



Performance Audit

Dealing with Asylum Applications

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List of Abbreviations

AFM	Armed Forces of Malta
AVR-R	Assisted Voluntary Return and Reintegration
AWAS	Agency for the Welfare of Asylum Seekers
EASO	European Asylum Support Office
EC	European Commission
EU	European Union
COI	Country of Origin Information
GDP	Gross Domestic Product
MEEF	Ministry of Education, Employment and the Family
MFSS	Ministry for the Family and Social Solidarity
MJHA	Ministry for Justice and Home Affairs
MPF	Malta Police Force
NGO	Non-Governmental Organisation
ORC	Office of the Refugee Commissioner
PQ	Preliminary Questionnaire
RAB	Refugee Appeals Board
TCN	Third Country National
TCNU	Third Country National Unit
THPN	Temporary Humanitarian Protection - New
UNHCR	United Nations High Commissioner for Refugees

Glossary

Application for asylum	An application made by a third country national or stateless person that can be understood to seek refugee status or subsidiary protection status.
Asylum seeker/applicant for asylum	A third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken by the Commissioner or, if decision is appealed, the Refugee Appeals Board (Source: Refugees Act Cap. 420).
Beneficiary of subsidiary protection	A third country national or a stateless person who does not qualify for refugee protection but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country (Source: Refugees Act Cap. 420).
Dar Project	A comprehensive return programme assisting asylum seekers to voluntarily return to their country of origin, through training and grants to enable business start-up.
International protection	Relates to the two EU recognized forms of protection, namely the Refugee Status (Geneva Convention) and the Subsidiary Protection (EU Qualifications Directive).
Irregular immigrant	A person without legal status in a transit or host country owing to illegal entry or the expiry of his/her visa.
Irregular migration	The movement of a person to a new place of residence or transit using irregular or illegal means without valid documents or carrying false documents.
Refugee status	A third country national who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Source: Refugees Act Cap. 420).
Serious harm	Relates to: (a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence on situations of international or internal armed conflict (Source: Refugees Act Cap. 420).
Single procedure	The procedure adopted by the Office of the Refugee Commissioner to examine whether the applicant fulfils the criteria to be recognised as a refugee according to law. In the case of those who are not found eligible for refugee protection, the Office proceeds to a further examination of whether the applicant fulfils the criteria for subsidiary protection according to Maltese law.
Subsidiary protection	The recognition of a third country national or a stateless person as a person eligible for subsidiary protection owing to serious harm (Source: Refugee Act Cap. 420).

Temporary humanitarian protection Temporary humanitarian protection is a form of protection granted to applicants who do not satisfy the conditions for refugee status or subsidiary protection as laid down in the Directive 2004/83/EC and the corresponding provisions of the Refugees Act and Procedural Standards Regulations, but who nonetheless should not be returned in view of humanitarian considerations.

Temporary humanitarian protection was introduced in the form of a policy, rather than legislation. This affords the Refugee Commissioner a greater degree of discretion and flexibility, thus ensuring that this form of protection can be granted whenever it is considered necessary, and that particular cases which may arise, but which cannot be foreseen, may however, benefit from it.

Third country national Any person who is not a citizen of the European Union within the meaning of Article 17(1) of the EC Treaty, including stateless persons.

Unaccompanied minor A person below the age of 18 who arrives in Malta unaccompanied by an adult responsible for him/her whether by law or by custom, for as long as he/she is not effectively taken into the care of such person and includes any minor who is left unaccompanied after he/she entered Malta (Source: Refugees Act, Cap. 420).



Courtesy of Justin Gatt/AFM Press Office

Executive Summary

Executive Summary

Introduction

1. The National Audit Office (NAO) has conducted the performance audit: “Dealing with Asylum Applications”. This report mainly examines whether the management of asylum applications is being carried out in an efficient and effective manner. Unless otherwise stated, this report primarily focuses on the period 2006 to 2010.

2. The main focus of this study relates to the operations of the Office of the Refugee Commissioner (ORC) and the Refugee Appeals Board (RAB) in processing asylum applications and appeals respectively as well as the Third Country Nationals Unit (TCNU) within the Ministry for Justice and Home Affairs (MJHA) which is responsible for facilitating the coordination of the Ministry’s objectives with various stakeholders. The study sought to determine the extent to which the management of asylum applications and appeals is efficient and effective. The criteria adopted with regards to the terms efficiency and effectiveness encompassed processing times, cost efficiency and the safeguarding of Government’s as well as the asylum seekers’ interests.

3. In view of the foregoing, this audit sought to evaluate the extent to which the:

- ORC has the appropriate mechanisms in place to ensure that applicants receive the right decisions;
- asylum applications decided by the ORC and applicants’ appeals decided by the RAB are being concluded in a timely manner and in an efficient way; and
- rights of applicants are being respected throughout the asylum application and appeals processes.

The prevailing situation

4. Most of the irregular immigrants arriving in Malta apply for asylum requesting international protection. In

accordance with the Maltese Immigration Act, irregular immigrants are kept in detention either up to defined periods established by policies or until such time that refugee status or other forms of protection is granted. An exception to detention regime is granted by way of policy to vulnerable persons, namely minors, pregnant women, the disabled, or those enduring other humanitarian circumstances. Once an international protection is granted, the asylum seeker has the right to remain in Malta for a prescribed period, the right to a travel document, employment opportunities, social welfare, accommodation, integration programmes, as well as family reunification.

5. Whilst acknowledging the relative humanitarian concerns, Malta faces a number of challenges in this regard due especially to its small geographical size, population density, and dealing with all the problems, including costs, related to the phenomenon of irregular migration.

6. The NAO sought to estimate the expenditure incurred to process asylum applications and the relative appeals. Since data was not centralised and information in this regard is fragmented, the exercise proved to be laborious and complex. In some cases, this exercise necessitated that the NAO retrieves the required information from source documentation.

7. Malta incurred an expenditure of around €17.9 million in 2009 and €12.5 million in 2010 to guarantee protection and grant all the entitled rights to asylum seekers. This expenditure includes the administrative costs incurred directly in the processing of asylum applications and appeals, as well as that relating to the relative professional services (mainly lawyers and interpreters). Additionally, the above expenses include the costs incurred for the provision of accommodation, food, medical and educational services during the asylum application and appeals procedures. This expenditure excludes search and rescue operations as this report primarily focused on the processing of asylum applications and relative appeals, since these procedures commence upon asylum seekers’

arrival in Malta. Moreover, since the relative information was not available, the expenditure excludes the costs of hospitalisation and social benefits dispensed by the Department of Social Security.

8. In 2009 and 2010, approximately €615,000 and €752,000 of the above costs related to the processing of asylum applications and the hearing of appeals. The remaining cost was associated with the asylum seekers' accommodation. It is to be noted, that such costs have an inbuilt contingency element to cater for the irregular influx of asylum seekers. Most of this contingency element relates to fixed costs to cater for a defined capacity of asylum seekers annually, although such a capacity has only been informally established.

9. During the period 2006 to 2010 the ORC decided 7,860 asylum applications. Following the processing of applications, the ORC can grant refugee status, subsidiary humanitarian status, temporary humanitarian protection or reject the application. In the latter case, action is then initiated by the Malta Police Force (MPF) to repatriate the applicant, pending any appeals. Over the period indicated, 42 per cent of all decided applications for asylum were rejected, while some form of protection was granted to the remaining share.

10. In addition to the new asylum applications, the ORC concluded 555 temporary humanitarian protection – new (THPN) cases in 2010. These cases generally necessitate that asylum seekers who are not granted international protection are assessed against current policies for THPN which includes that the person has been residing in Malta for more than four years.

The processing of asylum applications by the Office of the Refugee Commissioner

11. During 2006 to 2010 the ORC received 7,359 asylum seeker applications and reconsidered 555 THPNs. Generally, there was an increasing trend of asylum seeker applications for the period 2006 to 2008 whilst these decreased in the following years. However, it is to be noted that this decline has now been reversed due to the crisis in North Africa.

12. The fully independent processing of an asylum application by the Refugee Commissioner does not have a specific timeframe set by law stating the duration within which an application is decided. However, the ORC aims to conclude most cases within an average of six months. The processing time taken by the ORC may have a bearing upon the asylum seeker length of stay in detention centres in case of positive decisions.

13. Generally, the ORC managed to improve its rate of processing asylum applications to the extent that on

average applications were adjudicated within six months. However, as at end 2010, it was only adjudicating 68 per cent of the asylum applications within this period. This nonetheless constitutes a marked improvement over time since, in 2006, 38 per cent of applications were closed within this target.

14. The following were considered to have a significant bearing on the asylum application processing time:

- i. In addition to the regular workload of asylum applications the ORC processed 555 THPNs. The ORC was in a position to process such numbers in view of the low influx of asylum seekers in 2010.
- ii. During the period 2006 to 2010, 377 applications were deemed to be withdrawn due to sustained non-cooperation by the applicant. Such circumstances expend the ORC's resources unnecessarily.
- iii. In some cases a longer than average delay may be experienced. This occurs when the ORC exercises its legally empowered discretion to expedite applications for nationalities that would *prima facie* be eligible for protection.
- iv. Up to early 2009, the ORC's resources were insufficient to deal with the arrival rate of asylum seekers. Consequently, this led to an increase in the number of outstanding applications. The situation began to stabilise in 2008 when the ORC employed more staff and re-organised its business processes. However, such a complement was still insufficient to deal with the accumulated backlog and the influx of illegal immigrants during the following year.
- v. Lack of cooperation by the applicants themselves has also contributed to delays in the asylum application process. The large majority of asylum seekers do not produce any official documentation as proof of their identity or nationality. In other cases, processing time is increased due to the applicant having absconded from the detention centre for a considerable period. Moreover, the ORC is not in a position to contact those asylum seekers who changed their address without informing the competent authorities. Furthermore, a few asylum seekers for some reason or other subsequently decide to abandon their claim for refugee status after the application process has commenced or they had submitted invalid applications. Official data relating to the foregoing is very limited.
- vi. Case complexity is another factor contributing to an increase in the asylum seekers application processing time. During application processing, the ORC can face various obstacles which hinder the Office from



pronouncing a decision in a more expedient manner. Such circumstances, generally, result in delays in holding interviews with asylum seekers. Moreover, some cases demand more intensive research to verify applicants' circumstances to conclude their application. Additionally, some cases are prolonged for a considerable period of time due to processing interruptions caused by the non-cooperation of applicants. Processing of such cases, referred to as subsequent applications, is resumed at the Refugee Commissioner's discretion.

