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Report by the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Mission to Malta (6–10 December 2014)*

Summary

The Special Rapporteur on the human rights of migrants conducted a visit to Malta from 6 to 10 December 2014. He held consultations with officials of the Government of Malta, migrants and representatives of civil society organizations and international organizations.

Malta must develop programmes to cope with the unprecedented number of migrants and asylum seekers arriving by boat. The Special Rapporteur recommends that such programmes should offer immediate assistance, legal safeguards, and alternatives to detention, as well as integration programmes for migrants and asylum seekers who arrive irregularly. The European Union member States must collectively provide technical, financial and human resources to support front-line States such as Malta in developing comprehensive, rights-based migration policy.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[English only]

Report by the Special Rapporteur on the human rights of migrants, François Crépeau, on his mission to **Malta (6–10 December 2014)**

Contents

I. Introduction

1. From 6 to 10 December 2014, the Special Rapporteur on the human rights of migrants conducted an official visit to Malta. The visit was undertaken in follow-up to the Special Rapporteur's 2012 year-long study on the management of the external borders of the European Union. Following his study, the Special Rapporteur reaffirmed the importance of addressing irregular border crossings, recalling that it was in the context of such crossings that the most egregious human rights abuses appear to take place (see A/HRC/23/46, para. 20). The increased numbers of migrant crossings and deaths in the Mediterranean Sea and the response by European Union member States prompted the Special Rapporteur to revisit the issue of European Union border management. In addition, in September 2014 the Human Rights Council, through presidential statement 27/3, requested the Special Rapporteur, among others, to pay particular attention to the protection of migrants at sea. Consequently, the present report is focused on external border control, and does not provide a comprehensive overview of the broader human rights situation of all migrants in Malta. The report should be read in conjunction with the Special Rapporteur's reports on Italy (A/HRC/29/46/Add.2) and the European Union (A/HRC/29/46).

2. During his mission, the Special Rapporteur visited Valletta, where he was able to meet with representatives of the Ministry for Foreign Affairs, the Ministry for Home Affairs and National Security, the Ministry for Justice, Culture and Local Government, the Ministry for Family and Social Solidarity, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties and the Department of Industrial and Employment Relations. He also met with representatives from the Office of the United Nations High Commissioner for Refugees (UNHCR) and from the International Organization for Migration (IOM) and many irregular migrants and asylum seekers.

3. The Special Rapporteur met with irregular migrants and refugees in the Hal Safi detention centre and the Santa Venera open centre for unaccompanied minors, and with asylum seekers in Balzan and Marsa. He also consulted with numerous civil society organizations, lawyers and academics working in the field of migration.

4. The Special Rapporteur expresses his sincere appreciation to the Government of Malta for the support provided throughout the visit. He further thanks UNHCR for its excellent support and assistance.

II. Background on Malta and migration: a brief overview

5. Irregular migrants who arrive in Malta, having fled their home countries, have usually spent time in Libya or Egypt, where some were subjected to arbitrary arrests, indefinite immigration detention, torture, ill-treatment and racism.

6. The boat trips that follow these hardships are perilous, involving basic, often unseaworthy vessels with limited navigation systems and insufficient food, water and fuel. Migrants have reported being subjected to physical violence at the hands of smugglers, and women have described being victims of sexual violence during the boat journey. The crossing from Libya to Malta takes, on average, 1 to 3 days but can take significantly longer, depending on the boat and weather conditions. Many boats capsize or go into distress. In 2014, UNHCR reported that over 3,000 people had died or gone missing while attempting to cross the Mediterranean to Europe.

7. A large number of arrivals have been Syrians and Eritreans. This suggests that ongoing situations of violence and insecurity and economic hardship are the key drivers of migration using the central Mediterranean route. Another factor is the "sealing" of land

borders, such as those in Bulgaria, Greece and Turkey. For many irregular migrants, their only option is to make the dangerous sea journey to Italy or Malta.

8. All irregular migrants who arrive in Malta are mandatorily detained. In practice this approach has little deterrent effect, given that migrants often cannot control their destination. Some who arrive in Malta do not necessarily want to stop there. In many cases, migrants are on boats without navigation systems and may wish to move on to mainland Europe.

9. According to UNHCR, over 560 people arrived in Malta in 2014. About 30 per cent of arrivals declared themselves to be children, and many of those were unaccompanied. Malta received relatively few migrants, owing to the Italian search and rescue operation Mare Nostrum, which rescued many migrants at sea and disembarked them in Italy. However, with the phasing out of Mare Nostrum, Malta is likely to see a considerable increase in arrivals in 2015. Given the profile of the majority of migrants and asylum seekers arriving in Malta and the persistence of key push and pull factors, migration is not likely to decrease in the near future.

10. According to UNHCR, European Union member States received on average 3.5 asylum seekers per 1,000 inhabitants during the period 2010–2014. Cyprus, Hungary and Malta received, on average, more asylum seekers per 1,000 inhabitants than the European Union member States did as a whole. When comparing the number of asylum seekers to the size of the national population, between 2010 and 2014 Sweden received, on average, the highest number of asylum seekers compared to its national population; Malta ranked second.

III. Normative and institutional framework on migration and border management

A. International framework

11. At the time of the visit, Malta was party to seven of the nine core international human rights treaties. In March 2015 it ratified the International Convention for the Protection of All Persons from Enforced Disappearance. It has not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has yet to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

12. Malta has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime; and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It has not signed the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

13. Malta has signed the fundamental conventions of the International Labour Organization (ILO).[1] It has not signed the ILO Migration for Employment Convention

[1] Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105);

(Revised), 1949 (No. 97) or the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

14. Malta has ratified the United Nations Convention on the Law of the Sea, which establishes the structure of maritime territory and the rights and obligations of States. It has acceded to the International Convention on Maritime Search and Rescue, which establishes State duties in relation to establishing search and rescue services, and to the International Convention for the Safety of Life at Sea, which builds on the norms that provide that States and other actors have an explicit duty to assist those in distress at sea.

B. Regional framework

15. As member of the European Union and the Council of Europe, Malta is part of a regional system on migration and is subject to the jurisdiction of a number of additional legal instruments.

16. The European Union acquis on migration and asylum is applicable to Malta as a European Union member State, and Malta has transposed many relevant European Union directives into national legislation. Malta is also party to the Schengen Agreement, which provided for the strengthening of external border controls and eliminated internal border controls. Furthermore, as a European Union member State, Malta has an obligation to respect the Charter of Fundamental Rights of the European Union when implementing European Union law.

