(^{191}\) Integra – UNHCR, My Diversity: Age, Gender Diversity in the Maltese Refugee Context, 2015, p. 22, 27.

\(^{192}\) Ibid.

\(^{193}\) Information provided by Integra and Organisation for Friendship in Diversity.

\(^{194}\) Information provided by various NGOs.

\(^{195}\) Information provided by various NGOs.
development by providing more stable points of references for separated children throughout their integration process.

6. Durable Solutions in Consultation (Young Persons Focus Group)
On 6 December 2014, a group of twelve separated children in the common room of the Dar is-Sliem reception centre in Santa Venera, Malta, participated within a focus group to where the aim was to explore what they understand by the term ‘durable solution’ and what in practice this would mean for their futures. The participants were all boys between 15 and 17 years old from Egypt (6), Somalia (2), Mali (1) and Sudan (1); two did not declare their country of origin. All minors had been in Dar is-Sliem for a period ranging between three months to one year and a half, following a period in detention between one day and three months.

The first hour was spent trying to put the participants at ease through a series of ‘ice breaker’ exercises in order to establish trust between the minors and the People for Change Foundation representatives. One of the biggest challenges to carry out the focus group was the language barrier. Only a couple of the minors understood English and would then have to translate what was being said for the others to be able to participate. Interestingly the focus group was conducted in English and Maltese as some found it easier to understand what was being said when spoken to in Maltese, due to the similarities and common words found in Arabic.

6.1 What does ‘durable solution’ mean to you?
Explaining the concept of ‘durable solutions’ to the young participants was a challenge, especially considering the significant language barrier. Due to this more simplistic phrases were used when discussing with the minors, such as what are their plans for the future, their dreams and overall what they want to achieve here in Malta, abroad or in life in general. Discussing their current situation here in Malta it was clear that all the minors had similar reservations, concerns and fears that focused on two aspects, their current conditions within the reception centre and their legal status once they turn eighteen.

A main concern for the minors in the reception centre was access to clean and good quality water as they only received tap water, which was described as ‘salty.’ They also complained of a lack of variety in the food they were being given as well as a need for better quality food. This findings was a highly surprising because during this period when the child’s best interests are being determined, that would decide their whole future and well-being, one would assume that simple requests such as clean water and food should not be weighing on their minds. Similarly the minors complained of overworked, unfriendly and disrespectful staff members as well as the absence of leisure time activities. Considering the significance of the decisions that they are being confronted with, with even basic necessities not being met it is hard to imagine how the minors could be expected to be in a positive state of mind to really plan and prepare for their futures, totally unimpeded by needless issues. Therefore although plans and policies are being put in place to move away from detaining children in Malta, now the focus needs to shift onto what type of reception is truly being offered to these children and whether their basic needs are being met. Without positive reception conditions for these minors it is hard to imagine that any of them could envisage their lives here in Malta, and in a way they are indirectly being pushed out and not being given the chance to integrate.

Although minors in Malta receive protection irrespective of the final outcome of their asylum application status, the minors all expressed how the uncertainty of the asylum process is still a major concern especially due to the fact that for those whose asylum claim was rejected or is still being processed once they turn eighteen they immediately lose much of the protection afforded to them. These fears are crucial aspects that pose a challenge for the determination and implementation of durable solutions for the participants. A sixteen-year old boy from Mali summarised this uncertainty in the following way:

196. See Appendix 4 Young Persons Focus Group Outline and Questions.
“I was only given humanitarian status because they said there is no fighting in my country. They said I will not get anything when I turn 18. I am scared because I do not know what will happen when I turn 18.”

Even those minors who enjoy protection are worried about what will happen once they will become adults and transferred into an adult section in one of the open centres in Malta. Another participant exclaimed:

“Once you’re 18, you do not have anything.”

All the participants expressed their desire to receive more information as to what will happen when they turn eighteen and asked for more support and guidance which could be better provided by social and youth workers to prepare for the forthcoming changes that will take place in their lives, both in living conditions and social environment.

6.1.1 Return to Country of Origin or Resettlement in Another Country
In order to discover what the participants thought was the best option for them they were asked what their dreams and plans for the future were. For a number of the participants, the return to their home country is a welcomed process, while not all want to return immediately, the long-term goal for many is to go back one day, possibly after creating something for themselves which they could take back to their families and friends. These minors see their stay in Malta or Europe as a temporary situation where they have the opportunity to learn English and earn money until they return to their home countries. A number of participants also expressed that their wish is to continue travelling further around the EU, in particular to Italy in order to be able to go to school and live there in the future.