Dealing with asylum appeals

15. Asylum seekers, whose application for refugee status is rejected by the ORC or who have been granted subsidiary protection status but not refugee status, may appeal against such decision in writing to the RAB. Asylum seekers having recourse to the RAB are entitled to free legal aid. The appointed lawyer presents a detailed submission to the RAB, pleading the applicant's case.

16. During 2006 to 2010, the RAB received 2,957 appeal applications. It is to be noted that 560 cases have been considered withdrawn by Maltese Authorities. As at end 2010, the number of outstanding cases at the RAB amounted to 727.

17. This audit has shown that in 2009 the average time of concluded cases improved over the previous year. During this year, on average, the process from the submission of the appeals application to the RAB's decision took six months. However, mainly due to the complexity of cases dealt with in 2010 and problems to appoint legal aides, the average total duration of the appeals process increased to over 400 days.

18. Since 2008, the number of outstanding appeal cases has declined over time. However, the appeals process is negatively affected by the inability to ensure that legal aid reports – outlining the appellant's reasons for the RAB's consideration – are submitted in a timely manner. This situation seriously hindered, and in some cases prohibited, the conclusion of the appeals process within the six month target. Additionally, on two occasions the Board was constrained to cease its operations since all the outstanding cases were awaiting the submission of legal reports from lawyers.

19. The delay in the submission of legal reports is indicative that the lawyers engaged to assist appellants are not allocating the appropriate priority to asylum cases. On average lawyers were submitting their legal missives in 48 days which implies an average of two legal reports per month. This rate of reporting contrasts significantly with the TCNU's expectations, where it was assumed that each of the engaged lawyers would on average submit ten legal reports per month.

20. Additionally, the TCNU's management control over the provision of free legal aid is restricted since the engaged lawyers are not contractually bound. In such circumstances it is difficult for the TCNU to enforce report submission deadlines.

21. Following a negative appeal decision, appellants who were not granted any form of international protection are to be repatriated to their respective country of origin. Government policy in this regard is to encourage voluntary return.

22. Although repatriation was not within the scope of the audit, the limited work carried out in this area has



Courtesy of Clifton Fenech/DOI

shown that, for some reason or other, a substantial number of rejected asylum applicants, still remain in Malta. The following are considered to contribute to this situation:

- The administrative capacity required to ensure an effective procedures is not fully in place.
- Malta lacks a specialised-repatriation coordinating unit, involving all the major stakeholders.
- Malta does not have diplomatic relations with the countries of origins of many asylum seekers, which renders the determination of nationality and documentations issuance more problematic.

23. Delays or failure in repatriating appellants who were not granted any form of protection results in Government incurring additional costs and stretching Malta's asylum infrastructure even further.

Respecting the rights of asylum seekers during the asylum application process

24. The rights of asylum seekers during the processing of their application include that during any interview by the ORC officials, they are entitled to an interpreter, free services of a legal adviser during the appeals process, and they can also consult the local representative of the United Nations High Commissioner for Refugees (UNHCR).

25. The NAO audit revealed that adequate mechanisms are in place to ensure that asylum applicants are fully aware of their rights and entitlements in accordance with the applicable legal framework. Information sessions for this purpose are provided by the ORC soon after the asylum application is tendered.

Moreover, during the course of this audit, the NAO did not find any documentation or evidence relating to breaches or a lack of respect to such rights by Maltese Authorities.

Overall Conclusions

26. This audit sought to determine the extent to which the asylum applications process was managed efficiently in order to safeguard the interests of both Government as well as the applicants. Consequently, the efficiency of dealing with asylum applications is of critical importance due to the humanitarian aspects involved which must be addressed in accordance with Maltese and international law. Moreover, the asylum process is a costly endeavour which incorporates a contingent element to cater for the irregular influxes of asylum seekers.

27. This audit has shown that significant progress has been registered since the first major influx of asylum seekers arrived in Malta in 2002 when the ORC and RAB were set up under the Refugees Act (prior to this date all asylum claims were decided by the UNHCR office in Rome). Not only have these two fully autonomous entities been set up and eventually strengthened with the necessary resources, but also process reengineering has led to significant efficiency gains. Similarly, the RAB has, in general, concluded more cases and decreased the list of outstanding applications. This audit has also shown that this study did not encounter any evidence where the rights of asylum applicants were encroached upon by the competent authorities during the processing of asylum applications. The recent report by the Commissioner for the Human Rights of the Council of Europe also acknowledged the progress made in several aspects of the asylum system in recent years in Malta.

28. However, more needs to be done to ensure that asylum cases are concluded in a shorter timeframe. This audit has indicated various elements which impinge negatively on the efficiency of the asylum applications regulation over the provision of free legal aid. Inefficiencies also resulted due to the lack of cooperation by the asylum seekers themselves, namely, through their failure to produce documentation, thus making it extremely difficult to establish nationality, no shows for appointments and the non-compliance with the obligation to inform the Maltese Authorities of their place of residence once released from detention centres.

29. Further problems are encountered to repatriate applicants who are not granted asylum. Although repatriation was not within the scope of this audit, it is evident that a number of asylum seekers continue to reside in Malta following the negative outcome of their appeal. Whilst acknowledging the complex problems involved, namely the need to establish nationality and consequently to obtain a valid travel document from respective country of origin, it is a fact that the non-repatriation of applicants who were not granted asylum results in considerable extra costs to Government and stretches even further the asylum infrastructure. Moreover, this situation clearly illustrates that national and international efforts in this regards must be enhanced to ensure that decisions of rejected asylum claims reached through a fair and costly process are expediently implemented.

Recommendations

30. In view of the foregoing, the NAO proposes the following recommendations:

- i. Consideration is given to the drafting of official policy determining Malta's capacity for processing asylum applications. This will ensure that the appropriate funding and resources are directed towards the competent authorities to ascertain that the administrative capacity and related infrastructure is constantly in place to enable the processing of a minimum number of asylum applications to be dealt with. The minimum number determined would be based on recent asylum application trends and the level of inbuilt contingency mechanisms.
- ii. Efficiency and output levels relating to the various processes involved in dealing with asylum applications are sustained, and where possible improved upon. This can be achieved through the periodical review and enhancements of business processes employed and staff output levels. Consequently this will ensure that the opportunity exists for more cases to be concluded within the six month policy benchmark determined by the ORC and the RAB.

- iii. The TCNU considers that lawyers engaged to provide appellants with free legal aid in the appeals process be contractually bound. Such an undertaking is to stipulate the terms of engagement, as well as the number and timeliness of cases lawyers will be expected to conclude within a predefined period.
- iv. Sustained non-cooperation with Maltese Authorities and non-compliance with the relative obligations and conditions by asylum seekers should be considered as an implicit withdrawal of application. Some initiatives in this regard have recently been taken by the TCNU. However, it is proposed that a formal policy document is drawn up to ascertain administrative clarity and consistency.
- v. Efforts to repatriate asylum seekers whose application was rejected following due process be reviewed and enhanced. This will necessitate a concerted effort by various Maltese Authorities, their relevant international counterparts as well as European Union institutions. Assistance to repatriation efforts could also be sought through diplomatic cooperation with states that have close contacts with those countries from which most rejected asylum seekers originate.
- vi. Repatriation efforts should consider the establishment of a specialised coordinating unit, involving all the major stakeholders in the repatriation process, namely the MJHA, Ministry for Foreign Affairs and MPF. This unit would be in a better position to implement Government's repatriation policy and ensures that the repatriation process is carried out more expediently and in a more coordinated way. Such a unit is to be appropriately resourced and have access to the relative expertise in this area.
- vii. Consideration is to be given to integrate all information relating to asylum seekers, namely that relating to costs, the processing of applications and place of residence. Such information would strengthen the robustness of the relative information as well as enable Maltese Authorities to exercise better management control. Having an integrated and comprehensive database, including all necessary information related to an irregular immigrant since landing on Maltese shores, would surely be of considerable help to all entities working in this area. Otherwise the present fragmented, and often inconsistent, information system would render efforts to enhance more efficiency and effectiveness in the area of asylum management and control even more difficult if not outright impossible.

Chapter 1

Introduction



Chapter 1 – Introduction

1.1 Introduction

1.1.1 The National Audit Office (NAO) has conducted the performance audit: “Dealing with Asylum Applications”. This report mainly examines whether the management of asylum applications is being carried out in an efficient and effective manner. Unless otherwise stated, this report primarily focuses on the period 2006 to 2010.

1.1.2 Irregular migration refers to the movement of a person to a new place of residence or transit using irregular or illegal means, without valid personal and travelling documents or carrying false documents. Malta normally faces three types of irregular immigrants, namely those who:

- enter legally but remain beyond their authorised stay;
- arrive without the proper documentation; or
- arrive in an irregular manner on our shores either voluntarily or after finding themselves in difficulty at sea, thus very often necessitating search and rescue operations by the Armed Forces of Malta (AFM).

1.1.3 The scope of this audit covered the third category of irregular immigrants. Therefore, the NAO sought to analyse the processes of asylum applications and the relevant appeals.

1.2 Background

1.2.1 Irregular immigration, towards the European continent - including Malta, one of the EU’s border states - has increased considerably over the past few years. In fact, over recent years Malta has seen an influx of irregular migration from the African continent towards the EU which has predominately emerged from the Horn of

Africa, mostly reportedly departing from the Libyan coast. This situation has made irregular immigration in Malta, as well as at EU level, a top priority issue especially in view of the extensive and complex economic, humanitarian and security issues involved.