17. Malta joined the Council of Europe in 1965 and is party to the European Social Charter. It has not signed the European Convention on the Legal Status of Migrant Workers.

18. Malta is also party to the Convention for the Protection of Human Rights and Fundamental Freedoms and as such is under the jurisdiction of the European Court of Human Rights. The Court has issued a number of rulings on the human rights of migrants with regard to Malta. In 2013, the Court in *Musa* v. *Malta* ruled that the 17-month administrative detention of the applicant pending his asylum application and following its determination was arbitrary and in breach of article 5 (1) of the Convention. The Court further held that Maltese authorities had breached the applicant's right to an effective and speedy remedy to challenge the lawfulness of his detention under article 5 (4).

19. The Court has also ruled on cases challenging the Dublin regulations. Most recently, in *Sharifi and Others* v. *Italy and Greece*, the Court clarified its position, stating that the Dublin system, which serves to determine which European Union member State is responsible for examining an asylum application lodged in one of the European Union member States by a third-country national, must be applied in a manner compatible with the Convention: no form of collective and indiscriminate returns can be justified by reference to that system, and it is for the State carrying out the return to ensure that the destination country offers sufficient guarantees in the application of its asylum policy to prevent the person concerned from being removed to his country of origin without an assessment of the risks faced.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

C. National legal, institutional and policy framework

1. Legal framework

20. Malta has a number of immigration regulations and standards that incorporate international and regional standards into national law. The most significant pieces of legislation are the Refugees Act of 2000 and the Immigration Act of 1970, discussed below.

21. The Immigration Act forms the legal basis for the country's policy of mandatory detention in relation to irregular migrants. Under article 10, persons refused entry to the country may be placed temporarily on land or shore and detained until their departure. These people are considered not to have formally entered the country. Article 14 builds upon this provision setting out mandatory pre-removal detention.

22. The Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations of 2011 transpose Directive No. 2008/115/EC of the European Parliament and of the Council of the European Union into national law. Together with the Immigration Act, the Regulations govern the country's system of rights and procedures for expulsion and detention of undocumented third-country nationals.

23. The Refugees Act defines a refugee, sets process expectations, establishes a right of refugees to legal aid on the same basis as Maltese citizens and provides for the establishment of the Office of the Refugee Commissioner and the Refugee Appeals Board.

24. The Procedural Standards in Examining Applications for Refugee Status Regulations established by Legal Notice 243 of 2008, as amended by Legal Notice 161 of 2014, outlines the processes and procedures for assessing the protection claims of asylum seekers. These guidelines fall within the framework set by the Refugees Act.

25. Subsidiary legislation 420.06 of 22 November 2005 transposes into national law Council of the European Union Directive 2003/9/EC, which lays down minimum standards for the reception of asylum seekers in member States.

2. National institutions and policies

26. A number of Government departments and agencies, discussed below, have a role in developing and implementing the migration policies of Malta and related issues.

27. The Ministry for Home Affairs and National Security is responsible for the overall development of immigration and asylum policies. It coordinates operations in relation to irregular migration and asylum and manages a number of other agencies relevant to migration in its portfolio, including the Central Visa Unit, which issues visas, and the armed forces.

28. The Ministry for Social Dialogue, Consumer Affairs and Civil Liberties is responsible for the integration of migrants into Maltese communities. The inclusion of integration of migrants in the portfolio of the Ministry is a new development following the general elections in 2013 and the growing prominence of migration issues.

29. The Ministry for Education and Employment is responsible for all issues relating to labour market issues and migrants. It also implements a policy that allows for certain categories of migrants to apply for an exemption from the payment of tuition fees in State educational institutions.

30. The Ministry for Justice, Culture and Local Government is responsible for ensuring the full implementation of decisions of the European Court of Human Rights and legal aid.

31. According to article 13 (3) of the Refugees Act, unaccompanied minors under the age of 18 are protected with a care order under the Children and Young Persons (Care

Orders) Act. This gives the Minister for Family and Social Solidarity responsibility for care and custody and ensures, through an advisory board set-up, that a care plan for each minor is prepared, and that unaccompanied minors are protected and cared for on a psychosocial level. Unaccompanied minors are also provided with temporary humanitarian protection until the age of 18. A legal guardian is appointed for the purpose of the asylum determination interview.

32. The following bodies are under the Ministry for Home Affairs and National Security:

- The Agency for the Welfare of Asylum Seekers was established by subsidiary legislation 217.11 of 2009 to implement the national policy relating to the welfare of refugees.
- The Children and Young Persons Advisory Board assesses the conditions of unaccompanied minors and reports to the Agency for the Welfare of Asylum Seekers.
- The Detention Services agency supports border control by providing detention accommodation for irregular migrants while their claims to stay are considered or their removal is facilitated. Its mandate includes overseeing the operation of all closed accommodation centres, providing secure but humane accommodation for detained persons and maintaining a safe and secure environment.
- The Board of Visitors for Detained Persons was established by subsidiary legislation 217.08. The Board monitors the treatment of detainees and acts as the national preventive mechanism for the prevention of torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The Police Special Branch, Immigration Section, is responsible for the apprehension, investigation, identification and removal of illegally staying foreigners, and also has a role to play in border control, having officers at entry points, including airports and at ports and terminals in Valletta, Msida, Mgarr and Gozo.
- The Armed Forces of Malta conduct air and maritime border surveillance and play a key role in coordinating and undertaking search and rescue operations.
- The Office of the Refugee Commissioner was established by the Refugees Act. It is responsible for the enforcement of Dublin procedures and the determination of asylum and other protection visas in the first instance.

33. There are two appeal boards: one for asylum seekers and another for migrants, the mandates for which are set out in subsidiary legislation 420.04 of 15 February 2005, entitled “Refugee Appeals Board (Chambers) Rules” and subsidiary legislation 420.06. The boards review appeals to decisions on refugee and migration status.

34. The Refugees Appeals Board has a low appeal rate; 96.4 per cent of applications are rejected at the time of submission. The Refugee Appeals Board (Chambers) Rules governs the procedures of the Board.

