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Literature review on population(s) at risk of (child) trafficking in Malta

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About The Author

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About KOPIN

KOPIN is an NGO working in the field of international development cooperation, global education and migration and is registered in Malta under the 2007 Voluntary Organisations Act (VO ID No - VO/0200). The organisation has implemented a number of projects in the fields of North-South Collaboration and is also the founding organisation of The National Platform of Maltese NGOs SKOP – *Solidarjetá u Koperazzjoni* – which is Malta's largest network of NGOs working in the field of development and migration. For further information visit our website <http://www.kopin.org>.

CRC	Convention on the Rights of the Child
US-TIP	United States Trafficking in Persons Report
PFC	People for Change Foundation
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
COE	Council of Europe
GRETA	COE Monitoring Committee on Trafficking in Human Beings
E-Notes	European NGO Observatory on Trafficking, Exploitation and Slavery
JRS	Jesuit Refugee Service
Aditus	Aditus Foundation

Introduction and Methodology

This research aims to capture, through a literature review, existing knowledge on the issue of vulnerability to child trafficking. The assessment is not based on original research but builds on existing literature, including academic literature, policy documents, reports by international governmental and non-governmental organizations amongst others. A full list of documents assessed in the preparation of this report is provided in the bibliography.

This research adopts the internationally agreed definition of trafficking as enshrined in the Palermo Protocol, adopted in the Council of Europe Convention and the European Union Directive. This defines trafficking as:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Analysis of human trafficking in Malta is limited. Beyond a number of references in broader research, there is a dearth of work assessing the issue and these are primarily policy research reports. There is only one piece of academic literature focusing on trafficking in Malta and no specific literature on child trafficking exists. No specific research on vulnerability to trafficking in Malta has yet been published, and references to such vulnerability in other sources remains anecdotal.

This lack of data and research is identified and critiqued in a number of sources with GRETA¹ noting this as a major concern. Some literature addresses specific areas of missing data and analysis.² Some measures are being implemented to address this lacuna. The first anti-trafficking action plan³ included a research component; however, this element of the plan was not completed and was postponed to the second action plan.⁴ At the time of writing, a researcher had been contracted to

¹ Council of Europe, *GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta - First Evaluation Round GRETA(2012)14* (Group of Experts on Action against Trafficking in Human Beings, 2013)

² See for example: Ruth Farrugia, 'State responsibility for human trafficking - perspectives from Malta' 15 *Journal of Money Laundering Control* 142

³ See 'Policy Framework' below for a discussion of the action plan from a more substantive perspective.

⁴ As reported in: Government of Malta, *Final Report on the Malta Action Plan on Combating Trafficking in Persons* (2013)

carry out the research. GRETA reflected on the over-reliance on anecdotal evidence.⁵ Other calls for research come from E-NOTES⁶ as well as the CEDAW⁷ and CRC Committees⁸. No reference to research is made by the US TIP Report however it does criticize Malta's reluctance to publish data and statistics. Farrugia⁹ identifies the media as an important source of information on issues of trafficking. She highlights how whilst this issue of lack of data and analysis isn't one limited to Malta it remains one 'which requires resolution if only in order to enable policy to be based on solid research findings'¹⁰ whilst GRETA¹¹ reports NGO concerns regarding the need for evidence based research rather than anecdotal evidence to inform policy. Whilst accessing reliable data and carrying out first hand research is critical, clearly weighted anecdotal evidence remains an important source of information especially with a research scenario such as Malta, where the stakeholder community remains small and tightly knit.¹² The need for evidence based policy making and for research to inform policy developments is highlighted by *inter alia* E-Notes, Farrugia, CEDAW and GRETA.

There is confusion in public discourse in Malta around the distinction between trafficking and smuggling, an issue that is aggravated by inaccurate media reporting including with regards to court cases.¹³ For this reason, any reliance on media sources would need to be approached with great caution. This confusion is further exacerbated by political conflation of the issues, and in some cases is replicated in academic literature¹⁴.