“I need to live and work in Malta and return back home after five years, especially to visit my friends.”
“I want to work. I want to play football. I want to earn money to buy a car and a house for my family back in my home country of Mali.”

Some of the minors even expressed their wish to return back home immediately and having already applied for an AVRR through IOM, they were now waiting for the final results. Two participants plan to apply for resettlement options to go to the United States as soon as they turn 18 years old. When asked what are the reasons they see their future in America they said it was because in the USA he would be able to work and have a good life for themselves.

6.1.2 Family Reunification
The majority of the participants expressed a clear wish to be able to visit their families. Many stated that they miss their families and friends:

“I want to visit my friends and I want to visit family”

“I need to visit my family, because I miss them” and “I need to see my family in the future if it’s possible.”

Another important concern for many of the participants is that the maximum weekly pocket money that they receive (which currently amounts to 7€) was not enough to call their families back home. None of the participants expressed the wish to join family members in other countries besides their home countries. One participant explained how he lost his family at the age of eleven while fleeing from home but has never heard of family tracing possibilities, which shows that there are still lacunas when providing information about the durable solution process for some of the separated children.
6.1.3 Stay in Country of Arrival

Staying permanently in Malta seems to be a durable solution for at least one participant, who is even trying to learn Maltese, but even he stresses that learning English gives him the opportunity to move to other countries. While in Malta, the participants continually mention that they have two priorities; having access to education and access to work. It is viewed as one of the most important tasks that the social worker invests time in supporting the minor to apply for a work permit and to enter legal employment if in his/her best interest. 197

Most of participants see their educational development and schooling as crucial for their future success, with their main academic aim being to improve their English. With a better knowledge of English the participants hope to increase their chances of accessing labour markets both in Malta and abroad, as well as giving themselves a better opportunity to communicate with Maltese community members, authorities and service providers.

One participant attends a school on a regular basis, where he learns English, Maltese and Programming, which he sees as an investment to his future, while at the same time he is also working part-time to make some money to be able to live a little bit more comfortably. Several other participants explained how it is their wish to attend a school but are currently only taking part in language courses offered to them by an NGO. One boy, aged fifteen, claimed to not go to school, even though it was his wish and he is legally required to attend school in Malta until he turns sixteen. 198 In relation to their education, several participants would welcome more support and information about how to enrol into school, what different courses are being offered and how such courses would indeed help them not only with building a career and good prospects but even to support their integration in Malta.

A very important aspect for the majority of the participants being able to search for a job to generate income. One participant explicitly stated that he plans to invest the money he is earning in his home country after his return to Mali to buy a car and a house for his family there. Others stressed the importance to find a job and to rent a flat as soon as they turn eighteen. However, finding a proper job turns out to be a difficult task for the separated children to carry out on their own and most stated that they would appreciate support in searching for a job and in applying for an employment permit.

6.2 Why do you think determining a durable solution is important?

When asked why the participants believe finding a good solution for their future’s is an important decision most participants agreed that it was because of the fact that once they become adults they will have to learn to be independent and take care of themselves in the open centres. They expressed the need to have some sort of transition phase in place, from being looked at as children until they become adults, as currently the process seems to just happen too suddenly. The greatest concern for the participants is that once they become adults and therefore independent then they will need to start looking out for themselves and even taking care of basic needs such as food, housing and medical care, something which many still do not feel well prepared. In many cases, these fears are aggravated by the fact that their legal status changes significantly on their eighteenth birthday and most of the separated children seem to be well aware of this fact. This shows that finding a durable solution is important to ensure the fulfilling of the young person’s basic needs in the coming years and give them a feeling of security, which creates the basis for a long-term planning.

6.3 Concluding remarks

To finish off the focus group all the participants were asked how they would like to see their situation improve and which services would they ask the authorities to provide them with. The participants all agreed that they felt they needed better support to enrol in school, finding accommodation in the community, finding a job and more support acquiring a safe legal status. They also wish to be better informed as to what is going to

197. Information provided by AWAS.
198. This claim is disputed by AWAS.
happen to them once they turn eighteen and what possibilities and opportunities are open to them. Learning English is seen as a critical tool for them to be able to adapt to their surroundings and therefore asked for more consistent programs and courses, the likes of which are currently being provided in an ad hoc fashion from NGOs.

The participants also demanded that the conditions in the reception centres have to improve. This includes good food and water, friendlier staff members who perform a supportive role, and the availability of activities and the necessary accessories such as football shoes. They expressed the wish to have more free time activities to get to know Malta and Maltese people better as currently these are limited which results in them failing to establish any really connection with Malta to be seen as suitable durable solution.