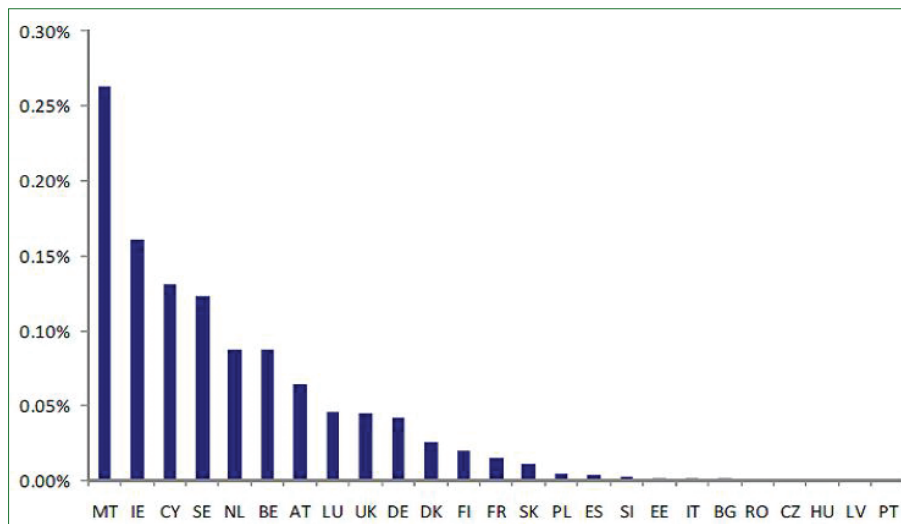
1.2.2 An irregular immigrant escapes from his own country for various reasons. This could be due to fear of persecution because of race, religion, nationality, political opinion, membership in a particular social group or because of some natural disaster. Others migrate for purely economic reasons when they choose to leave their homeland in search of stability and a better future in another country.

1.2.3 Upon landing in a country, irregular immigrants normally request international protection. Across the EU 27 member states there were approximately 1.2 million persons who applied for an asylum application between 2006 and 2010. Table 1, presented on page 16, refers.

1.2.4 Most of the irregular immigrants arriving in Malta apply for asylum requesting international protection. In accordance with the Immigration Act Cap 217 of the Maltese Law, irregular immigrants are kept in detention until the applicants’ status is determined. An exception is granted by way of policy to vulnerable persons, namely minors, pregnant women, the disabled, or those in other humanitarian conditions.

1.2.5 Once international protection is granted, the beneficiary has the right to remain in Malta for a prescribed period, the right to a travel document, employment opportunities, social welfare, accommodation at an open centre, integration programmes, as well as family reunification.

1.2.6 However, whilst acknowledging the humanitarian concerns, Malta faces a number of considerable challenges in this regard due to its small size, very high population

Figure 1 : Total costs as percentage of GDP across the EU countries

Source: European Parliament, 2010. What systems of burden-sharing between member states for the reception of asylum seekers?, p. 82.

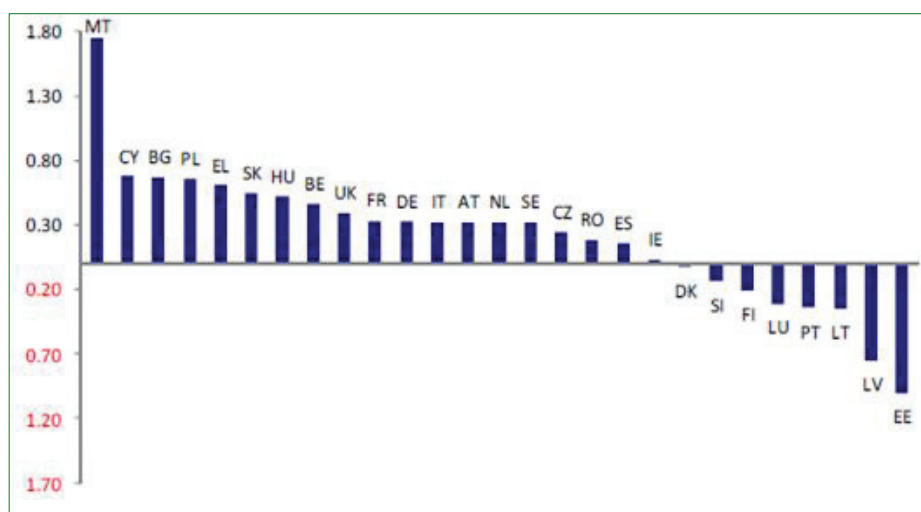
density, and the substantial costs and requirements involved in dealing with asylum seekers.

Problems faced by Malta due to illegal immigration

1.2.7 A report commissioned by the European Parliament's Civil Liberties Committee and published in 2010 reported that during 2007 Malta incurred an expenditure amounting to 0.26 percent of its Gross Domestic Product (GDP) to deal with irregular immigration. This was found to be the highest spending across the EU on a proportional basis. The result was compounded by the fact that Malta, the EU's smallest member state, has the lowest capacity to deal with the problem, based on its population size, population density and GDP per capita. Figure 1 indicates the total costs as percentage of GDP across the EU countries.

1.2.8 The aforementioned report also finds that, due especially to its strategic position at the crossroad between Europe and Africa, Malta has a pressure which is out of proportion when compared to its capacity vis-à-vis other EU countries. Figure 2 illustrates the responsibility index taking into consideration the GDP per capita, population, population density and asylum applications as per EU country.

1.2.9 Additionally, official documentation further emphasises Malta's disproportional burden in dealing with irregular immigration. In 2008 and 2009, Malta registered the highest asylum applications per one thousand inhabitants amongst the Mediterranean EU Member States. During these years Malta had around six asylum applications per one thousand inhabitants. In 2010, this decreased to less than one asylum application

Figure 2 : Responsibility index across the EU-27 countries

Source: European Parliament, 2010. What systems of burden-sharing between member states for the reception of asylum seekers?, p. 68.

Table 1 : Asylum applications (2006 to 2010)

Country	Quantity of asylum applications					Asylum applications per thousand inhabitants				
	2006	2007	2008	2009	2010	2006	2007	2008	2009	2010
EU-27	197,415	222,640	252,950	257,605	257,815	0.40	0.45	0.51	0.52	0.51
Malta	1,270	1,380	2,605	2,385	175	3.14	3.38	6.35	5.77	0.42
Greece	12,265	25,115	19,885	15,925	10,275	1.10	2.25	1.77	1.41	0.91
France	30,750	29,160	41,845	47,625	51,595	0.49	0.46	0.65	0.74	0.80
Italy	10,350	14,055	30,145	17,470	10,050	0.18	0.24	0.51	0.29	0.17
Slovenia	500	370	260	200	245	0.25	0.18	0.13	0.10	0.12
Spain	5,295	7,195	4,515	3,005	2,740	0.12	0.16	0.10	0.07	0.06
Cyprus	4,540	6,780	Not available	Not available	2,875	5.92	8.71	Not available	Not available	3.58

Sources: Eurostat, 2010. Europe in figures – Eurostat yearbook 2010, p. 201.

Eurostat, 2009 & 2010. Population and social conditions, p. 2.

per one thousand inhabitants. This change resulted from a sudden decrease in the number of boats arriving from Libya.¹

1.2.10 Table 1, shows that, during the period 2006 to 2010, 7,815 persons applied for asylum in Malta.² During the same period, there were 1.2 million persons who applied for an asylum application within the EU.

1.2.11 The EU Interior Ministers meeting held in Sweden acknowledged that the influx of illegal migration has caused a major strain on the reception services in Malta. The meeting noted that more efforts needed to be made to alleviate the stress on Mediterranean countries. This meeting also stressed the importance of creating a common European asylum system, which would mean increasing solidarity between member states and more shared responsibility.³

The processing of asylum applications

1.2.12 The Refugee Act, Cap 420 of the Maltese Law (hereafter referred to as Refugees Act), provides for the establishment of the fully-independent Office of the Refugee Commissioner (ORC) as the entity responsible for receiving, processing, and determining applications for asylum. In fulfilling its duties the ORC is also bound to assume the responsibilities and obligations arising

from International Conventions and other European Directives.

1.2.13 An asylum applicant can lodge an appeal against the decision provided by the ORC with the also fully autonomous Refugee Appeals Board (RAB). The legal framework of the RAB is stipulated by the Refugees Act. This Board has the power to hear and determine appeals against a recommendation by the Commissioner of the Office of the Refugee.

1.2.14 In addition to the above legal framework, the Ministry for Justice and Home Affairs (MJHA) together with the Ministry for the Family and Social Solidarity (MFSS) had issued a policy document entitled “Irregular Immigrants, Refugees and Integration” which lays down the rights and obligations of both the host country as well as asylum seekers.

1.2.15 Malta adopts the single procedure model for the processing of asylum applications. This entails that the Commissioner at ORC examines whether an asylum applicant qualifies for refugee status or not. If a negative outcome ensues, the ORC then assesses the application to determine if the applicant qualifies for subsidiary protection. If the latter status is not deemed appropriate, the ORC may then grant the applicant a temporary humanitarian protection. This is only considered if the applicant does not qualify for either form of the EU harmonised status.⁴

¹ Source: Eurostat, 5/2011. *Asylum applicants and first instance decisions on asylum applications in 2010*.

² Asylum statistics referred to NAO indicate that there were 7,359 asylum applications during the period 2006 to 2010. Conclusions and findings presented in this report are based on this figure. The variance between this figure and that quoted in Table 1 is mainly attributed to the time period within which the data was collated.

³ “EU-member states debate illegal immigration”, DW-World.de, 16 July 2009. Available at: <http://www.dw-world.de/dw/article/0,,4494293,00.html> [Accessed 14 December 2010].

⁴ Source: European Migration Network, 2009. *The practice in Malta concerning the granting of non-EU harmonised protection statuses - Malta*, p. 2.

Table 2 : Decisions by the ORC (2006 to 2010)

Decision type	Year of decisions					
	2006	2007	2008	2009	2010	2006 to 2010
Granted refugee status	26	9	19	20	46	120
Granted subsidiary protection	552	623	1,395	1,677	166	4,413
Granted temporary humanitarian protection	0	1	7	10	11	29
Rejections	666	330	1,277	893	132	3,298
Total decisions by ORC	1,244	963	2,698	2,600	355	7,860

Source: ORC.