⁵ See above n1. See also: Jean-Pierre Gauci, 'Malta' in Mike Dottridge (ed), *E-Notes Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008-2009)* (Associazione On The Road 2010)

⁶ See above n5.

⁷ Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women - Malta* (2010)

⁸ Committee on the Rights of the Child, *Concluding observations on the combined second periodic reports of Malta, adopted by the Committee at its sixty-second session (14 January – 1 February 2013)* (2013)

⁹ Farrugia R, 'State responsibility for human trafficking - perspectives from Malta' 15 *Journal of Money Laundering Control* 142

¹⁰ *ibid*

¹¹ Council of Europe, GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta - First Evaluation Round GRETA(2012)14 (Group of Experts on Action against Trafficking in Human Beings, 2013)

¹² For some of the challenges with researching human trafficking see: Andrea Di Nicola, 'Researching into human trafficking: Issues and problems' *Human Trafficking* 49 and Guri Tyldum and Anette Brunovskis, 'Describing the unobserved: Methodological challenges in empirical studies on human trafficking' 43 *International Migration* 17

¹³ See as example:

<http://www.timesofmalta.com/articles/view/20130616/local/four-charged-over-human-trafficking.474155>,

¹⁴ See for instance: Farrugia P. 148

The Phenomenon

Two distinct images emanate from the literature and available data. The first relates to identified cases of trafficking with Malta having identified 25 cases of trafficking over the past decade, all of whom, with the exception of one, were foreign adult women trafficked for the purposes of sexual exploitation.¹⁵ One man also trafficked for sexual exploitation was also identified. One case of labour exploitation, involving three persons potentially trafficked is currently pending prosecution. Based on this data, Malta is primarily a country of destination for adult women trafficked exclusively for the purposes of sexual exploitation.

However the limited literature provides a far more nuanced image. It also identifies Malta as a source and transit country predominantly for sex trafficking as well as being a destination country for labor trafficking. According to the available literature trafficked persons include women, men and children, both nationals and foreigners. Cases of internal child sex trafficking were reported by the US TIP Report in 2007, 2009, 2012 and 2013. It must be noted however that the TIP report largely considers all forms of child prostitution to fall within the purview of trafficking.¹⁶ The Committee on the Rights of the Child describes Malta as a significant source and destination country for (women and) children subjected to sex trafficking. Human Rights Watch reported instances of violence and exploitation of children whilst in immigration detention but did not elaborate further and it is unclear what forms of exploitation they have witnessed.¹⁷ *Sara's story*, published by Herzwerk, identifies Malta as a transit country reflecting Nigerian women trafficked through Malta for exploitation in Malta and then in other European countries. In this particular case, she was exploited in forced prostitution in Italy and then fled to Austria where she was seeking international protection.¹⁸

Beyond the issue of trafficking, exploitation of migrant workers, specifically of those who have been through the asylum system, is a rampant concern in Malta and one

¹⁵ See Council of Europe, *GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta - First Evaluation Round GRETA(2012)14* (Group of Experts on Action against Trafficking in Human Beings, 2013)

¹⁶ The fact that the report adopts definitions of trafficking which are similar too, but sometimes not fully convergent with the internationally agreed definitions of trafficking is a critical weakness of the report in terms of promoting international accountability. See on this: Jean-Pierre Gauci, 'Procedural Challenges in Trafficking Based Asylum Claims' Currently Under Review and Gallagher, A. T. (2011). "Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports." *Human Rights Review*12(3): 381-400.

¹⁷ Human Rights Watch, *Boat Ride to Detention: Adult and Child Migrants in Malta* (2012)

¹⁸ The story was published in a newsletter by Herzwerk, a Vienna based charity working with on the street sex workers including providing support to trafficked persons. Herzwerk, 'Sara's Story - ' Herzwerk Newsletter Summer 2012. Leaflet available with the author. [INCL WEBSITE REF?] Unfortunately it was not included on a website. I managed to get hold of it through personal contacts.

which has been raised repeatedly in both literature and policy discourse. Whilst not all forms of migrant exploitation might meet the criteria for trafficking, the line between the two can easily be crossed and therefore greater attention ought to be placed on assessing these concerns.¹⁹ Unaccompanied minors are not excluded from this exploitation and might be susceptible to it even if there is no specific information available in this regard.