35. A migrant detainee can currently challenge the duration but not the reasonableness of detention before the Immigration Appeals Board, in accordance with the Immigration Act. However, planned amendments to article 25A (10) of the Immigration Act would allow for a challenge against the issuance of a detention order. The hearings before the Immigration Appeals Board are conducted in a similar manner to those held before the national courts. Individuals may be assisted by a lawyer, evidence is heard by the Board and submissions are made by the parties. The appellant is also given the opportunity to

make oral or written submissions. It should also be noted that the members of the Board are part-time and enjoy security of tenure, with a view to ensuring the independence of the Board.

D. European Union influence on national laws, policies and institutions in the sphere of migration management and border control

1. Schengen system

36. Malta implemented the Schengen acquis in 2007, making the country a key point of entry into the European Union Schengen area. Membership in the Schengen area puts pressure on Malta to focus on the security-related aspects of irregular migration rather than the human rights of migrants.

37. Under the Schengen system, any irregular migrant who is registered in Malta will be returned to Malta, even if they move to another country within the European Union. The Special Rapporteur observes that, for undocumented and irregular migrants, this can create a situation where irregular migrants become stuck in Malta; in particular those without documents often become trapped in Malta, as they are unable to travel to other countries within the European Union or safely return home.

38. There are a number of European Union directives on reception of, asylum for and detention of migrants within member countries. The most prominent of those are discussed below.

2. Dublin III regulation

39. Following heavy criticism of the Dublin II regulation, including the greater pressure it put on front-line European Union member States, Regulation No. 604/2013 of the European Parliament and of the Council of the European Union (the Dublin III regulation) came into force on 1 January 2014. The new regulation provides enhanced safeguards for applicants for international protection in Europe, including a provision that stipulates that, while waiting for a decision on his or her appeal, a person has the right to remain in the country (a suspensive right of appeal), and a clause designed to prevent breaches of human rights whereby, a State is not permitted to transfer a person to another European Union member State if there is a risk that he or she would be subjected to inhuman and degrading treatment in that member States. This means that States will be obliged to undertake their own assessment of the situation rather than continue to apply the Dublin regulations on returning migrants, unless the European Court of Human Rights or the European Court of Justice take a decision to the contrary.

40. The Dublin III regulation introduces an early warning mechanism, which is aimed at making it easier to detect problems in a member State's asylum system so that the European Union Commission and the European Asylum Support Office can provide early assistance before the situation degenerates. The regulation contains an emphasis on respect for family life, including provisions to ensure that transfers under Dublin III facilitate family unity as much as possible. It also widens the definition of the family to benefit unaccompanied minors, who can now be reunited with grandparents, uncles or aunts living in a European Union member State. Additionally, during personal interviews, officials are required to inform applicants that they may provide information about family members in other European Union member States, which will be taken into account in the determination as to which State is responsible. The Dublin III regulation also provides for the production of a common information leaflet on Dublin and a specific leaflet for unaccompanied minors.

41. Despite the improvements within the Dublin system, the Special Rapporteur is concerned about a number of issues relating to how these regulations affect the human rights of migrants in Malta.

42. A key feature of the Dublin system is that, under Regulation No. 603/2013 of the European Union, migrants entering the European Union are fingerprinted to ensure that their asylum claim is processed in the correct member State in accordance with the system. If migrants attempt to enter another European Union member State, they are returned to where it has been deemed their application should be made — usually the first country of entry. Migrants often do not want to have their fingerprints taken because, as discussed above, they have plans to travel to other countries in Europe.

43. The Special Rapporteur learned that irregular migrants who arrive by boat to Malta sometimes refuse to be fingerprinted, making it difficult for border guards to effectively and systematically implement the Dublin system, especially when large groups refuse to be fingerprinted and photographed. There have been instances when a degree of force has been used. The Special Rapporteur observed that Malta should refrain from using any form of physical force against migrants who have not committed any crime, when implementing identification mechanisms, such as fingerprinting. Migrants are reluctant to comply with the identification mechanisms because of the consequences attached to such identification, in particular the inability to move beyond the European country responsible for their entry and the prohibition on claiming asylum in the country of their choice. This is especially true as some European Union member States have made little use of the family reunification clause, the humanitarian clause and the sovereignty clause, which could enhance the mobility of migrants throughout Europe.

44. Additionally, the Dublin Unit is understaffed and cannot deal efficiently with Dublin cases or be effective in making the most of provisions such as those of family reunification. The Special Rapporteur was also informed that the Dublin system remains a challenge for the Government because, despite Malta's small size as compared to other European Union member States, the country remains responsible for all those who arrive on its shores by boat. The Special Rapporteur observes that the Dublin system places extensive responsibility for migration control on front-line states such as Malta which have limited financial, technical and human resources to implement its procedures, especially at a time when irregular migration is at its highest.

45. The Special Rapporteur observes that, in effect, the Dublin logic is already buckling, with the realization that the return of migrants to the front-line countries of Europe constitutes a punishment for both the migrant and the front-line countries to which they return: it is unsustainable in the long term. Instead of ineffective prohibitions, repressive policies and lengthy procedures, Europe must deploy incentives for migrants to use legal procedures, including for family reunification, and ensure the mobility of those migrants throughout the common European territory, thus allowing them to live where they will find the best employment opportunities and integration conditions, as is already the case for European citizens.

3. Directive 2008/115/EC

46. Directive No. 2008/115/EC of the European Parliament and of the Council of the European Union covers, inter alia, the obligation to return irregular migrants, their treatment during expulsion proceedings, entry bans, procedural rights and the grounds and conditions for detention. It notably sets the maximum detention period for irregular migrants at 18 months. The Directive includes provisions that encourage European Union member States to explore alternatives to detention.

4. Directive 2003/9/EC

47. Council of the European Union Directive 2003/9/EC establishes minimum standards for the reception of asylum seekers and harmonizes conditions provided across European Union member States. It provides guarantees to asylum seekers, including: accommodation, food and clothing, in kind or in the form of a financial allowance; family unity; medical and psychological care; access to the education system for minor children and language courses to enable them to attend ordinary school; and rehabilitation programmes and post-traumatic counselling for victims of torture or violence. It also imposes on European Union member States a duty to inform asylum seekers of their rights and to allow for freedom of movement within the country.

IV. Border management

A. Rescue at sea

48. The Armed Forces of Malta coordinate all search and rescue operations in the Malta search and rescue region. This support varies from timely information sharing to the availability of aerial or naval assets. In addition, Italy has a search and rescue helicopter based and operating from Malta as part of the Italian military support mission in Malta. Malta also has formal search and rescue cooperation agreements with Greece, Italy, Libya and the United States of America, namely, the United States Navy and the United States Coast Guard forces in the Mediterranean. Malta also liaises with Tunisia, on an informal operational level, on search and rescue issues.