ORC decisions

1.2.16 During the period 2006 to 2010 the ORC decided 7,860 asylum applications. Following the processing of applications the ORC can grant refugee status, subsidiary humanitarian status, temporary humanitarian protection or reject the application. In the latter case, action is then initiated by the Malta Police Force (MPF) to repatriate the applicant if no appeal is lodged. The different levels of status granted by the ORC are explained in this report's Glossary. Table 2 refers.

1.2.17 In 42 percent of all decided applications for the period, the application for asylum was rejected, whilst some form of protection was granted to the remaining share.

1.2.18 In 2010, out of a total of 355 decisions pronounced by the ORC, 46 (13 percent) were granted refugee status. This is significantly higher than the proportion of asylum seekers granted refugee status in previous years that amounted to one per cent of all decisions. Moreover, in 132 (37.2 percent) cases, the application for asylum was rejected by the ORC, whilst assistance in the form of subsidiary or temporary humanitarian protection was granted to the remaining 177 applications (49.8 percent). This constitutes a decrease of 15 percent over the previous year.

1.2.19 In addition to the ORC decisions indicated in Table 2, the Refugee Commissioner processed a further 555 applications which were granted temporary humanitarian protection (new) - THPN. These applications pertain to asylum applicants who have resided in Malta for over four years following their rejection of the original application.

Costs of dealing with asylum applications

1.2.20 During the course of this performance audit, the NAO tried to estimate, in a meaningful and realistic manner, all the costs incurred by the Maltese Government in respect of processing an asylum seeker application. In order to arrive at the overall cost of processing an asylum seeker

application, the following four costs were determined in respect of 2009 and 2010:

- The average cost per ORC concluded application.
- The average cost per RAB concluded appeals.
- The average cost per day for detaining an asylum seeker in a closed centre.
- The average cost per day for accommodating an asylum seeker/refugee in an open centre.

1.2.21 These four cost components are outlined in Table 3. Further details regarding the methodology used and the relative explanations for costs in respect of 2009 are presented in Appendix I.

1.2.22 Table 3 shows that Malta incurred an expenditure of around €17.9 million and €12.5 million in 2009 and 2010 respectively to guarantee protection and grant all the entitled rights to asylum seekers. This expenditure includes the administrative costs incurred directly in the processing of asylum applications and appeals, as well as that relating to the relative professional services (mainly lawyers and interpreters). Additionally, these expenses include the costs incurred for the provision of accommodation, food, medical and educational services during the asylum application and appeals procedures. This expenditure excludes search and rescue operations as this report primarily focused on the processing of asylum applications and relative appeals, since these procedures commence upon asylum seekers' arrival in Malta. Moreover, since the relative information was not available, the expenditure excludes the costs of hospitalization and social benefits dispensed by the Department of Social Security.

1.2.23 In 2010, approximately €752,000 related to the processing of asylum applications and the hearing of appeals. The remaining costs were associated with the asylum seekers' accommodation and maintenance, which includes the provision of food, health care, and education. This amounted to an expenditure of approximately €6.8 million and €5 million on accommodation for closed and open centres respectively.



Table 3 : Total cost of processing asylum applications (2009 and 2010)

	2009			2010		
	Total cost (€)	Percentage of total cost	Average cost (€)	Total cost (€)	Percentage of total cost	Average cost (€)
Processing an asylum application by the ORC	514,127	2.8	197.74	644,482	5.2	708.22 ⁵
Processing appeals	100,694	0.6	243.81	107,361	0.9	338.68
Accommodation of asylum seekers in closed (detention) centres	12,078,726	67.4	22.98	6,751,991	54.2	121.11
Accommodation of asylum seekers in open (reception) centres	5,232,125	29.2	6.54	4,957,054	39.7	5.30
Total	17,925,672	100.0		12,460,888	100.0	

Note: The average cost relates to concluded applications by the ORC, concluded appeals by the RAB, and cost per asylum seeker per day at closed and open centres.

Latest developments related to asylum seekers

1.2.24 Through Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, the EU Commission aims to provide for a single procedure by ensuring the simplification and rationalisation of asylum procedures, facilitating access to examination procedures, enhancing the efficiency of the examination process of applications, improving the quality of asylum decisions, and ensuring access to effective remedy for asylum applicants. The EU Commission made these proposals because there are still significant divergences among national asylum procedures and present rules fall short in preventing administrative errors. These issues, together with the strengthening of cooperation among EU member states, will also be dealt with through the recently inaugurated European Asylum Support Office (EASO).

1.2.25 During the time of writing this report, there were significant developments related to asylum seekers, which would have an impact on Malta. The current political situation and conflicts in North Africa has jeopardised previous arrangements between the European Commission, individual EU member states and Libya. Moreover, the current situation in North Africa raises serious concerns of the possibility of a substantial influx of irregular immigrants.

1.3 Audit focus and objectives

1.3.1 The main focus of this study related to the processing of asylum applications and appeals. The study sought to determine the extent to which the management of asylum applications is efficient and effective. The criteria adopted with regards the terms efficiency and effectiveness encompassed processing times, cost efficiency and the

⁵ In estimating the average costs for processing an asylum application in 2010, the analyses also included the 555 THPN cases referred to in Paragraph 1.2.19.



Courtesy of Reuben Piscopo/DOI

safeguarding of Government's and asylum seekers' interests.

1.3.2 In view of the foregoing, this audit sought to evaluate the extent to which the:

- (a) ORC has the appropriate mechanisms in place to ensure that applicants receive the right decisions;
- (b) asylum applications decided by the ORC and applicants' appeals decided by the RAB are being concluded in a timely manner and in an efficient way; and
- (c) rights of asylum seekers are being respected whilst at the same time safeguarding national interests.

1.4 Audit methodology

1.4.1 Various sources were used in conducting this audit. A literature review of various documents and Governmental entities was undertaken. The key documentation included the Refugees Act and policy information maintained by various entities. A selected bibliography is attached in Appendix II.

1.4.2 Information was also obtained through various meetings conducted with officials of relevant Government entities, namely, the ORC, and the RAB who are responsible for processing the asylum applications and deciding upon appeals respectively and MJHA which is actively involved in the area of asylum. Other entities consulted include the AFM, MPF and the Agency for the Welfare of Asylum Seekers. The data collated was analysed to elicit various information related to the asylum process and respective costs.

1.4.3 Asylum data in Malta is still extremely fragmented if not outright inconsistent in certain instances. Thus, the NAO had to perform a laborious exercise of consulting and retrieving various databases and spreadsheets maintained by the various entities indicated in the preceding paragraph. In many cases, such data was not maintained in accordance to established standards. As far as possible, the NAO carried out integrity checks mainly through reconciling electronic data with source and other manual documentation on a random sample basis.

1.5 Structure of the Report

1.5.1 Chapter 2 seeks to determine the extent to which asylum decisions are reached by the ORC in an efficient manner. Conclusions presented in this Chapter are mainly based on longitudinal analysis of time taken to process applications, case worker efficiency rates and the unit costs incurred in processing applications.

1.5.2 Chapter 3 aims to establish the degree to which the appeals process was carried out efficiently. For this purpose, this Chapter analyses processing time and costs associated with dealing with appeals lodged.

1.5.3 Chapter 4 focuses on the initiatives and mechanisms employed throughout the asylum application and appeals processes to safeguard the rights of asylum seekers and national interests.

1.5.4 The overall conclusion and recommendations emanating from this report are included in the Report's Executive Summary.



Courtesy of the Office of the Refugee Commissioner

Chapter 2

The processing of asylum applications by the Office of the Refugee Commissioner

Chapter 2 – The processing of asylum applications by the Office of the Refugee Commissioner

2.1 Introduction

2.1.1 The Office of the Refugee Commissioner (ORC) aims to decide asylum applications within an average period of six months. This target was attained by 2009. Due to the particular circumstances of 2010, the ORC focused on the more complex cases and procedures to reconsider the granting of temporary humanitarian protection (new) – THPN.

2.1.2 This audit also established that over time the ORC managed to adjudicate over half of the applications submitted within six months. Whilst acknowledging the significant improvements achieved, this implies that further progress is required to enable more applications to be concluded within this period to ascertain that the Government and applicants' interests are appropriately safeguarded.

2.1.3 This Chapter discusses the extent to which asylum applications are processed in an efficient manner in terms of outputs, processing time and costs. The Chapter also outlines that the cost-efficient processing of asylum applications is dependant on a number of factors, namely management, technical and applicant related issues.

Background

2.1.4 The Refugee Act provides the legal and procedural framework relating to refugees and asylum seekers. In 2008, Council Directives 2004/03 EC and 2005/85/EC were transposed into this Act. Consequently, the Refugee Act includes provisions on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection as well as procedures for granting and withdrawing refugee status.

2.1.5 The main provisions of the Refugee Act, which relate to the processing of asylum applications, entail that:

- the asylum seeker completes the asylum application wherein specific personal and case information is provided;
- an ORC case officer is appointed, undertakes the relative preliminary case research and interviews the asylum seeker; and
- a preliminary recommendation on the application is made by the case officer, which is subsequently referred to the Refugee Commissioner for vetting and endorsement purposes.

2.1.6 In addition to these legislative procedures, the ORC also conducts information sessions wherein new asylum applicants are provided with the necessary information regarding the application process, their rights and obligations.

2.1.7 Further to the above legislative requirements, the ORC also implements the Ministry of Justice and Home Affairs (MJHA) administrative procedures relating to the granting of THPN. These procedures stipulate that without prejudice to any previous decisions delivered by the Commissioner for Refugees, a former applicant for international protection may be considered for this type of protection (THPN). A major consideration for the granting of THPN is that applicants would have lodged their application for international protection at least four years prior to the date of the submission of an application for temporary humanitarian protection under the present procedure. Another requirement relates to the provision of evidence that during this period the applicant has been residing in Malta.