The exploitation of migrant workers has been elaborated by various sources including the European Network Against Racism²⁰ and the International Organization for Migration.²¹ An in depth assessment of migrant worker exploitation is however beyond the scope of the present research. Access to legal employment by all those who have been through the asylum system coupled with the possibility of status linked to integration potential are elements that can positively contribute to reducing the vulnerability of this particular sub-category of persons. Beyond these current opportunities the development of mentorship and befriending programmes can provide a positive impetus in combatting exploitation.

The Framework Around (Child) Trafficking in Malta

Over the past years Malta has significantly developed its legal, policy and institutional framework to better address the issue of human trafficking, including child trafficking. Developments in the area are motivated by a number of factors, including Malta's obligations under international and regional legal instruments (most notably the European Union Directives), the impact of external monitoring measures (most notably the US-TIP Report) and growing public awareness on the issue.²² This section will not provide a critical assessment of the entire framework but will rather be limited to issues of direct relevance to child trafficking.

Legal Framework

Malta has signed and ratified the Trafficking Protocol, the Council of Europe Trafficking Convention as well as various related instruments of the United Nations and the International Labour Organization (ILO). As a European Union Member State

¹⁹ See on this: Dina Haynes, 'Exploitation Nation: The Thin and Grey Legal Lines Between Trafficked Persons and Abused Migrant Laborers'

²⁰ See for instance: Jean-Pierre Gauci and Maria Pisani, *ENAR Shadow Report: Racism in Malta* (2013)

²¹ Jean-Pierre Gauci, *LINET Annual Report - Integration of Migrant Workers into the Maltese Labour Market* (2013)

²² Farrugia p. 143

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it is bound by the relevant *acquis*, including the 2011 Trafficking Directive²³ and the 2004 Residence Permit Directive²⁴. Malta is a signatory to the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography as well as all other major human rights instruments.²⁵

Malta has also ratified a number of ILO Conventions relevant to trafficking including: the 1930 Forced Labour Convention,²⁶ the 1957 Abolition of Forced Labour Convention,²⁷ and the 1999 Worst Forms of Child Labour Convention.²⁸ It is also party to various relevant Council of Europe conventions including the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse.

Human Trafficking is **criminalized** through the various provisions of subtitle VIII of Title VIII of the Criminal Code that implement the criminalization requirement of the three main legally binding instruments in the area, namely the Protocol, COE Convention and the EU Directive. Table 1 below provides a breakdown of the requirements for the offence.

Act	recruitment, transportation, sale or transfer of a person, including harbouring and subsequent reception and exchange of control over that person, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the purposes
Means	Violence or threats, including abduction; deceit or fraud; misuse of authority, influence or pressure; the giving or receiving of payments or

²³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

²⁴ Council Directive 2004/81/E of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

²⁵ See for instance: the European Union Charter of Fundamental Rights, the Arab Charter on Human Rights, the American Convention on Human Rights, the Convention on the Elimination of All forms of discrimination against women, the Protocol to the African Charter on Human and People Rights on the Rights of Women in Africa, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the African Charter on the Rights and Welfare of the Child, the SAARC Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia, the 1930 Convention regarding Forced or Compulsory Labour, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, the International Convention for the Suppression of White Slave Traffic, the International Convention on the Protection of the Rights of All Migrant workers and Members of their Family, Convention (No. 143) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers,

²⁶ Ratified on 04 January 1964

²⁷ Ratified on 04 January 1965

²⁸ Ratified on 15 June 2001

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	benefits to achieve the consent of the person having control over another person.
Purpose	Exploitation including: the production of goods or provision of services; or slavery or practices similar to slavery; or servitude; or activities associated with begging; or any other unlawful activities not specifically provided for elsewhere under this sub-title, prostitution or in pornographic performances or in the production of pornographic material, removal of any organs