49. The Special Rapporteur was informed about the considerable impact of migration on the human and technical resources of the Armed Forces. Individuals spend extended hours on duty and at a much higher level of readiness than was the case in the past. The effect on the vessels operated by the Armed Forces has also been considerable, insofar as routine maintenance activities have to be conducted in compressed timelines and sometimes deferred owing to operational commitments.

50. Malta faces many challenges with regard to search and rescue, such as: having a vast search and rescue area relative to its size; overlap with the search and rescue zone of Italy, causing confusion regarding responsibilities and tension with Italy related to interfaces between their two search and rescue systems; a lack of support from other European Union member States in tackling the pressures within its search and rescue zone; inadequate management of the search and rescue zones by countries of origin, such as Libya; and confusion about where people rescued at sea should disembark. Reportedly, Malta has sometimes been unable to respond effectively to distress calls or has not allowed rescued migrants to disembark on Maltese territory. However, the Special Rapporteur emphasizes the extreme vulnerability of migrants at sea, and underlines the importance of Malta upholding its obligations under international law in relation to search and rescue.

51. The Special Rapporteur learned that the Armed Forces has updated its search and rescue software and programmes and has increased its training and its aerial and naval assets through projects co-financed by the European Union, which help in conducting rescue operations.

1. Merchant vessels

52. Private vessels cooperate with the Government and sometimes carry out the search and rescue. This is at their own financial cost, which can create disincentives to participate. In February 2015, the International Maritime Organization underlined that the support

provided to search and rescue operations by merchant vessels should remain exceptional, and that States should shoulder the main responsibility of fielding sufficient search and rescue capacity.

2. Migrant Offshore Aid Station

53. In April 2014, the Migrant Offshore Aid Station was established by private individuals as a response to the increasing numbers of deaths at sea. It is based in Malta and assists Rescue Coordination Centres in the Mediterranean to conduct search and rescue operations. In 2014, the Station saved 3,000 people. It is currently working with Médecins sans frontiers-Amsterdam to provide humanitarian support to people rescued.

B. Cooperation on border management

54. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) supports Malta in managing its external borders and helps strengthen the country's search and rescue capacity through the provision of air assets and other vessels to enable the country to more easily carry out rescue operations safely at sea. Regulation 656/2014 of the European Parliament and of the Council on surveillance of the external sea borders in the context of operational cooperation coordinated by FRONTEX was adopted in 2014, aimed at resolving confusion arising from diverging national interpretations of international provisions on maritime surveillance. The Regulation sets out clear rules for FRONTEX joint operations at sea, including with respect to the interception of vessels during joint operations at sea, search and rescue situations and the disembarkation of intercepted or rescued migrants. The Special Rapporteur received conflicting information as to whether the regulation has actually been able to resolve confusion and incoherence in search and rescue systems.

Operation Triton

55. In November 2014, the FRONTEX Joint Operation Triton was formed in order to take over from the Italian operation Mare Nostrum. Joint Operation Triton covers the search and rescue zones of Italy and Malta with the support of the countries' naval assets.

C. Bilateral agreements

56. Malta has readmission agreements with Albania and Montenegro, as well as with Kosovo. It has memorandums of understanding on migration matters with the Governments of Burkina Faso, Gambia and Nigeria, which allow for Malta to return nationals of those countries.

57. The Special Rapporteur was informed that these agreements all have specific articles dedicated to guarantees for the human rights of migrants. However, he remains concerned about the lack of monitoring of the implementation of such agreements.

D. Resettlement programmes

58. A number of countries both within and outside the European Union have offered assistance to Malta in managing the needs of those who have been granted asylum or subsidiary protection. While people's experiences of resettlement programmes are reported to be positive, the number of places are limited and it is unclear what criteria is used for selection.

1. EUREMA

59. In 2009, in order to release the pressure put on Malta by the Dublin system, the European Union member States and other European countries began a pilot resettlement project (EUREMA) to transfer recognized refugees and beneficiaries of subsidiary protection from Malta to the countries that had volunteered to assist. The programme was renewed in April 2011 and 15 countries pledged to resettle 356 people.

60. People wishing to benefit from the EUREMA project first undergo a pre-screening process with UNHCR, then they are assessed by a panel, set up by the countries providing support, for referral. If an applicant is formally referred, he or she is interviewed by representatives of missions sent from the expected destination country. If applicants are successful, funding is provided to support resettlement.[2]

2. Refugee programme of the United States of America

61. Since 2008, the United States has had a resettlement agreement with Malta that is run by IOM and UNHCR; the country has taken more than 2,000 people who were granted protection status in Malta. Many asylum seekers would prefer to obtain subsidiary protection rather than refugee status, so as to improve their chances for gaining access to this resettlement programme (people with subsidiary protection are given priority as they have no access to family reunification or citizenship in Malta).

E. Returns

62. There were 71 forced returns in 2013, and 92 in 2014. The Board of Visitors for Detained Persons reportedly monitors forced returns during the pre-departure and departure stages to ensure the escorts adhere to the procedures. However, the Special Rapporteur stresses that an independent body should conduct monitoring.

63. The Special Rapporteur received information that constraints on government capacity to forcibly return rejected asylum seekers leads to their being kept in detention facilities for 18 months before being released into society without sufficient support in the form of social protection. Their lack of a long-term visa exacerbates difficulties finding work and they are left living in fear of being forcibly returned or are vulnerable to abuse and exploitation.

64. The Special Rapporteur was informed that legislative amendments to the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations allow for a periodic review of the grounds of detention for irregular migrants awaiting forced returns. The review is conducted either on application or ex officio by the Principal Immigration Officer at reasonable intervals of time, which should not exceed three months. In the case of detention periods of six months or more, the Principal Immigration Officer is to carry out the review and notify the Refugee Appeals Board which is to supervise and, where necessary, revise such review. The Special Rapporteur received information questioning the effectiveness and efficiency of this procedure. It is also not clear how forced returns are conducted, especially in cases where people are arrested while at work or in the night and then returned.

[2] Department of Home Affairs, "EUREMA II" (2014) (https://homeaffairs.gov.mt/en/MHAS-Information/EUREMA/Pages/EUREMA-II.aspx).

F. Assisted voluntary return

65. Since 2006, migrants have systematically been offered the option for voluntary return through projects implemented in partnership with IOM.

66. IOM visits detention centres in order to inform migrants of assisted voluntary return opportunities. However, few take those opportunities. There were reportedly 55 assisted voluntary returns in 2013, while in 2014, as at November, there had been 69. The Special Rapporteur notes that assisted voluntary return programmes are useful, although when offered to migrants in detention they should not automatically be termed "voluntary".

67. An initiative linking the amount of money offered to the date at which migrants accept to be part of an assisted voluntary return programme — the more they wait, the smaller the amount — has not been an effective incentive for migrants to use such programmes soon after their arrival. This trial initiative should be abolished and a standard amount for assisted voluntary return should be restored. Migrants who participate must have a business plan in order to benefit from the funds offered; however, there is no effective or consistent monitoring system for these programmes.

68. IOM has also repatriated unaccompanied minors after confirming that it was in their best interests to be returned. During the visit, there were nine Egyptian unaccompanied minors who wanted to be returned.

V. Detention of migrants, and reception centres

A. Mandatory detention

69. All irregular migrants who arrive in Malta are detained upon arrival, with the exception of children, following a policy decision by the Government in April 2014. The Immigration Police collect basic biographical data of those on the boat and attempt to identify vulnerable groups, such as young children, people with disabilities or people with physical and mental health problems.

70. The immigration authorities in Malta systematically issue removal orders to all irregular migrants. The removal orders issued typically refer to the lack of means to sustain themselves or to their irregular entry. The irregular migrants are typically not informed of the considerations leading to the removal order, or given an opportunity to present information, documentation and/or other evidence in support of a request for a period of voluntary departure. They are consequently held in detention for maximum period of 18 months until they are granted protection status or until they are to be removed from Malta. Migrants can appeal to the Immigration Appeals Board only within three working days from the date of the issuance of the order. The appeal can be done verbally or in writing. The Board can grant the migrant provisional release from detention while it considers the case. If the order is revoked, the migrant is released from detention.

71. As discussed above, migrants and asylum seekers are often victims of human rights violations throughout their journey. Upon arrival in Malta, they are often traumatized by their migratory experience — some do not even remember the details of their first few days after arrival. They need time to rest, ponder their situation, get information, seek legal advice, understand the system and consider their options before being asked to fill any form which may prove a re-traumatizing process. Consequently, the requirement to fill out the preliminary questionnaire immediately after they arrive in Malta, although useful for border officials, might be counterproductive in meeting the protection needs for irregular migrants.

72. Although irregular migration is not criminalized legally, the practice of mandatory detention has the unfortunate result of portraying the migrants as dangerous criminals who should be locked up immediately upon arrival for the safety of the wider public. There is no evidence that any of the migrants who came to Malta over the years has ever constituted a general public security risk. Mandatory detention consequently serves only to inspire in the Maltese general population a feeling of fear and distrust against the migrants and asylum seekers. This climate of fear unfortunately goes on to taint the policies and programmes put in place by Maltese authorities and the relationship between migrants, asylum seekers and Maltese citizens.

B. Types of accommodation

73. Hal Safi and Lyster barracks are detention centres that hold irregular migrants. Both centres are located on military bases and subject to military jurisdiction. The Special Rapporteur is concerned that migrants are accommodated in military barracks, and urges the Government to develop alternatives to this type of detention.

74. Those who receive protection visas are housed in open centres, some of which are large and can accommodate a total of 2,000 people. Others are of a more modest size, housing about 40 people, making it easier for the integration of the migrants into society.

C. Conditions of detention

75. Since Lyster was closed, the Special Rapporteur only visited Hal Safi, which can accommodate 1,200 people. During the visit, it was accommodating only 32 male detainees in its main facility. Many of those migrants, who had all arrived by boat, were Nigerians, Gambians, Chadians and Ghanaians. Reportedly, the youngest was 17. In addition, there was reportedly a Nigerian couple who had been detained for seven months in a mobile home facility within the centre. The Special Rapporteur was unable to meet with them; he was informed that they were sick and had been taken to hospital.

76. All migrants detained at Hal Safi had been informed of their rights and had reportedly applied for asylum, but had been rejected without explanation; they were in limbo, uncertain about their future. This uncertainty causes insomnia, stress and depression. Incidences of violence, attempted suicide and self-harm have occurred when detainees receive news of their rejection for asylum.

77. The situation of asylum seekers requiring psychiatric treatment is a growing concern. The Special Rapporteur learned that they are sometimes placed in the same institution as prisoners and drug users. They are handcuffed to their beds or locked in a room, are rarely allowed to shower, and lack regular medical visits. Of even greater concern are reports that doctors also question the extent to which their professional responsibility extends towards irregular migrants.

78. Some detainees are released and given identity cards with the proviso that, if there is a problem, they will be returned to the detention centre. Those still at Hal Safi hoped that the same would happen to them.

79. The Special Rapporteur found that the detention centre lacked: personal space and privacy for migrants; potable water, which forced detainees to buy drinking water; adequate and decent-quality food; and adequate access to health care. While at Hal Safi, the Special Rapporteur noted that television-watching is the only recreational activity available. Additionally, detainees are allowed outside only for one hour per day, and thereby lack any

physical activity, despite the fact that there is an outdoor fenced space that can be used by detainees.

80. The Special Rapporteur welcomes the publication of the findings, also known as the Valenzia report,[3] of the independent inquiry into the death of Mamadou Kamara, a 32-year-old Malian, while in detention in Safi. He had tried to escape from a detention facility, was severely mistreated when recaptured and died from his injuries. Two officers were charged with murder and one for perverting the course of justice. This serves to demonstrate that all shall be held accountable in the protection of the rights of migrants. The Special Rapporteur also looks forward to the implementation of the inquiry's findings with regard to improving detention conditions.

81. The Government uses open reception centres as alternatives to detention. Asylum seekers do not receive adequate individual support and are not provided with comprehensive information about their rights, asylum procedures, appeals and removal, nor do they receive legal assistance. They frequently lack information about how to gain access to social services and contact support organizations.

82. The Balzan open centre is a small facility that accommodates families. Some have stayed there for more than 18 months. Although all are allowed to work, some are not able to get jobs and instead receive a monthly allowance. Those who work are in the hospitality industry and earn an average of €4.60 an hour and are required to pay taxes and insurance. They are provided with free accommodation and access to education for their children. Access to health care is available but sometimes limited by obstacles relating to language and accessible information. There are no dedicated interpreters in this centre and migrants rely on each other for translation. There are communal cooking, cleaning and sanitary facilities.

83. The Hal Far Tent Village open centre was originally designated for single men but now also accommodates single women and families with children. Similar nationalities are kept together to avoid tensions. Those with refugee status and subsidiary protection get a daily allowance of €4.60 and one meal per day. The sanitary facilities for men and women are located side by side and are not well lit, increasing the feeling of unsafety for children and women. There is insufficient hot water and the water is non-potable, so bottled water for drinking must be bought, as is the norm in Malta.

D. Special categories of detainees

1. Vulnerable groups

84. The Special Rapporteur was informed that some vulnerable persons are not subject to detention, and may only be detained pending medical clearance. During such time, access to health and other necessary services are made available. Furthermore, a group of professionals known as the Care Team, comprising social workers and welfare officers, is in place, to which persons with specific needs can be referred for individual assessment, follow-up and interventions.

2. Minors

85. Most children who arrive with their families are quickly moved from detention facilities to open centres. In the past, unaccompanied minors have been detained for longer periods for age determination. While in detention, unaccompanied minors live and sleep in

[3] The inquiry was headed by retired judge Geoffrey Valenzia.

the same areas as adults, without any special accommodation for their young age and without access to education.

86. Age determination is now carried out within three days of arrival. A primarily psychosocial approach is used, with the aim of reducing the number of children subjected to intrusive bone density procedures. The Special Rapporteur urges that full interviews with a psychologist be conducted with a child representative present. There should be room for the benefit of doubt, as owing to fear and uncertainty children may say that they are adults when in actual fact they are still minors.

87. The Special Rapporteur notes that if there are over 500 arrivals, the systems struggle to cope and to undertake timely age determination processes for all. In order to improve age assessments, the Agency for the Welfare of Asylum Seekers, which conducts the assessments, is consulting with Aditus, the Jesuit Refugee Service and UNHCR with regard to developing other procedural safeguards, such as appeals against the age assessment decisions.

88. The Special Rapporteur visited the Santa Venera open centre, which was accommodating 12 boys, all under the age of 17. All children who arrive at the centre are educated until the age of 16. However, the Special Rapporteur learned that some children do not like to attend classes, since they have difficulties with the language and culture. Some attend vocational training courses. The boys reported that the facilities did not have potable water or sufficient food. They are allowed to go outside for defined periods and are able to get cleaning jobs, and receive €8 per week in pocket money. They have very little activity to occupy them and have English lessons once a week. At the time of the visit, only two boys were going to English classes, as the others wanted to return to their countries of origin and therefore did not want to invest in staying in Malta. They seemed scared about their situation and uncertain about their future. At age 17, children are moved from Santa Venera to open centres that accommodate adults.

VI. Cross-cutting concerns

A. Access to justice

89. Overall, there is a general concern among irregular migrants in detention and open centres that some nationalities are favoured over others in relation to asylum claims. The system by which migrants are awarded refugee status or some other subsidiary protection is not perceived as transparent and leaves migrants frustrated and mistrustful of government officials, as well as of international organizations and civil society organizations on occasion. The Special Rapporteur urges the Government to take the measures necessary to ensure transparency and provide substantive grounds when awarding protection or rejecting claims and clarity about the duration of the process for acquiring protection.

90. There are a number of other issues relating to access to justice which are of concern to the Special Rapporteur.

1. Detention appeals

91. Under the Immigration Act, detention may be appealed to the Immigration Appeals Board within three days of the issuance of the removal order, or where detention is "unreasonable" pending an asylum application. The sittings before the Board are conducted in a manner similar to those held before the national courts. A lawyer provided by means of legal aid may assist individuals. Board members enjoy security of tenure, with a view to ensuring their independence. The Board may not authorize release when the identity of the

applicant has yet to be established, for example, when the applicant does not have travel or identification documents, as is the case of most migrants reaching Malta by boat.

92. This limited appeal system is not sufficient to meet international standards, as recognized by the European Court of Human Rights in *Massoud* v. *Malta*, which ruled that Malta had breached article 5.4 of the European Convention on Human Rights by not providing adequate legal recourse to challenge detention.

2. Asylum appeals

93. The Special Rapporteur was informed that the Refugee Appeals Board, the asylum appeal mechanism, comprises five chambers. The Board members are not all trained in immigration law or the migration policies of Malta. Some chambers are more effective than others and there is no effective coordination among the chambers, which results in inconsistency in procedures, process and case rulings, and the absence of development of a coherent case law.

94. All asylum seekers whose application is being processed at first instance by the Refugee Appeals Board have the right to have access to legal assistance at any stage of the procedure.[4] The legal aid is provided in accordance with an agreement between the Government and the Malta Bar Association. Reportedly, however, lawyers do not necessary have solid knowledge of asylum and immigration law and, as such, whenever possible, non-governmental organizations provide assistance in legal proceedings and in some cases may, at their own personal cost, hire private legal counsel. The Special Rapporteur stresses that asylum seekers and their legal representatives should consistently, without prompting, be provided with a copy of their case file in sufficient time prior to their appeal, as well as with competent legal aid.

B. Labour exploitation

95. The Special Rapporteur received information about the exploitation, by employers in Malta, of irregular migrants, asylum seekers and refugees, who refrain from protesting and mobilizing due to their fear of being detected, detained and deported. Migrant workers in an irregular situation are made to work long hours and paid less than the minimum wage in Malta, often in the construction, tourism and caregiving industries. They have to pay taxes but do not all share the same rights as citizens. For example, employers often give migrants lower wages and do not provide them with required safety equipment or insurance.

96. The Special Rapporteur learned that government contractors and subcontractors are prohibited from exploiting workers, including migrants. Those found exploiting workers are blacklisted and cannot get a government contract for three years. However, the Special Rapporteur observed that sanctions against employers are rare, and the directive of the European Parliament and of the Council of Europe on sanctions against employers remains unimplemented in Malta, as is the case throughout Europe.

97. There are currently 20 labour inspectors who work together with the Immigration Police. Although labour inspectors are not empowered to check immigration papers, it is not clear whether they conduct operations with the Immigration Police; that would be a very bad practice, as it would not provide incentives for migrants to call labour inspectors or health and safety inspectors when work conditions are unsafe or in violation of labour laws. There is a need for firewalls between public service and immigration enforcement, so

[4] Directive 2005/84/EC of the European Parliament and of the Council, art. 15 (1), implemented by Maltese law through Legal Notice 243 of 2008, para. 7 (1).

that labour inspections can be carried out without having to divulge anyone's immigration status.

98. Migrant workers are workers, whatever their immigration status, and should be treated equally under labour laws. Furthermore, it is important that Malta acknowledges that it has jobs for which it needs migrant workers, including low-wage migrants, and thus considers opening legal channels for migrants of all skill levels to come to Malta.

C. Xenophobic and discriminatory acts

99. There are misconceptions among the general public that all migrants and asylum seekers are criminals or diseased and are taking away jobs belonging to Maltese. Senior government officials fuel this rhetoric publicly. There is also growing anti-Islamism and fear. The Special Rapporteur notes that, in his discussions with the police, he was informed that crime figures had not changed.

100. Amendments under the Criminal Code were made in order to prohibit and penalize racially motivated crimes involving racial hatred, and the promotion of violence against persons or groups on the grounds of, inter alia, national or ethnic origin or citizenship. The Special Rapporteur notes that the anti-xenophobia and anti-discrimination laws of Malta are rarely enforced, and that the State needs to ensure that the prohibition of such acts on the grounds of nationality and citizenship is explicit in those laws.

101. The Special Rapporteur notes that the National Commission for the Promotion of Equality has carried out various initiatives to counter racism and xenophobia and to raise further awareness of equal treatment on the grounds of religion and belief as well as race and ethnic origin.

D. Integration within Malta

102. Asylum seekers and beneficiaries of subsidiary protection have access to free national education and health care. However, for many beneficiaries of international protection, pursuing further education is impossible without additional financial assistance. The Special Rapporteur urges the Government to offer a financial support loan scheme for those beneficiaries pursing further education. Furthermore, extra targeted language support would be useful for the children of asylum seekers and refugees.

103. Many migrants find it hard to integrate into Maltese society. They experience xenophobia and racism, can be subject to discrimination in relation to recruitment, pay and conditions within the workforce and experience uncertainty around their legal capacity to stay. Many migrants desire to move on to other European countries, which exacerbates a systemic view of migrants as a temporary problem and reinforces barriers to integration.

104. The Special Rapporteur welcomes the initiative of the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, which has, in collaboration with migrants, developed a website on integration, available in seven languages. He was also informed that a new directorate for integration will be established. It will implement a migration integration strategy, deal with complaints concerning equal treatment and have investigative powers, thereby enabling it to visit detention centres. The Special Rapporteur also welcomes the plans by the Ministry to establish an integration unit to address vulnerable groups, including migrants.

VII. Conclusions and recommendations

105. **Migration cannot be seen only through the lens of a border security operation, especially with recent arrivals, many of whom were fleeing wars, violence and conflict. Over-reliance on border security — which focuses on policing, defence and criminality instead of a more rights-based approach — only serves to give a false sense of control over one's borders.**

106. **In 2014, as a result of Mare Nostrum, the number of migrants arriving in Malta fell significantly because, once rescued at sea, migrants were disembarked in Italy. However, the Special Rapporteur cautions that this is likely to change, and Malta must prepare for rising numbers of migrants. He stresses that this migration phenomenon must be considered as the "new normal" for the coming years. The reception of such migrants and asylum seekers should not, therefore, always be conducted in an ad hoc emergency manner. The Special Rapporteur recommends that programmes be developed to build the capacity to adequately receive and process high numbers of migrants based on a long-term vision of migration. Such programmes should include measures to provide adequate immediate assistance, offer legal safeguards and promote integration.**

107. **The Special Rapporteur proposes several recommendations, as detailed below.**

A. Recommendations to the Government

1. Normative and institutional framework for the protection of the human rights of migrants

108. **The Special Rapporteur recommends that the Government:**

(a) **Implement the plans to establish a national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), ensuring that it is both functionally and financially independent of the Government and vested with the authority to investigate all issues relating to human rights, including those of migrants, regardless of their administrative status;**

(b) **Ensure the establishment of a fully independent national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is mandated to visit all places where migrants may be deprived of their liberty;**

(c) **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

2. Border management

109. **The Special Rapporteur recommends that the Government:**

(a) **Further implement a human rights-based approach to migration and border management, ensuring that the rights of migrants, including irregular migrants, are always the first consideration;**

(b) **Ensure that readmission and cooperation agreements aimed at, inter alia, combating irregular migration include safeguards to fully respect the human rights of migrants, as well as ensure adequate protection of vulnerable migrants, including asylum seekers, in particular with regard to the principle of non-refoulement;**

(c) **Establish a comprehensive mechanism for the identification of unaccompanied minors that includes not only medical exams but also a psychosocial and cultural approach, in order to best identify specific protection measures in the best interests of each child;**

(d) **Fully implement the relevant provisions of Regulation 656/2014 of the European Parliament and of the Council for all search and rescue operations coordinated by the Malta Rescue Coordination Centre;**

(e) **Agree on criteria to identify the place of safety where people rescued at sea should be disembarked as a matter of urgency, to render disembarkation predictable and quick. To this end, negotiations on a memorandum of understanding on disembarkation should be vigorously pursued within the IMO framework.**

3. Detention and open centres

110. **The Special Rapporteur recommends that the Government:**

(a) **Change laws and policies related to the administrative detention of irregular migrants, so that detention is decided upon on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation under which detention may be resorted to, rather than being the automatic legal consequence of a decision to refuse admission of entry or a removal order;**

(b) **Ensure that migrants are detained only when there is a reasonable basis to believe that they present a danger to themselves or others or would abscond from future proceedings, and always for the shortest time possible, and that non-custodial measures are always considered first as alternatives to detention;**

(c) **Establish places of administrative detention outside of military facilities and expeditiously take measures to transfer the detainees to the non-military facilities. Such detention centres should not be managed by military staff;**

(d) **Improve the management of government centres for irregular migrants, drawing from the recommendations made in the Valenzia report, the best practices observed in the current network of reception centres and in other facilities in Europe and around the world, and in accordance with relevant standards espoused by international human rights law;**

(e) **Strengthen contingency plans to avoid overcrowding and consequent deterioration of conditions during peak migration periods;**