2.2 ORC outputs

2.2.1 During 2006 to 2010, the ORC received 7,359 asylum seeker applications and reconsidered 555 THPNs. In addition, 901 asylum seeker applications that were still

Table 4 : ORC workload of asylum applications - by persons (2006 to 2010)⁶

	2006	2007	2008	2009	2010
Brought forward from previous year	901	930	1,682	1,713	215
New asylum applications	1,296	1,739	2,754	1,395	175
THPNs	n/a	n/a	n/a	n/a	555
Total workload for the year	2,197	2,669	4,436	3,108	945
Decisions on asylum applications by ORC	1,244	963	2,698	2,600	355
Decisions on THPNs by ORC	n/a	n/a	n/a	n/a	555
Asylum applications withdrawn	23	24	25	293 ⁷	12
Total concluded applications/THPNs	(1,267)	(987)	(2,723)	(2,893)	(922)
Asylum applications still in process as at end of year	930	1,682	1,713	215	23

Source: ORC.

in progress were brought forward to 2006 from previous years. Table 4 summarises the workload of the ORC for these years. The Table shows an increasing trend of asylum seeker applications for the period 2006 to 2008 whilst these decreased in the following years.

2.2.2 Table 4 shows that since 2009 the ORC managed to significantly decrease the outstanding number of asylum applications. This situation is due to three contributory factors, namely, increases in the staff complement, improvements in the ORC's work practices and procedures as well as a decline in the influx of illegal immigrants in 2010. However, it is to be noted that this declining trend is very likely to be reversed due to the present political crisis in North Africa.

2.2.3 The processing of an asylum application by the Refugee Commissioner does not have a specific timeframe set by law. However, Article 23 of the Council Directive 2005/85/EC encourages Member States to conclude asylum applications in the shortest possible timeframe. Furthermore, Legal Notice 243/2008 states that the Refugee Commissioner shall ensure that, wherever a recommendation cannot be made within six months, the applicant concerned shall either be informed of the delay or receive, upon his request, information on the time frame within which the decision on his application is to be expected. This situation does not constitute an obligation for the Commissioner towards the applicant concerned to take a decision within that timeframe. Nevertheless, the ORC targets to adjudicate asylum applications within an

average of six months. Moreover, the ORC is striving to conclude as many cases as possible within this period.

2.2.4 In cases where asylum seekers are granted refugee status or subsidiary protection status, detention lasts until the decision granting them protection is issued by the Maltese Authorities. Furthermore, if the application is still outstanding after 12 months, asylum seekers are entitled to access the labour market and, consequently, are released from detention.

The processing time taken by the ORC may have a bearing upon the asylum seeker length of stay in detention centres in the case of a positive decision.

2.2.5 On the other hand, if the asylum seeker application is confirmed as rejected by the Refugee Appeals Board before the lapse of 12 months, the applicant will not be released from detention. However, Government policy on immigration states that no immigrant may be detained for longer than 18 months. So if the application is rejected the asylum seeker may be detained for up to 18 months, and if not repatriated, released from detention. Moreover, the Immigration Act stipulates that an irregular immigrant may submit a request for release from detention to the Immigration Appeals Board on the basis of 'unreasonable duration of detention'.

⁶ Due to data recording inconsistencies the asylum applications indicated in Table 4 includes subsequent applications. These applications relate to cases whereby an applicant may submit a fresh application if new elements or findings are presented which could not have been submitted earlier.

⁷ Due to the different time periods within which the ORC's workload was calculated, a variance of 78 applications between the NAO's calculation and official figures materialised for the periods under review.



2.2.6 The foregoing emphasises the critical importance of processing asylum applications in an expedient manner. The untimely conclusion of asylum applications potentially results in persons whose case has not been decided, being released from detention. This audit has noted that during the period under review there were 360 such cases. Table 5 refers.

Concluded applications

2.2.7 As discussed earlier, it is critical that asylum applications are processed within a reasonable period to safeguard Government's and asylum seekers' interests. The National Audit Office (NAO) evaluated the processing of asylum applications against the current ORC benchmark to conclude cases within an average of six months. This exercise also entailed determining the actual number of cases that were adjudicated within this timeframe. For this purpose the NAO analysed 7,393 cases concluded by the ORC, out of 7,860 decisions.⁸ Table 5 refers.

2.2.8 Table 5 highlights the improvements registered by the ORC to conclude cases within the six month policy benchmark. In 2006, concluded decisions within six months totalled 38 percent (438 out of 1,153 cases) of all the concluded applications by the ORC. The ratio of concluded asylum applications at the ORC within this benchmark improved to 68 percent (132 out of 194 cases) in 2010.

2.2.9 In addition to the asylum applications, the ORC concluded 555 THPN cases in 2010. These cases generally necessitate that asylum seekers who are not granted international protection are assessed against current policies for THPN which includes, amongst others, that the person has been residing in Malta for more than four years. The processing of THPN applications is generally concluded within one month if the candidate can satisfy other criteria that demonstrate his integration efforts.

Table 5 : Time taken to adjudicate asylum applications

Year of ORC decision	Number of cases adjudicated					Total
	Up to 180 days	181 to 360 days	361 to 540 days	541 to 720 days	Over 721 days	
2006	438	557	109	42	7	1,153
2007	324	400	138	17	0	879
2008	1,466	757	136	239	6	2,604
2009	1,352	1,171	7	26	7	2,563
2010	132	28	18	13	3	194
Total	3,712	2,913	408	337	23	7,393

Source: ORC.

⁸ For the purpose of this analysis a total of 467 out of 7,860 concluded cases were not considered due to insufficient information.



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2.3 The efficiency of processing asylum applications

2.3.1 Generally, the ORC managed to improve its rate of processing asylum applications to the extent that on average applications were adjudicated within six months. However, as at end 2010, it was adjudicating 68 per cent of applications within this period. In view of this situation, the NAO sought to identify potential bottlenecks in their processing. This entailed determining the average duration taken to complete two critical phases of the asylum applications, namely, the waiting time endured prior to an application being assigned to a case officer and the actual processing time taken to adjudicate the case by the ORC.

2.3.2 The 555 THPNs concluded in 2010 were not considered for the purpose of this exercise due to the different objectives and procedures of the respected processes. Additionally, 377 withdrawn asylum cases were excluded from the NAO analysis since comprehensive information relating to their processing was not available.

2.3.3 Table 6 shows that up to 2009 substantial improvement was registered by the ORC in concluding

asylum applications, both in terms of reducing the average waiting time to be assigned to a case officer and the ensuing application process. In 2010, however, the average processing time of asylum applications increased again.

2.3.4 A considerable period elapses between the submission of the Preliminary Questionnaire (PQ) and the commencement of actual processing by the ORC. *The number of cases adjudicated by the ORC within six months increased from 38 percent in 2006 to 68 percent in 2010 of asylum applications concluded.* During 2009, on average, applications were subjected to a 132 day waiting period prior the commencement of processing by the ORC. This constitutes a considerable improvement over previous years which is mainly attributable to an increase in ORC staff and improvements in work practices.

2.3.5 Nevertheless, in some instances, significant delays materialised in referring asylum applications to case

Table 6 : The average duration time in days for key stages of the asylum application process

Year of decision by ORC	Average waiting time until case officer is appointed (days)	Average duration between the actual processing of application by the case officer to ORC decision (days)	Average processing time of asylum application (days)
2006	146	84	230
2007	174	52	226
2008	136	75	211
2009	132	46	178
2010	147	84	231

Source: ORC.

officers. For example, in 2009, 13 cases were passed on to case officers after the lapse of one year from date of PQ. In 8 of these 13 cases, the PQ had been received by the ORC in 2007. A contributory factor to this situation relates to instances where the ORC exercises its legally empowered discretion to expedite applications for nationalities that would *prima facie* be eligible for protection, thus creating a longer than average delay for other cases.

2.3.6 Additionally, up to 2009, the ORC managed to reduce application processing time significantly. The actual application processing time taken by ORC (excluding the waiting time prior to allocation of application to case officer) to conclude a case on average amounted to around 46 days. This constitutes an improvement of around 45 percent since 2006.

2.3.7 The improvements registered up to 2009 were not sustained during 2010 as the overall processing time increased by 30 percent over the previous year. An increase of 83 percent (38 days) in the actual processing time of applications is the main contributory factor to this situation. Such a scenario materialised since during 2010:

- the ORC was predominately dealing with cases pertaining to previous years (over 90 percent). These were considered to be more complex and required a greater case officer input. Such cases which have been carried forward from previous years can be considered as artificially inflating the average processing time since the composition of cases decided upon by the ORC was distorted due to the decline in 2010;
- in addition to the regular workload of asylum applications, case officers processed 555 THPNs. The ORC was in a position to process such numbers in view of the low influx of asylum seekers in 2010; and
- a number of training and development initiatives involving most case officers were undertaken in 2010. In part these contributed to a decrease in the case officers' time allocation to process asylum applications.

2.3.8 The NAO review acknowledges the above circumstances, which hindered the processing of asylum applications. However, the NAO studies identified a number of inefficiencies which can be attributed to three main limitations, namely human resources management, applicants' related issues and case complexities. These issues are discussed in the following sections.

2.4 Human resource management

2.4.1 One of the factors affecting the duration of the application process relates to the organisation and administration of the ORC. To varying degrees, a number of management issues had a negative impact on the ORC's performance. Generally this relates to the availability of resources, the business processes adopted and staff efficiency.

2.4.2 As early as 2007, the ORC deemed that the human resource availability was insufficient to enable it to deal effectively with the influx of asylum seekers. In July 2007, an internal exercise carried out by ORC estimated that to cater for the total number of irregular immigrants arrivals

Up to early 2009, the quantity of ORC resources was insufficient to deal with the arrival rate of asylum seekers.

the Commission required 14 technical personnel. At the time the ORC employed eight technical officials.

2.4.3 Such an increase in staff complement was further justified by the ORC since asylum applications increased from about 72 percent in 2007 to 97 percent in 2008 as a proportion of irregular immigrants arriving in Malta.⁹ Moreover, the ORC remarked that over and above this increase, it faced an additional workload due to the implementation of a number of requirements in accordance with Council Directives 2004/83/EC and 2005/85/EC, as well as the Dublin Regulations. Legal Notice 243/2008 has laid down more stringent rules for processing asylum applications. Consequently, the legislative changes indicated herein introduced additional mandatory obligations on the ORC.

2.4.4 In 2007, the ORC was not able to cope with its workload. This situation led to an increase in the number of outstanding applications, which also impinged negatively on the average time taken to process cases. The situation began to stabilise in 2008 when the ORC started to increase its human resource capacity. During 2009 and 2010, the ORC's payroll included the fulltime equivalent of 14¹⁰ and 15 case officers respectively.

2.4.5 In the prevailing circumstances, the employment of such staff was considered to constitute value for money on at least three counts. First, the time taken to process asylum application was significantly shortened (even when considering the situation in 2010 where the average processing time was artificially inflated due to the different composition of cases reviewed by the ORC). Secondly, the increased costs emanating from the employment of

⁹ Source: ORC Report, January 2009.

¹⁰ It is to be noted that new recruits engaged in 2009 received the equivalent of 24 men-months worth of training.

these technical officials was by far off-set by the decrease in the daily variable costs of detention. Thirdly, the staff complement available to the ORC can be considered as part of Government's contingency to cater for the irregular influx of refugees. It is to be noted that an official policy indicating Malta's contingency levels is not documented.

2.4.6 Moreover, the ORC strengthened its business operations to further enhance asylum application processing efficiency. The main changes included case quota allocations to staff and the adoption of the country desk approach. The latter initiative encouraged case officers' specialisation in particular regions, which was deemed to enhance the efficiency and quality of processing asylum applications.

2.5 Asylum seekers' level of cooperation

2.5.1 This performance audit determined that, in part, the lengthening of the asylum application process is due to a lack of co-operation by the applicants. The NAO has been informed by the ORC that many asylum seekers do not produce any official documentation as proof of their identity or nationality. Furthermore, some asylum seekers subsequently abandon their claim for refugee status after the application process has commenced or they submitted invalid applications.

Lack of co-operation by the asylum seekers further lengthens the application process.

2.5.2 In other cases, processing time is increased due to the applicant having absconded from the detention centre for a considerable period. Moreover, the ORC is not in a position to contact some asylum seeker in cases where the latter changed their address without contacting the competent authorities. Official data in this regard is very limited.

2.5.3 As a result of the issues discussed in this section, the ORC has considered that 377 applications have been deemed as withdrawn during the period 2006 to 2010.

2.6 Case complexities

2.6.1 Case complexity is another factor contributing to an increase in the asylum seekers' application processing time. During application processing, the ORC can face various obstacles which hinder the Office from pronouncing a decision in a more expedient manner.

Case complexities additionally hinder the ORC from processing the asylum applications within the six month period.

2.6.2 Such circumstances, generally, result in delays in holding interviews with asylum seekers. Moreover, some cases demand more intensive research to verify applicants' circumstances. The following are some examples of these hindrances:

- Most asylum seekers are not in possession of any identification documents.
- Asylum seeker's particulars need to be reliably determined.
- Asylum seeker is a fugitive.
- Asylum seeker's requires medical treatment.
- The appointment of a guardian for an under-age asylum seeker.
- Medically, confirming the age of unaccompanied minors.
- Dealing with subsequent applications which relate to cases where processing was interrupted for a considerable period due to the non-cooperation by applicant (for example, applicant has absconded).¹¹
- Inexpedient input from other national entities.

2.6.3 Since official information on the extent of such problems is limited, the NAO sought to obtain indications of such prevalence. For this purpose, 100 cases out of the 2,600 applications decided by the ORC in 2009 were randomly selected and reviewed by the NAO. The following presents the major issues noted in each case:

- Seven files contained no abnormal circumstances, which could potentially delay processing. Five of these files were concluded in less than six months.
- The remaining 93 files related to 'problematic cases'. Further analysis of these 93 files revealed the issues reproduced hereunder. It is to be noted that due to their complexity, some of these cases featured more than one problem. However, in each case indicated below, only the principal issue is being reproduced:
 - In 78 cases, the asylum applicant was not in possession of personal documents. Nonetheless in 46 cases decisions were forthcoming in less than six months.
 - One case pertained to an under-age asylum seeker. The ORC was hindered from processing this

¹¹ It is estimated that during 2009 and 2010 the ORC concluded 4 and 43 subsequent applications respectively.

application earlier since it took the Ministry for Social Policy approximately a month to appoint a guardian.

- One case recorded that the asylum seeker was being treated for a medical condition. This lasted approximately seven months, and consequently delayed the conclusion of the application process.
- Six cases showed that the applicant had escaped from detention while his asylum application was being processed. In five of these cases, the applicants have not been apprehended or returned voluntarily to detention centres. Consequently, the latter applications were considered as implicitly withdrawn.¹²
- Seven cases pertained to unaccompanied minors, who were required to undergo medical examinations to determine their age.¹³ In four cases, the examination results were provided by the Department for Social Welfare Standards to the ORC within a month. Another case took three months for age determination results to be referred to the ORC. In the remaining two cases, medical results were not available after four months of the ORC's requests.

2.7 Costs to process applications

2.7.1 During 2009 and 2010, the total costs incurred by the ORC to process applications amounted to €514,127 and €644,482 respectively. Table 7 refers.

2.7.2 The expenditures indicated in the Table 7 show that the average cost per application processes during this period amounted to around €198 and €708 respectively during 2009 and 2010. The cost per concluded case in 2010 has increased significantly from 2009 due to the fact that:

- i. the volume of applications processed by the Refugee Commissioner have decreased by 68 per cent in 2010 from the amount completed in 2009. This decrease results even when taking into account the 555 THPNs processed in 2010; and
- ii. the total cost incurred by the ORC in 2010 has increased by 25.4 percent from total ORC expenditure in 2009.

2.7.3 The substantial variance in the average asylum application costs during 2009 and 2010 arises since the ORC's fixed costs incorporate a contingency for a specific annual arrival rate. It is worth noting that this rate is not specified in any official documentation. However, an unofficial report has considered Malta's capacity to host asylum seekers on the basis of detention centres capacity.¹⁴ In 2007, this was estimated at 1,800 asylum seekers.

2.7.4 Consequently, the variance in unit processing costs during this period can be seen as the ORC's opportunity cost for constantly being in a position to deal with the irregular influx of asylum seekers. Recent events have shown that it is imperative that Malta has the adequate contingency plans and administrative capacity in place – which as indicated above can be significantly costly.

Table 7 : Costs incurred by the ORC to process applications (2009 and 2010)

Description	2009		2010	
	Total cost (€)	Percentage of total cost	Total cost (€)	Percentage of total cost
Salaries of ORC staff	392,722	76.4	476,355	73.9
Professional services	67,530	13.1	88,253	13.7
Administrative costs	53,875	10.5	79,874	12.4
Total costs	514,127	100.0	644,482	100.0
Average cost per concluded application	197.74		708.22¹⁵	

Source: MJHA.

¹² According to Subsidiary Legislation 420.07, 'Procedural Standards in Examining Applications for Refugee Status', Article 13 (2).

¹³ According to Subsidiary Legislation 420.07 Paragraph 15 (2), medical examinations to determine the age of unaccompanied minors within the framework of any possible application for asylum may be carried out.

¹⁴ ORC, 2009. *Staff Compliment Report*.

¹⁵ In estimating the average costs for processing an asylum application in 2010, the analyses also included the 555 THPN cases.

2.7.5 In such circumstances, whilst fixed costs have to be incurred to maintain and enhance the existing infrastructure to deal with a significant arrival of asylum seekers, Government is in a position to control variable costs by negotiating contracts with service providers in a way that would allow quantities ordered to be dependent on the volume of arrivals. Examples of such contracts would include those relating to meals and security services. The review of such contracts was beyond the scope of this audit.

2.7.6 Full details of the methodology employed by NAO to determine this cost for 2009 is presented in Appendix I.

2.8 Conclusion

2.8.1 The ORC has registered improvements in its performance for the period 2006 to 2009, as demonstrated by a reduction in the average duration of processing

asylum applications, a significant increase in the number of concluded cases, and a reduction in the number of pending applications. This was achieved notwithstanding the increased workload of the ORC and the various impediments encountered that tend to prolong the duration of the application process. ORC's performance during 2010 cannot be reliably assessed due to the different composition of its caseload.

2.8.2 The improvements in ORC's efficiency were also noted in the recent report published in June 2011 by the Commissioner for the Human Rights of the Council of Europe. The report acknowledged the progress made in several aspects of the asylum system in recent years in Malta as reflected in the shortening of the time needed to process asylum applications, improved provision of information on the asylum system to asylum seekers, and the increased rate of recognition of refugee status.



Chapter 3

Dealing with asylum appeals

Chapter 3 – Dealing with asylum appeals

3.1 Introduction

3.1.1 Applicants whose asylum application had been rejected by the Office of the Refugee Commissioner (ORC) are entitled to appeal the decision at the Refugee Appeals Board (RAB). Apart from 2006, it was only in 2009 that appeals were concluded within six months, which is considered to be a reasonable period for the adjudication of such cases. The major constraints delaying this process relate to the provision of free legal aid.

3.1.2 This Chapter provides an overview of the appeals process and discusses the workload and output of the various entities involved - the Third Country Nationals Unit (TCNU) and the RAB. The Chapter categorises the audit findings by issue, namely management control over the provision of free legal aid, decisions pronounced by the RAB, the costs of the appeals process and the repatriation of applicants.

Background

3.1.3 The Refugees Act defines the powers of the RAB and provides for the appointment and removal of its members. Articles 5 to 7 outline a number of provisions relating to the proceedings of the Board.

3.1.4 The RAB is composed of two Chambers, known as the “First Chamber” and the “Second Chamber”. The functions of both chambers are practically identical, with each chamber composed of a Chairperson, two members, and a secretary. The assignment of cases between the two Chambers is carried out by the secretary of “First Chamber”.

3.1.5 Similarly to the ORC, Maltese Law does not set out a specific maximum period within which appeals are

to be concluded. In accordance with Maltese Law, the RAB’s decision is final, and thus the case would then be considered closed. If the application for asylum is not granted international protection by the RAB, the respective authorities can deport the asylum seeker whenever travel documents are available. On the other hand, if the appeal reverses the previous decision, the applicant is granted a refugee status.

3.1.6 Asylum seekers, whose application for refugee status is rejected by the ORC or who have been granted subsidiary protection status, may appeal against such decision in writing to the RAB. The Chairman of the RAB contends that the number of appeals is influenced by Non-Governmental Organisations (NGOs) assistance to anyone, who could benefit from the prospect of asylum.¹⁶

3.1.7 During the period 2006 to 2009, out of 7,505 ORC decisions, there were 7,431 applicants who were not granted full refugee status. These applicants could therefore appeal their decision at the RAB. In 2,719 cases, that is 37 percent of the first instance decisions which were not granted the full refugee status, the applicants opted to exercise their right of appeal. It is to be noted that all appellants are entitled to free legal aid. The majority of appeals lodged, 93 percent, relate to applicants whose case was rejected by the ORC. Table 8 refers.

3.1.8 Whenever asylum seekers request the assistance of free legal aid, the Ministry for Justice and Home Affairs (MJHA) engages a lawyer to assist the appellant. The TCNU within the MJHA appoints an interpreter to assist the lawyer during the relative interview, should this be requested. Upon conclusion of this procedure, the lawyer writes a detailed report regarding the applicant’s case. This report is submitted to the RAB.

¹⁶ Analysis of Chairman RAB reproduced in ‘Government of Malta Reply to ECRI’s third report’ (March 2008).

Table 8 : Appeals lodged (2006 to 2009)¹⁷

First instance decision	2006		2007		2008		2009	
	Appeals	Decisions	Appeals	Decisions	Appeals	Decisions	Appeals	Decisions
Subsidiary protection	90	552	41	623	33	1,395	32	1,677
Temporary protection	-	-	0	1	1	7	5	10
Rejections	582	666	269	330	916	1,277	750	893
Totals	672	1,218	310	954	950	2,679	787	2,580

Source: ORC.

3.1.9 Once the RAB collects all the necessary evidence and information required, the Board proceeds to determine the case. The asylum seeker is informed of the Board's decision in writing, explaining reasons for acceptance or rejection of the appeal. Figure 3 outlines the appeals process.

3.2 Concluded appeals

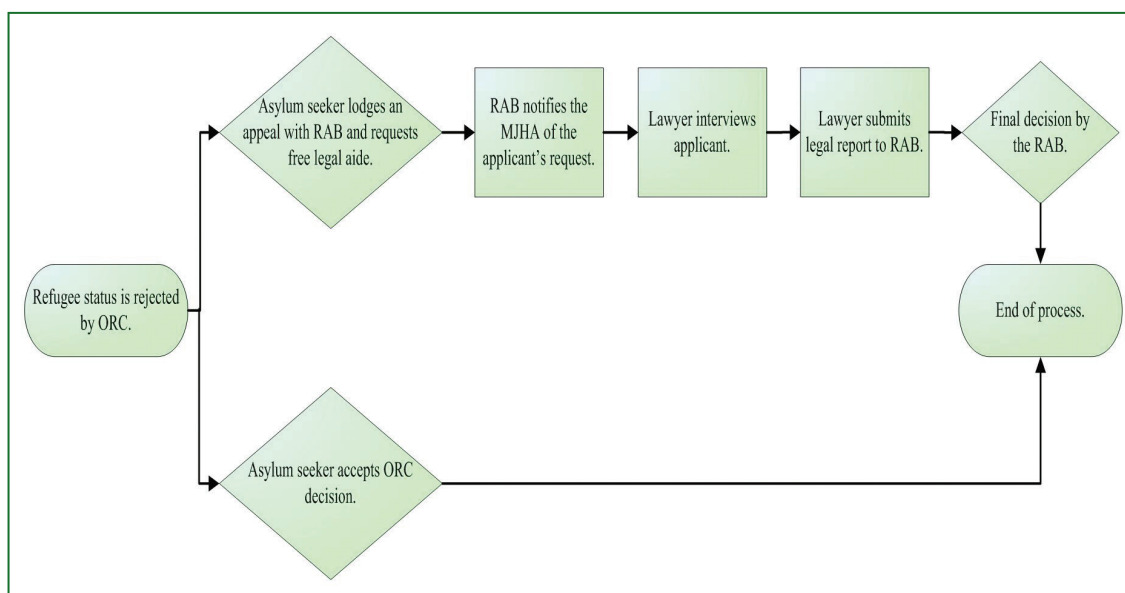
3.2.1 This Section aims to discuss the appeals processed during the period 2006 to 2010. Table 9 gives an overview of the yearly appeals workload, the number of appeals adjudicated and the number of outstanding applications.

3.2.2 Table 9 illustrates that the average duration in days for adjudicating appeals has varied considerably over the period 2006 to 2010. The momentum, in terms of average duration for the appeals adjudicated, in 2009 was not maintained in 2010. This situation mainly materialised since the average duration for processing asylum

applications is subject to some distortions. Consequently, computations pertaining to previous years are not comparable to 2010 since the appeals workload contained a higher proportion of complex cases than preceding years. Most of these cases were carried forward from previous years.

Pending cases

3.2.3 Nevertheless, the number of outstanding appeals as end of year showed a decreasing trend throughout the past two years. Such a trend would, however, have not been observed if a substantial amount of cases, 560 cases in total, were not considered closed by the MJHA. This administrative decision, in line with Article 7 (2) of the Refugees Act, was based on the fact that various attempts by the respective Maltese Authorities to contact appellants have either proved unsuccessful, the appeals notification was refused by the applicant or the appellants have since been resettled.

Figure 3 : The appeals process

¹⁷ The information presented in Table 8 is based on the year of the first instance decision by the ORC. Consequently a variance with the RABs' workload for the same period of 76 appeals resulted. These appeals were not considered for the purpose of the analysis discussed in Paragraph 3.1.6

Table 9 : Appeals workload (2006 to 2010)

	2006		2007		2008		2009		2010	
Appeals still pending brought forward from previous year	512		654		648		1,274		1,047	
New appeals	742	1,254	311	965	915	1,563	827	2101	162	1,209
Cases withdrawn	(32)		(12)		(64)		(641) ¹⁸		(165) ¹⁹	
Total workload	1,222		953		1,499		1,460		1,044	
Appeals adjudicated	(568)		(305)		(225)		(413)		(317)	
Appeals still pending as end of year	654		648		1,274		1,047		727	
Average duration in days for appeals adjudicated	117		229		312		187		428	

Source: RAB and MJHA.

3.2.4 Despite the number of appeals adjudicated, a significant number of applications remain outstanding for a considerable period, and are duly carried forward to the following year's workload. The number of such cases as at 2009 and 2010 amounted to 1,047 and 727 respectively. Table 10 shows the number of pending applications within the different stages of the appeals process.

3.2.5 Table 10 illustrates the following:

- i. As at end 2010, the number of outstanding appeals decreased from 1,047 to 727, that is 31 percent over the previous year.
- ii. The number of total cases awaiting a lawyer to be assigned by the TCNU within the MJHA has however, increased from 311 to 348, representing an increase of 12 percent. This implies that the TCNU is experiencing difficulties to assign outstanding cases to lawyers.

Cases are processed chronologically by the TCNU. However, applications relating to appellants residing in closed centres tend to be dealt with in a more expedient manner. This situation arises since applicants' acknowledgement of the TCNU's official notice regarding the appointment with legal aide is more readily forthcoming.

- iii. The TCNU is experiencing substantial difficulties in tracing appellants who are no longer residing in detention centres. Such a situation materialises whenever appellants fail to inform the relevant Maltese Authorities of changes in their place of residence. The TCNU makes various attempts to trace the appellants, including communication with other local authorities. However, as indicated by the untraced 324 and 215 individuals in 2009 and 2010 respectively, this is proving to be a problematic endeavour.

Table 10 : Pending appeals as at year end (2009 and 2010)

	2009	2010
Pending cases at MJHA		
Cases still to be assigned to lawyers	311	348
Applicants to be traced prior to interview with lawyer	324	215
Legal aide procedure in progress	49	61
Total cases pending at MJHA	684	624
Legal reports submitted to RAB	352	84
RAB awaiting legal reports from private lawyers	11	19
Closing balance of appeals at RAB as at end of year	1,047	727

Source: RAB and MJHA.

¹⁸ The 641 cases withdrawn in 2009 comprise 556 and 85 applications withdrawn by the MJHA and the RAB respectively.

¹⁹ The 165 cases withdrawn in 2010 comprise 4 and 161 applications withdrawn by the MJHA and the RAB respectively.

Processing expediency

3.2.6 As is the case with the ORC, the law does not set out a specific maximum period within which appeals are to be concluded. However, the NAO considered the conclusion of appeals within six months from the date of lodgement of the appeal or within one year from date of submission of the original asylum application to the ORC as reasonable timeframe benchmarks. This criterion was established since, in accordance with provisions in Maltese law, asylum seekers are entitled to employment following one year of submission of the asylum application. The ORC aims to pronounce asylum decisions within an average of six months, it was deemed reasonable, that in view of the employment clause, the RAB concludes its cases within six months of receipt of appeal.

3.2.7 In order to analyse factors contributing to considerable variations in the average duration of appeals adjudicated, the NAO analysed the appeal process between 2008 and 2010. The duration of the appeal process was

categorised into four different stages and the concluded cases were classified according to appellants' place of residence.

3.2.8 MJHA initiates the appeals process following notification by the RAB regarding an applicant's request for free legal aid. Throughout this process the TCNU within the MJHA makes the necessary arrangements for the assignment of a lawyer, which also includes an interview between the legal aide and appellant. Subsequently, a report is prepared by the lawyer and submitted to the RAB. Supervision of progress registered in the latter stage falls within the remit of the TCNU. The RAB then makes a final decision on the appellant's application.