The minors feel the government should provide them with a higher weekly stipend that would be sufficient enough to call their families at home and even to participate in social life, such as by using public transportation or even to get a haircut. Since they cannot receive direct support from their families, the minors suggested that a social worker should compensate for the lack of family support. Most importantly, the social worker should provide them with regular information updates, explanations and guidance. Furthermore, they wish to have increased support during the asylum procedure, when enrolling to school and language or vocational courses, finding a job and organising free time activities, such as playing football together with other Maltese teenagers. Additionally, they suggest that NGOs could support the young migrants to have better access to the labour market, but also to develop basic skills such as cooking to be able to take better care of themselves.

Appendix 1 Minors who applied for asylum in Malta in 2014* by nationality
128 Total Applications

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somalia</td>
<td>51%</td>
</tr>
<tr>
<td>Gambia</td>
<td>19%</td>
</tr>
<tr>
<td>Nigeria</td>
<td>8%</td>
</tr>
<tr>
<td>Mali</td>
<td>6%</td>
</tr>
<tr>
<td>Syria</td>
<td>3%</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>3%</td>
</tr>
<tr>
<td>Egypt</td>
<td>1%</td>
</tr>
<tr>
<td>Guinea</td>
<td>1%</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>1%</td>
</tr>
<tr>
<td>Libya</td>
<td>1%</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>1%</td>
</tr>
<tr>
<td>Togo</td>
<td>1%</td>
</tr>
</tbody>
</table>

* Situation until 1.11.2014. Information provided by the Refugee Commissioner
Appendix 2 Asylum Application Process for Separated Children in Malta

1. The child is found by or reported to the Refugee Commissioner (RefCom).

   - RefCom provides information for minor to apply for asylum.

2. Minor expresses his will to apply for asylum.

   - Minor age is confirmed, care order is issued and legal guardian appointed, UaM is released from detention and placed in accommodation for children.

3. 2) Application form & interview, legal guardian appointed by Parental Advisory Board is attending the meeting.

   - Assessment of different Durable Solution process:
     - Stay in country of arrival
     - Return to third country
     - Return to country of origin

4. Minor age is confirmed, if person is considered as possible minor age assessment is still conducted.

   - If minor age is confirmed, person is entitled to temporary protection as long as he is minor.

5. Minor age is not confirmed, asylum request process continues with the normal procedure.

6. In case of rejection, 2 weeks appeal time (under 18-year-old rejected applicants have temporary protection status as long as they are minors).

   - Age Assessment Procedure by AWAS (asylum request process stops until the authorities receive the outcome).
### Appendix 3 Main Actors Involved in the Implementation of Durable Solutions

<table>
<thead>
<tr>
<th>Authority/Organisation</th>
<th>Status</th>
<th>Main tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Office of the Refugee Commissioner (ORC)</td>
<td>Governmental</td>
<td>• The highest authority responsible for determining the status of persons seeking asylum in Malta (hearing, analysis and determination of applications incl. appeals).</td>
</tr>
</tbody>
</table>
| The Immigration Police | Governmental | • Tasked with surveying Malta’s point of entry to prevent persons from entering illegally.  
• Processes requests related to residence permits, the acquisition of property, nationality and work permits.  
• Appointed Dublin-officer to process requests made under Dublin in the context of family reunification. |
| Agency for the Welfare of Asylum-seekers (AWAS) | Governmental | • Provides a variety of social services such as social workers, cultural mediators and translators.  
• It has responsibility to manage accommodation facilities (including housing of minors and youth).  
• Promotes schemes by the Government that are related to resettlement and assisted voluntary returns. |
| The Children and Young Persons Advisory Board with the Ministry for the Family and Social Solidarity (MFSS) | Governmental | • Responsible for providing parental care for minors who are issued with a Care Order.  
• The Children and Young Persons Advisory Board, which is attached to MFSS, has the responsibility over the Best Interest Determination procedure.  
• The Advisory Board has the overall responsibility in assisting the Minister on the best methods when dealing with children or youths to promote their general welfare. |
| Commissioner for Children | Governmental | • The main entity responsible for children’s rights issues in Malta.  
• Made formal recommendations to the relevant ministries for migrant children not to be held in detention centres, and for children born in international waters who reach Maltese territory to automatically be granted Maltese citizenship. |
| United Nations High Commissioner for Refugees (UNHCR) | IO | • The UNHCR Durable Solutions Unit carries out research and provides support for all three durable solution processes.  
• Advocacy work, support/facilitation of AWAS, legal guardian of minor and different public authorities (RefCom, Advisory Board) in assessment of the different durable solution process upon request.  
• Operates in the detention centres; it has access to separated children whom it can assist and help. |
Introduction