With regards to **child trafficking**,²⁹ the act provides, in line with international instruments, that the crime of trafficking subsists even if none of the means required for adult trafficking exist. Where such means are applied to children, the crime is considered as aggravating allowing for an increase in punishment by one degree. Moreover, further provisions relating to child trafficking were introduced in 2010 including specific provisions on trafficking for the purposes of illegal adoption³⁰ and provisions on child labour. The latter is defined as including the coercion of a person under age into forced or compulsory labour for any purpose whatsoever including the forced or compulsory recruitment of minors to take part in armed conflict. The requirement of the purpose as set out above subsists with regard to this provision.

GRETA indicated two concerns regarding the transposition of the trafficking definition namely with regards to the inclusion of abuse of a position of vulnerability as a means of trafficking, the express prohibition of forced labour and the irrelevance of consent. The first is of particular relevance in the context of child trafficking. The Maltese government justified its position by stating that Maltese legislation was in line with the relevant requirements. With regards to the last concern, they expressly stated that the recommendation was being considered.³¹

The White Slave Traffic (Suppression) Ordinance³² also criminalizes the exploitation of the **prostitution** of others and makes specific reference to children. The ordinance

²⁹ The legal framework around child trafficking is also discussed by: Therese Commodini-Cachia, *FRA Thematic Study on Child Trafficking Malta* (2010)

³⁰ Article 248DA. Provides that: Whosoever, for any purpose referred to in articles 248A to 248C, both inclusive, acting as an intermediary for the adoption of a child improperly induces the consent of any person whose consent is required for the adoption shall on conviction be liable to the punishment laid down in article 248D.

³¹ See GRETA Report, p. 54

³² Chapter 63 of the Laws of Malta. The Ordinance was first adopted in 1930 and subsequently amended in 1933, 1955, 1965, 1974, 1976, 1981, 1983, 1989, 1994, 2006 and 2007. The current text of the ordinance is available:

builds on earlier trafficking Conventions including the 1904 and 1910 International treaties on the White Slave Traffic. The ordinance refers to the age of 21 rather than the age of 18 and thereby applies its child specific provisions also to persons above the age of 18 but under the age of 21.

Since 2007 a residence permit is available for trafficked persons who collaborate with the authorities under the Permission to Reside for Victims of Trafficking or Illegal Immigration who cooperate with the Maltese Authorities Regulations.³³ The regulations allow for a reflection period of up to two months and for the granting of a residence permit of six months (renewable for as long as required) where the continued stay of the third country national in Malta is useful to the criminal justice process. No such residence permits have however been issued since the adoption of the regulations in 2007. GRETA expressed concern around the fact that no minimum duration for the reflection period has been set.³⁴ There is no explicit reference to trafficking based asylum claims in the refugee law framework and no specific policies or regulations have been adopted. However, three Nigerian women have reportedly been granted asylum on the basis of having been trafficked despite the lack of formal identification as such.³⁵

The *Children and Young Persons Act*³⁶ relates to **care and assistance** of children and applies also to trafficked children by virtue of Article 4 of the Residence Permit regulations. This provides that:

A third country national who is a victim of trafficking of human beings [...] and who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be assisted in terms of the Children and Young Persons (Care Orders) Act as if he were a child or young person under such Act.

In particular the act obliges the Minister responsible for Social Welfare to take into his care such children deemed to be in need of care, protection or control. Issuance of a care order under the act can also be used in situations where those exercising parental authority are involved in the trafficking of a minor. Malta also plays its role in international cooperation by, for instance, extraditing perpetrators under the European Arrest Warrant System.³⁷

³³ Legal Notice 175 of 2007, available at:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9562&l=1>

³⁴ GRETA Report, Para 132

³⁵ GRETA Report, Para 10

³⁶ Chapter 285 of the Laws of Malta

³⁷ See Farrugia R, 'State responsibility for human trafficking - perspectives from Malta' 15 Journal of Money Laundering Control 142 p.148

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Lengthy criminal proceedings in the context of trafficking have been highlighted by inter alia the TIP Reports, GRETA and E-NOTES as a key weakness in Malta's response to trafficking. It is to be noted however that such delays are a problem of the judicial system in Malta and not one specific to trafficking as highlighted by E-NOTES.

Policy Framework

Beyond the legal law provisions Malta has also put in place a number of policy measures including an unpublished Memorandum of Understanding between the Malta Police Force and Aġenzija Appoġġ and two consecutive action plans. A review of the action plans reflects an acknowledgement of Malta's relative newness to the area of trafficking with proposed measures focusing primarily on identifying needs. Each plan covers a period of about two years.

The first action plan was intended to consolidate Malta's efforts in the area including through a review of current laws and practices. Its objectives were: consolidation of current procedures and initiatives relating to trafficking in persons, identification of areas of concern requiring action, enhancement of accountability in relation to the delivery of actions within the National Action Plan, provision of the necessary tools and resources for the development of a holistic strategy in the fight against trafficking in persons, raising awareness among public authorities in relation to the importance of trafficking cases with a view to register greater effectiveness in relation to the prosecution of cases and the identification of victims and, where necessary, enhancing the administrative capacity of Maltese authorities to deal with human trafficking cases. The action plan came to an end, and a report thereon was drawn up at the end of 2012 when the second action plan came into force. Therefore, out of the total 14 actions envisaged by the Action Plan nine had been implemented: four had been partially implemented and one had been postponed. Child Trafficking was not a priority of the action plan and indeed no mention thereof was made in the report on its implementation. The extent to which child specific requirements were addressed in the implementation of the general provisions is unknown and has not been commented upon in the literature or the action plan report. The action plan is however praised by GRETA as being comprehensive including prosecution, protection and prevention. No external evaluation of the implementation of the action plan was foreseen or carried out as criticized by GRETA.

The second action plan builds on the first and whilst taking on the pending actions also adds a number of new actions including one focused on child trafficking namely: ensuring protection of potential child victims of trafficking, including by way of the adoption of guidelines specific to children. The target deadline for this action is set

to the second quarter of 2014. This also builds on the priority that is stipulated in the European Action Plan on Combatting Trafficking.³⁸ At time of writing the present paper, there was no information available on the implementation of this specific measure.

A number of other policy areas address the issue of general vulnerability understood broadly as referring to poverty, social exclusion and marginalization. Various annual reports of the Commissioner for Children³⁹ as well as the National Action Plan on Social Protection and Social Inclusion highlight the need to, and propose measures to address such vulnerability. Even if such measures are not aimed at trafficking specific vulnerability and are not intended as anti-trafficking measures they can play an important role in achieving the overall goal of reducing vulnerability to and preventing trafficking.

Institutional Framework

In 2010 E-NOTES noted that the institutional framework around trafficking was in early stages of development.⁴⁰ Since then it has developed considerably as noted by the subsequent TIP and GRETA reports amongst others. The framework now includes: an anti-trafficking coordinator, a monitoring body, and stakeholder taskforce as well as specialized services within the Malta Police Force and Appoġġ.⁴¹ GRETA (2013) commends the multi-disciplinary dimension of the Monitoring Committee. The 2007 TIP Report noted how in the case of minors used in commercial sexual exploitation, specially trained police officers interview and refer them to Child Protection Services for assistance in reintegration.⁴² Moreover, an agreement has been signed between the Maltese authorities and the International Organization for Migration aimed at supporting Malta's anti-trafficking efforts; in particular the development of standard operating procedures and the provision of training to stakeholders.⁴³

³⁸ European Commission, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016* (2012). Priority A Action 3 deals specifically with the protection of child victims of trafficking.

³⁹ See for instance: Commissioner for Children, 'Annual Report 2010 - Safeguarding Children From Poverty' Commissioner for Children Malta, 'Annual Report 2007 - Every Child is Unique'

⁴⁰ Gauci J-P, 'Malta' in Dottridge M (ed), *E-Notes Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008-2009)* (Associazione On The Road 2010)

⁴¹ Aġenzija Appoġġ is the national social services provider.

⁴² Department of State, 'Trafficking in Persons Report - Malta'

⁴³ See: <http://www.iom.int/cms/en/sites/iom/home/where-we-work/europa/european-economic-area/malta.html>

The identification of trafficked persons remains the sole responsibility of the Malta Police Force. This was critiqued in the 2013 GRETA Report that highlighted the importance of multi-agency involvement in identification and the need for regular training to relevant stakeholders.⁴⁴ Over recent years a number of trainings have been organized for relevant stakeholders⁴⁵ whilst a Malta-specific set of indicators have also been drafted.⁴⁶ No information is available on whether child specific indicators or sets of indicators specifically targeted at the identification of child trafficking have been created. In its report GRETA explicitly urged the Maltese authorities to take further steps to ensure that national action to combat human trafficking is comprehensive, in particular by, inter alia, adopting a proactive approach to detecting child trafficking.⁴⁷

The Commissioner for Children,⁴⁸ responsible for the promotion of children's rights in Malta, is not represented on the Monitoring Committee of the stakeholder taskforce and has not carried out anti-trafficking initiatives of its own. The Maltese authorities have been criticized for the lack of involvement of civil society stakeholders in the development, implementation and evaluation of counter-trafficking policies and measures.⁴⁹

Beyond this, Malta also has a missing children hotline (116) operational since the end of 2010 that might also be relevant in the context of child trafficking. The number is assigned to the Malta police force. Moreover, Aġenzija Appoġġ also manages helpline 179 (run by a number of professionally trained volunteers) that covers human trafficking as an issue.⁵⁰ Under the Be Smart Online⁵¹ initiative, 179 is also the helpline for reporting issues of abuse of children over the internet, which is an issue of particular relevance in the context of child trafficking. Both these hotlines can provide valuable opportunities for trafficked children to raise alert of their situation and provide the system with a warning system. Greater awareness of these services is however required if they are to have their desired impact.

⁴⁴ See GRETA Report, para 107

⁴⁵ See GRETA Report para 67-71

⁴⁶ Copy of the indicators available with the author.

⁴⁷ GRETA Report, para 65

⁴⁸ See the website of the Commissioner for Children at <http://www.tfal.org.mt/aboutus.aspx?lid=1>

⁴⁹ See: various TIP Reports, E-NOTES and GRETA Report

⁵⁰ For more information about these services visit: <http://www.kidsmalta.com/view.aspx?n=179> or https://secure3.gov.mt/socialpolicy/family/fsws/appogg/appogg_socio_legal/intake_spl

⁵¹ See <http://www.besmartonline.org.mt/>

Overall Assessment

General assessments of counter-trafficking efforts in Malta are limited. The only regular assessment of Malta's efforts is the US TIP Reports. Figure 1 below highlights how Malta has been ranked annually since it started appearing in the report in 2006.⁵²

Malta's efforts are also subject to scrutiny by GRETA. In its first report GRETA (2013) noted a number of important developments highlighting Malta's efforts in meeting the requirements of the Council of Europe Convention but identified a number of concerns that need to be addressed, including: the development of partnerships with NGOs, improvement of assistance and support provisions, measures to ensure risk assessment and safe return, information on remedies including compensation, and the need to ensure the non-criminalization of trafficked persons.

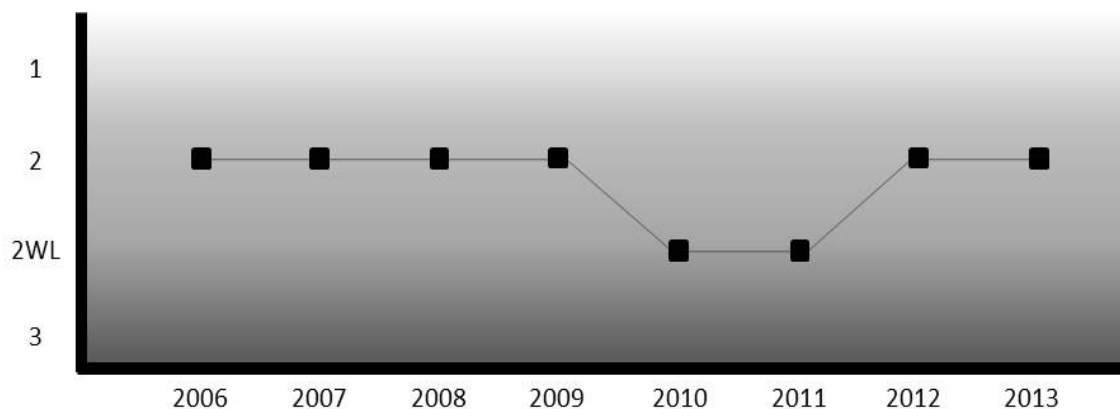


Figure 1 - Malta's position in the US-TIP Report between 2006 to 2013

The only NGO assessment of counter-trafficking measures is the 2010 E-Notes report. The report highlighted the lack of indicators, the very basic policy and institutional framework and the dearth of prevention activities as issues of particular concern reflecting on how human trafficking was a relatively new issue on the Maltese policy agenda at the time. This assessment has now in part been superseded by developments occurring in the last three years that have fulfilled many of the recommendations made in the assessment, not least the adoption of a national action plan against racism. Other treaty bodies including the Committee on the Rights of the Child and the Committee on the Elimination of all forms of Discrimination against Women have both raised concerns about trafficking in Malta.

⁵² The WL in the diagram refers to Watch List.

GRETA, E-NOTES and the TIP Reports highlight a lack of preventive measures including awareness raising activities.

Identification of the main profiles of children at risk of trafficking

The limited research available identifies children as being at risk of trafficking. Maltese children are identified as vulnerable to internal and international trafficking primarily in the sex industry.⁵³ Migrant children (read: asylum seeking children) especially unaccompanied minors, are vulnerable to trafficking to, through and from Malta. Whilst no quantitative vulnerability assessments have been carried out, existing literature highlights these communities as specifically vulnerable.

Vulnerability of **unaccompanied minors** to trafficking has been highlighted inter alia by aditus and JRS Malta in their submissions relating to a National Children's Policy. They expressed concern regarding the vulnerability of migrant children, and in particular unaccompanied minors upon release from detention and when travelling abroad alone.⁵⁴ The vulnerability of migrant children⁵⁴ is also noted by the US TIP Report 2010.

Identification of critical factors in the national context

The critical factors in the national context are the lack of attention being given to child trafficking, and a failure to recognise the possibility that this is a real issue affecting children in Malta. Partly as a result of the lack of identified cases of child trafficking, this is not a priority policy issue and has received little attention from the relevant stakeholders. In turn, such lack of attention may result in a failure to invest the required resources in anti-child-trafficking efforts that in turn will mean less identified victims. This creates a catch-22 situation.

Moreover, children's rights advocates are not included within any of the institutional frameworks set up in the context of trafficking – they are not represented on the Monitoring Committee nor do they participate on the stakeholder taskforce. The Commissioner for Children has not carried out any activities relating to trafficking, as reflected in the various annual reports of the office.⁵⁵ Related to this is the failure of the Maltese policy framework to mainstream child trafficking issues into other relevant policy areas including National Action Plans on Social Inclusion and the

⁵³ See for instance: various US Department of State TIP Reports

⁵⁴ JRS Malta and Aditus, *Joint submissions on the draft National Children's Policy* (2012)

⁵⁵ See the various Annual Reports published by the office.

National Children's policy despite recommendations in this regard put forward by NGOs.

Awareness of issues of child trafficking and services available remain critically weak. Research published by the European Commission found that 95% of Maltese thought the missing children hotline service was very or fairly useful but only 36% of respondents knew that the service existed.⁵⁶ According to the same research, 69% of Maltese respondents do not think that people receive adequate information about these helplines. Awareness of the 179 helpline is likely to be higher although no statistics are available in this regard.

There are no children specific shelters (again explained by the lack of identified cases) aimed at assisting and protecting children who have been or are at risk of being trafficking. No trafficking specific shelters exist in Malta and trafficked persons are housed in shelters set up for domestic violence victims.

More generally the continued association drawn in public and political discourse and literature between trafficking and irregular migration⁵⁷ leaves negative repercussions, albeit difficult to quantify, on anti-trafficking efforts and measures and more specifically on how the system identifies, views and reacts to persons vulnerable to trafficking. Whilst children are more likely to be given the benefit of the doubt in this regard, this is not always the case and such overlaps in approaches must be curtailed.

Identification of possible mitigating factors of the territories

It is critical to note that no child trafficking cases have yet been identified in Malta and this in part explains (albeit not justifying) the lack of focus on the issue at the policy level. It must be ensured that the possibility of and vulnerabilities to child trafficking are acknowledged, assessed and acted upon by all the relevant stakeholders.

The children's rights framework currently available provides opportunities in this regard, but more needs to be done to ensure applicability and specialized support and services in the anti-trafficking area. The Office of the Commissioner for Children has been active on the issue of child labour and a number of positive legal

⁵⁶ See European Commission, 'Eurobarometer: harmonised numbers for services of social value' See also: <https://ec.europa.eu/digital-agenda/en/116-european-phone-numbers-malta>

⁵⁷ As noted above, general discourse about irregular migration has tended to confuse terms like smuggling and trafficking. The use of the term trafficking to refer to the arrival of irregular migrants is one such instance.

developments can be noted in this regard including the inclusion of the prohibition of child labour through the Maltese criminal code in 2010.

Malta is a party to the Convention on the Rights of the Child, and as such has incorporated the principle of the best interest of the child into its legislation. The linking of child trafficking to the Children and Young Persons (Care Order) Act provides legal opportunities for the protection of trafficked children. Moreover, child migrants and in particular unaccompanied minors are considered as vulnerable under national law.⁵⁸ Unaccompanied minors are issued a care order and housed in specialised centres mitigating some of their general and trafficking vulnerabilities.

Conclusions

The lack of identified cases of child trafficking in part explains the failure to actively engage with the issue on a policy level but this, in turn, creates a vicious cycle whereby resources are not invested making identification of cases less likely. The issue needs to be further mainstreamed into broader child protection efforts in Malta and its possibility and reality must be acknowledged if effective measures are to be taken to prevent and curb it. Ongoing assessments of anti-trafficking efforts are required in order to assess impact and inform future policy direction.

Policy Recommendations

1. Acknowledge the possibility of child trafficking and adapt existing measures to address the child specific manifestations of trafficking.
2. Further develop the policy and institutional framework to combat trafficking and specifically child trafficking. In particular, ensure that children's rights organizations are involved in all aspects of policy development, implementation and evaluation.
3. Identify the capacity needs and develop specific training measures aimed at the identification of and care for trafficked children.
4. Ensure coherence between various policy areas including anti-trafficking, migration and children's policies.
5. Implement without delay recommendations put forward by GRETA and other international bodies.

Research Recommendations:

⁵⁸ See Article 14 of the Reception of Asylum Seekers [Minimum Standards] Regulations

Literature review on population(s) at risk of (child) trafficking in Malta

1. Develop the knowledge base on child trafficking in Malta including both the vulnerability of residents in Malta to trafficking and children trafficked into Malta.
2. Conduct in depth quantitative and qualitative research into communities vulnerable to trafficking in Malta. Such vulnerability should address trafficking for all modes of exploitation
3. Carry out in depth analysis of Malta's policies and actions on child trafficking against the child specific provisions included in international and regional anti-trafficking instruments.
4. Ensure that research carried out informs the development of policies and measures.

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