(f) **Ensure that all detained migrants have access to proper medical care, interpreters, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise;**

(g) **Systematically inform detained migrants in writing, in a language they understand, of the reason for their detention, its duration, their right to have access to a lawyer, and the right to promptly challenge their detention and to seek asylum;**

(h) **Ensure that all migrants deprived of their liberty are able to promptly and easily contact their family, consular services and a lawyer, at all times and free of charge;**

(i) **Develop comprehensive human rights training programmes for all staff who work in reception centres, including training that enables them to identify detainees exhibiting mental health issues or in need of protection as victims of crime, and improve available mental health and support services in detention, based on the principle of informed consent;**

(j) **Ensure the independent monitoring of reception centres so that they are all brought to the same standards;**

(k) **End the detention of unaccompanied migrant children. Additionally, migrant children require more culture and language support to help with integration at school and in society, more activities outside of the shelters to occupy them when they are not in school, and monitoring, for at least one year, to ensure an easy transition from shelters to open centres.**

4. Access to justice

111. **The Special Rapporteur recommends that the Government:**

(a) **Ensure full and proper access to justice for all detainees, including a more accountable system for lodging complaints within detention and reception centres;**

(b) **Ensure that all detained persons who claim protection concerns are, without delay, adequately informed of their right to seek asylum, have access to registration of asylum claims and can promptly and easily communicate with UNHCR, lawyers and civil society organizations;**

(c) **Establish a fairer and simpler system for migrant detainees to be able to challenge expulsion and detention orders;**

(d) **Ensure that the appeal proceedings are based on the merits and validation of detention;**

(e) **Provide explicit training for the Immigration Appeals Board and the Refugee Appeals Board on international human rights law and international refugee law;**

(f) **Expedite the implementation of legislation that allows migrants to challenge effectively their detention at any time, in line with the standards laid out by the European Court of Human Rights, through periodic review by a court of law on the necessity and legality of detention, and ensure that these mechanisms are accessible for children and other vulnerable groups;**

(g) **Provide unaccompanied children with free, competent and effective guardianship to ensure proper decision-making in all proceedings concerning such children, as well as free legal representation, to assist in all immigration and asylum proceedings;**

(h) **Guarantee fully the right to free legal assistance in expulsion, detention and asylum procedures to all migrants and asylum seekers in primary legislation and secure it in practice in all situations of detention of migrants and asylum seekers.**

5. Cross-cutting concerns

112. **The Special Rapporteur recommends that the Government:**

(a) Provide access to basic services, such as health care, to everyone living in Malta, regardless of their immigration status, in accordance with international human rights standards;

(b) Expedite the establishment of an integration unit that will focus on equality and non-discrimination for all, including for migrants and asylum seekers, inside the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties. It should initially focus on public awareness campaigns to eradicate stereotypes and discrimination against migrants while promoting tolerance and respect for diversity

and on providing accurate data regarding migrants and asylum seekers and their economic and social contribution to Malta;

(c) Reinforce the public awareness campaigns through effective enforcement of laws on prohibiting racist and xenophobic acts and on prohibiting hate speech and racially motivated violence against migrants and asylum seekers. Ensure that any such cases are prosecuted and punished, and that appropriate compensation is awarded to the victims;

(d) Fully implement its legislation to combat direct and indirect racial discrimination with regard to the enjoyment of economic, social and cultural rights by immigrants, in particular refugees and asylum seekers, including access to private rental housing and the labour market;

(e) Fully implement the Employer Sanctions Directive, including by developing comprehensive measures to penalize Maltese employers who abuse the vulnerability of migrants by paying them low or exploitative wages;

(f) Avoid the criminalization of irregular migrants in language, policies and practice, and refrain from using incorrect terminology, such as "illegal migrant".

B. Recommendations to the European Union

113. **The Special Rapporteur recommends that the European Union:**

(a) **Ensure that European Union frameworks do not contribute to the restriction of human rights protections of migrants in Malta;**

(b) **Recognize that migrants will continue to arrive despite all efforts to stop them, and that, at some point, repression of irregular migration is counterproductive as it drives migrants further underground, thereby empowering smuggling rings and creating conditions of alienation and marginalization that foster human rights violations, such as discrimination and violence against migrants;**

(c) **Provide financial, material and logistical assistance to Malta for the reception and processing of migrants and asylum seekers;**

(d) **Ensure that Malta possesses a well-managed reception capacity that can sustain the foreseeable seasonal migration peaks. A shared responsibility by all European Union member States for reception includes some States offering part of their reception capacity to other front-line States experiencing migration peaks;**

(e) **Establish a programme for the quick relocation of asylum seekers across Europe, according to a distribution key and taking into account the wishes of the asylum seekers themselves, the possibilities of family reunification and humanitarian considerations that are essential to an equitable redistribution of responsibilities between States. If well managed, such a system would incentivize asylum seekers to register in the first European Union country of entry. It would encourage asylum seekers not to use the evasion tactics that are now systematically employed to avoid their identification and the application of the Dublin regulations;**

(f) **Develop a common asylum policy. States should mutually recognize each other's refugee status determination decisions, thus ensuring the mobility of refugees throughout the territory of the European Union. In order to gain confidence in each other's refugee status determination systems, they should develop a roster of decision-makers from each European Union country, at first decision and at appeals levels, for joint screening of asylum applications. With the help of the European Asylum Support Office and UNHCR, this would allow for the sharing of expertise, experience,**

good practices and lessons learned. It would also help create trust in the capacity of each national system, through the understanding that it is grounded on a common knowledge base relating to country-of-origin information, to be developed around a common interpretation of the legal criteria for protection and to be responsive to the same factors as considered in other systems;

(g) **Work with States to open up more regular migration channels, including for low-skilled workers, thus reflecting the real labour needs of the European Union, which would lead to fewer irregular border crossings and less smuggling of migrants;**

(h) **Ensure that the cooperation with FRONTEX takes full account of the human rights of migrants, rather than focusing only on security-related aspects;**

(i) **Promote the swift family reunification of unaccompanied minors with their relatives who reside in other European Union member States, whatever their status;**

(j) **Ensure the full implementation of responsibility sharing between European Union member States in the management of its external borders. In particular take into full account the geographical position of Malta, which renders its coastlines particularly exposed to migration flows. This should include permitting asylum seekers the freedom of movement within the European Union and attributing European Union support funds to the country where asylum seekers establish themselves.**