Who are we?
- We are staff from The People for Change Foundation. Our work includes listening to the views of all the people who matter and taking these ideas to the government to try and influence them to change the way they do things. This includes writing reports and organising talks and seminars to talk about the problems migrants face and how we think these problems can be overcome.
- This project is being carried out in 8 other countries across Europe to find out about the situation of young people just like you in other countries – so 90 young people all over Europe are doing what you are doing right now. The result will be a report that we will share with the government and it will help us know what we should be asking for.

Why are we here?
- Explanation of ‘durable solution’ using two shoes – one that is sturdy and strong and one which is weak – how far along the journey of life would each of these shoes take you?
- Explain there is an agreement between lots of countries all over the world which sets standards about how children and young people should be treated – they are called child rights. These rights say that governments should ensure children and young people are protected from harm, that they should have their opinions listened to and that when adults make decisions about your lives and that they do what is in your interests first and foremost.
- Durable solutions are both for the short term (next week or month) and in the long-term (imagine several years into the future).
- We want to explore how these rights are experienced by you, as young unaccompanied persons in Malta. Today we want to investigate what you want your future to look like and what the government should do to make you feel more certain about it.
List of Questions

Exercise 1

Reception
1. What does Max think of detention? Is this somewhere he could stay for a long time? Why Max thinks he is placed in detention in the first place?
2. Does Max have everything he needs in this situation and how is he feeling?
3. What else do you think he needs?

Legal Guardian / Social Worker
1. How do you think the relationship between the legal guardian and/or social workers in the centre and Max? Does Max make a difference whether the person helping him is a legal guardian and/or social worker as long as the person helps him?
   i. Does Max understand that what is the role of his legal guardian?
   ii. How often Max meets with his legal guardian, does the guardian has enough time to listen his concerns and does Max find it easy to talk to the guardian about the issues that worry him (trust)?
   iii. What would make it easier for Max to feel safe with the legal guardian and/or social worker?

Status
1. Should Max be worried about his visa and permission to stay in the country?
2. Or maybe Max would like to move to another country in the first place? If yes, why and to what country?
3. To whom, Max would talk about his plan to move to another country?

Family Tracing
1. How does Max feel about not being able to find his family?
2. Should Max try and search for other family members like his step-father?
3. Are there any other persons than Red Cross workers that Max could talk to when trying to find his family members?

Education
1. How do you think Max finds his education? Does it help him?
2. What should the local authority being doing about Max’s situation? How does this make Max feel?
3. What do you think Max thinks about his future? What does he hope to achieve?
4. Max is lucky enough to have friends who help him, but are there any other people Max could maybe talk to improve his situation? How did Max find out from those people and he can reach them if he wants to ask something/talk to someone?

Return to Country of Origin
1. How might returning to his country of origin make Max feel?
Would Max like to go back to his country of origin? If yes, why or why not?
2. What should the government be considering when trying to return Max to his country of origin?
3. What does Max need now in this situation? Are there people that Max trusts and can talk with?

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199. Max refers to a fictional character that went through a similar journey to the boys staying in Dar Is-Sliem in order to make them feel more at ease talking about situations they went through.
Exercise 2: Messages to key actors

1. Where would he like to be and what he would like to do?
2. Discuss what they think will happen to Max several years into the future?
3. What would Max like to happen? How would this make him feel?

Around the room we have pieces of flip chart paper. On each sheet we write one key actor involved in the process of designing and implementing a durable solution for these young people. We give each young person a number of post-it notes and ask them:

1) What should these different people do to make your future more certain?
2) What should they do to ensure you can achieve what you want in your life?
3) With whom of these people you have been dealing with and/or what kind of support the actor provided?

In context of charity workers, do you happen to remember the volunteer is/was working for?

4) Are there any people missing?
5) What would a certain positive future look like to you or for young people like you?
Appendix 5 Young Persons Focus Group Photos

**Image 1:** A participant expressed his dream is to work, play football, learn English and Maltese and one day buy a house and a car back home in Mali.

**Image 2:** A young person drawing a car.

**Image 3:** Another participant wrote that he wants to live in Italy, go to school, find a job and one day have a family.
References

Legal Sources:


Other sources:


