Malta’s National Children’s Policy 2016

UNHCR’s comments to the National Children’s Policy published by the Ministry for the Family and Social Solidarity on 19 September 2016 for public consultation.

28 October 2016
Malta
Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to provide its comments to the National Children’s Policy published on the 19 September 2016 and open for public consultation.

2. UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees.\(^1\) As set forth in its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.”\(^2\) UNHCR’s supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees (“the 1951 Convention”)\(^3\) according to which State parties undertake to “co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention.”

The same commitment is included in Article II of the 1967 Protocol relating to the Status of Refugees (“the 1967 Protocol”).\(^4\)

3. UNHCR’s supervisory responsibility is also reflected in European Union (EU) law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union, as well as in Declaration 17 to the Treaty of Amsterdam, which provides that “consultations shall be established with the United Nations High Commissioner for Refugees [...] on matters relating to asylum policy”.\(^5\) Secondary EU legislation also emphasizes the role of UNHCR. UNHCR’s supervisory responsibility is specifically articulated in Article 29 of the EU Asylum

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\(^2\) Ibid. para. 8(a).


Procedures Directive\(^6\), Recital 22 of the EU Qualification Directive\(^7\) as well as Article 10(3) and 18(2)(b) and (c) of the Reception Conditions Directive.\(^8\)

4. Over half of the world’s refugees are children.\(^9\) Children are at greater risk than adults of abuse, neglect, violence, exploitation, trafficking or forced recruitment into armed groups. They may experience and witness disturbing events or be separated from their family. At the same time, family and other social support networks may be weakened and education may be disrupted. These experiences can have a profound effect on children – from infancy and childhood through to adolescence. During emergencies and in displacement, girls face particular gender-related protection risks.\(^10\)

5. Children’s rights are enshrined in international law, including in the United Nations Convention on the Rights of the Child,\(^11\) and are at the heart of UNHCR’s protection mandate. Given the high proportion of children amongst displaced populations and the fact that girls and boys face unique protection risks, responding to their specific needs is a key priority for UNHCR.\(^12\)

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General Comments

6. UNHCR welcomes and supports the efforts made by the Government of Malta to further improve its policy on children. Over the years, UNHCR’s dialogue with the Maltese authorities has included discussions about policy issues relating to the treatment of child asylum seekers and refugees, as well as practical recommendations relating to reception, protection and integration of refugee children in Malta.

7. UNHCR welcomes the positive images selected to accompany the policy document, however these images do not seem to adequately represent the cultural diversity which is already present in Malta.

8. UNHCR notes that while in recent years progress has been made on the issue of detention of asylum-seeking children, the Office remains concerned that children are still being detained in the Initial Reception Facility, even if for shorter periods of time. UNHCR considers the Initial Reception Facility to be a place of detention, as “detention” refers to the deprivation of liberty or confinement in a closed space which an asylum-seekers is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities. While UNHCR appreciates that the national reception system for asylum seekers does not fall within the remit of the Ministry for the Family and Social Solidarity, it considers that non-detention of children is a key priority for the protection of children in Malta. UNHCR recommends that the relevant authorities jointly explore solutions in order to address this issue as in principle children should not be detained at all.

Specific Comments on Health and Environment

9. With reference to Policy Action No. 1, UNHCR recommends that such community-based units or information centres also provide interpretation and translation services for foreign mothers and families, in particular refugees. In this way, access to pre-natal, post-natal and maternal support can be facilitated. Cooperation with the Migrant Health Liaison Office within the Department of Primary Health could also be considered in view of its experience in this regard.

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13 Strategy for the Reception of Asylum Seekers and Irregular Migrants, Ministry for Home Affairs and National Security, December 2015, available here: https://is.gd/YKDT6U. In terms of the Strategy document the facility named as “Initial Reception Facility” accommodates unaccompanied minors in a confined environment in order to be medically screened and processed by the pertinent authorities. Procedures in this facility also include age assessment.


10. With reference to Policy Action No. 11, UNHCR recommends that age appropriate sexual health and identity education be culturally sensitive and that information is presented in a way which can be received and understood by persons of different origins, nationalities and backgrounds.

11. With reference to Policy Action No. 14, UNHCR recommends the introduction of safeguards to protect asylum-seeking and refugee adolescents accommodated in open reception centres from alcohol, drug, tobacco and sexual abuse. In addition, sexual education courses or classes could be held in open reception centres to facilitate prevention of such abuse.

12. With reference to Policy Action 19, UNHCR recommends that child-friendly spaces and age-appropriate activities are also included in the open reception centres structure for the benefit of asylum-seekers and refugees.

Specific Comments on Family and Relationships

13. With reference to Policy Action No. 2, UNHCR recommends that this point is further clarified, particularly in relation to the current reception policy\(^\text{16}\) which permits the detention of children in the Initial Reception Facility for the purposes of medical clearance and age assessment.\(^\text{17}\)

14. With reference to Policy Action No. 9, UNHCR recommends that this should also apply to refugee children. With regards to out-of-home care, a semi-independent programme for adolescents without any family support and who are approaching adulthood could be considered.

15. With reference to Policy Action No. 12, UNHCR notes that there is a need for more child-minding support for parents who do not have access to childcare services. This is important so as to prevent the need to resort to abusive and irregular child-minding systems, especially in the case of refugees and other migrants with no family or social network in Malta.

16. UNHCR notes that asylum-seeking and refugee children who are unaccompanied and separated from their family have specific needs in terms of family tracing and reunification. In terms of the EU Reception Conditions Directive,\(^\text{18}\) Member States also need to take into account family reunification possibilities when assessing the best interest of the child. Currently, family reunification procedures are only accessible to

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\(^{17}\) Refer to paragraph 8 above.

those children who have obtained refugee status. Children who are beneficiaries of subsidiary protection do not have access to such procedures in accordance with the principles set out in the UN Convention on the Rights of the Child.\textsuperscript{19}

17. UNHCR also notes that the role of the legal guardian for asylum-seeking children and refugees should be further clarified. In current practice, the role of legal guardians seems to be limited to accompanying the child for the asylum interview. UNHCR considers that the role of the legal guardian should include more responsibilities in line with those of a legal guardian appointed for Maltese children.

Specific Comments on Education and Development

18. With reference to Policy Action No. 17, UNHCR notes that there is a need to consider the introduction of induction or bridging programmes for children who are not familiar with Maltese or English and who have gaps in their formal education. While the use of peripatetic teachers is useful in this regard, more needs to be done to reduce the initial gap for asylum-seeking and refugee children entering the Maltese education system.

19. With reference to Policy Action No. 23, UNHCR recommends that teachers and school staff are provided with training and information on refugee issues through awareness raising programmes and activities.

Specific Comments on Community and State

20. With reference to Policy Action No. 2, UNHCR recommends that particular emphasis is placed on children from all backgrounds, including refugee children as they often encounter particular difficulties in making their views heard and taken into account by the formal political process.

Concluding Comments

21. UNHCR looks forward to further discussing the above points with the Ministry for the Family and Social Solidarity. UNHCR stands ready to provide further guidance on the protection of asylum-seeking and refugee children where required.