3.2.9 Table 11 shows the duration of each stage in the appeal process as referred to in Paragraph 3.2.8. The NAO's analysis focused only on requests by applicants for free legal aid for the period 2008 to 2010. This data analysis is mainly based on data collated by the MJHA, which was considered to be more comprehensive than that

Table 11 : An analysis of the appeals process (2008 to 2010)

Year Concluded by RAB	Quantity	Average duration from appeal lodged to appellants acknowledgement regarding the assignment of legal aide (days)	Average duration from assignment of legal aide to preliminary interview with appellant (days)	Average duration from preliminary interview to submission of legal aide's report (days)	Average duration from legal aide's report to RAB decision (days)	Average duration of the appeals process (days)
Detention						
2008	43	54	12	29	36	131
2009	242	50	12	36	35	133
2010	71	47	7	102	29	185
Sub-total detention	356					
Not in detention						
2008	80	225	13	45	42	325
2009	83	113	22	112	74	321
2010	131	548	11	25	61	645
Sub-total not in detention	294					
Total applications						
2008	123	165	13	39	40	257
2009	325	66	14	56	45	181
2010	202	372	9	52	49	482
Total Applications	650					

Source: MJHA.

maintained by the RAB. In view of these constraints and insufficient information in the MJHA database, the NAO could not consider 305 appeals lodged in this period. Consequently, the information presented in Table 11 is presented on 650 cases.

3.2.10 Table 11 shows that there are significant variations in the average duration to conclude appeals cases. Although there was an improvement of around 30 percent in the time taken to conclude appeals applications in 2009 over 2008, this momentum was not maintained in 2010.

3.2.11 Moreover the average duration from the date of appeal lodgment to assignment of legal aide is significantly longer for applications in non-detention centres. This is notably evident in 2009 where the average overall processing time was better than that attained in 2008 and 2010. However, during 2009, 75 percent (242 out of 325) of applications concluded pertained to appellants residing in closed centres.

3.2.12 Table 11 also shows that significant variations exist in the time taken by legal aides to submit the relative legal reports for the RAB's consideration. This situation results since legal aides may not be allocating priority to the assigned asylum cases. Moreover, this situation results as the TCNU does not fully employ the appropriate mechanisms to ensure the timely submission of legal aides' reports. Subsequently, problems in this area had a negative impact throughout all the stages within the appeals process.

3.2.13 This negative effect of the delays in submitting legal reports is reflected by the RAB's adjournments during 2008 in the periods February to March and September to October. In these instances the Board was constrained to cease its operations since all the outstanding cases were awaiting the submission of legal reports from lawyers.

3.3 Managing the provision of free legal aid

3.3.1 In order to fulfill its obligations to provide free legal aid in accordance with Maltese law, the TCNU periodically issues an expression of interest inviting lawyers to provide legal aid to appellants. Lawyers are remunerated at the rate of €70 for every legal report submitted to the RAB.

3.3.2 The TCNU assigns the appeals cases gradually to lawyers upon submission of legal reports in hand. Consequently, unless a case is concluded, new cases will not be assigned. This system was adopted to motivate lawyers to submit reports to RAB more expediently through higher remuneration by concluding more cases.

3.3.3 The TCNU considers that the number of lawyers willing to provide their services was sufficient. This assertion was based on the fact that every lawyer is expected to deliver an average of ten cases per month. This implies that over the period 2008 to 2010 the average of 15 lawyers engaged could deliver 1,800 legal reports annually.

3.3.4 During the period 2008 to 2010, lawyers submitted 879 legal reports to the RAB. In this timeframe, the average of 15 lawyers engaged annually by the TCNU submitted 20 legal reports each. This rate of submission amounts to less than two reports per month, which falls significantly short of the ten cases per month envisaged by the TCNU. Table 12 shows the number of reports submitted by lawyers assigned by TCNU to provide free legal aid during the period 2008 to 2010 and the relative duration taken. Out of this amount, the NAO analysed 751 legal reports since 128 legal reports had to be excluded due to incomplete information.

M J H A ' s management control relating to the timely submission of legal aides' reports to the RAB was insufficient.

3.3.5 Table 12 shows the following:

- Lawyers' performances significantly vary suggesting different level of commitments in the provision of this service.
- On average, individual lawyers are submitting reports to the RAB in intervals of around 7 weeks.
- In 2008, 2009 and 2010, there were three, five and one lawyers who submitted their reports to the RAB in an average duration of over 90 days per case respectively.

3.3.6 Delays in submitting legal reports prohibit the RAB from proceeding with its deliberations. Consequently, the risk that appeals decisions are not delivered within the six months benchmark from the appellant's application increases. Additionally, this report has already made reference in Paragraph 3.2.13 that on two occasions the RAB had to adjourn. The Board could not proceed with its operations due to the unavailability of legal reports as a result of submission delays.

3.3.7 Moreover, such delays are the main contributory factors in the significant backlog of cases awaiting to be referred to a lawyer. This scenario implies that management control relating to the timely submission of legal aides' reports to the RAB was insufficient since the appropriate mechanisms to regulate the provision of this service were not fully in place. The following section refers.

Table 12 : Submission of case reports by lawyers to the RAB (2008 to 2010)²⁰

Lawyer code	2008		2009		2010		2008 to 2010	
	Qty	Average days	Qty	Average days	Qty	Average days	Qty	Average days
A	9	41	9	13	3	38	21	29
B	22	36	35	37	39	84	96	56
C	17	16	64	13	32	27	113	18
D	n/a	n/a	n/a	n/a	7	35	7	35
E	10	121	10	267	n/a	n/a	20	194
F	4	33	-	-	n/a	n/a	4	33
G	7	139	-	-	n/a	n/a	7	139
H	10	56	1	116	8	413	19	209
J	7	15	9	20	9	41	25	26
K	31	29	22	83	-	-	53	52
L	12	14	15	120	n/a	n/a	27	73
M	n/a	n/a	n/a	n/a	4	54	4	54
N	n/a	n/a	20	12	14	22	34	16
O	-	-	6	158	n/a	n/a	6	158
P	45	27	8	131	20	30	73	39
Q	35	40	n/a	n/a	n/a	n/a	35	40
R	n/a	n/a	n/a	n/a	13	53	13	53
S	n/a	n/a	-	-	108	11	108	11
T	2	159	-	-	n/a	n/a	2	159
U	2	42	56	78	26	49	84	68
Total	213	40	255	61	283	44	751	48

Source: MJHA.

3.4 Regulating legal aid

3.4.1 A major contributory element diminishing management control over the provision of services by lawyers relates to the fact that these professionals are not contractually bound to provide their services within an agreed timeframe. None of the engaged lawyers have been furnished with terms of reference or signed undertakings with the TCNU.

Lawyers are not contractually obliged to submit reports within an agreed timeframe.

3.4.2 Lawyers are accountable for the legal assistance they provide to their clients, that is, the appellants. They are also administratively responsible to the TCNU, who engages them and is responsible for effecting the relevant remuneration. However, the lack of formal agreements between the TCNU and lawyers renders the former's capacity to regulate the provision of this service more problematic.

3.4.3 In the circumstances, the TCNU's actions to stimulate a more expedient submission of reports are limited to communicating periodically through emails with lawyers. However, this approach has not led to the desired results.

3.5 RAB decisions

3.5.1 The final stage of the appeals process relates to the RAB's decision. This decision is pronounced following a review of the relative case reports submitted by the ORC, in support of its first instance decision and the legal report pleading the appellant's case for appeal. During 2008 to 2010, the RAB has only overturned three ORC decisions.

On average, it takes the RAB 45 days to pronounce a decision following the receipt of lawyers reports.

3.5.2 During 2009, the RAB's adjudications, that is, from the submission of the lawyers' report to the final

²⁰ The abbreviation 'n/a' indicates lawyers who were not part of the available pool of legal aid at MJHA.



decision, necessitated an average of 45 days to conclude as indicated in Table 11. This duration was marginally exceeded in 2010, where the RAB was concluding cases in an average of 49 days. This increase is mainly attributed to the adjournment of one of the Chambers between July and November 2010 due to the non-replacing of a member who could no longer serve the Board.

3.6 Cost of processing appeals

3.6.1 This audit determined that the average costs to process appeals by the RAB during 2009 and 2010 amounted to €100,694 and €107,361. This implies that the average cost per concluded case amounted to €243.81 and €338.68 respectively in the years indicated. Table 13 refers.

3.6.2 Table 13 shows the cost efficiency registered by the RAB over the period 2009 to 2010 was not sustained. The cost per concluded case in 2010 increased by 39 percent from the previous year namely because the RAB managed to conclude less cases for the reasons cited in Paragraph 3.2.2.

3.6.3 The expediency in dealing with asylum applications is not only critical in view of its humanitarian implications but also for financial considerations. Each extra day taken to conclude an appeal costs the Government at least the variable costs of detaining and /or maintaining applicants through various services and grants.

3.7 Repatriation of rejected asylum applicants

3.7.1 In accordance with the policy document ‘Irregular Immigrants, Refugees and Integration’²¹, asylum seekers who do not qualify for refugee or humanitarian protection status, following completion of the appeals process, are to be repatriated to their respective country of origin. Government policy in this regard is to encourage, as much as possible, voluntary repatriation and Assisted Voluntary Return and Reintegration (AVR-R) rather than a forced return. Moreover, in view of the consular issues involved especially to obtain relative travel document once nationality is duly established, Government is also pursuing the problem of repatriation through diplomatic means at EU and third country levels.

Table 13 : Cost of processing appeal applications (2009 and 2010)

Description	2009		2010	
	Total cost (€)	Percentage of total cost	Total cost (€)	Percentage of total cost
Salaries	74,718	74.2	66,533	62.0
Professional services	22,318	22.2	21,464	20.0
Administrative costs	3,658	3.6	19,364	18.0
Total costs	100,694	100.0	107,361	100.0
Average cost per concluded appeal application	243.81		338.68	

Source: MJHA.

²¹ This policy document was published by the MJHA and the Ministry for the Family and Social Solidarity (2007).



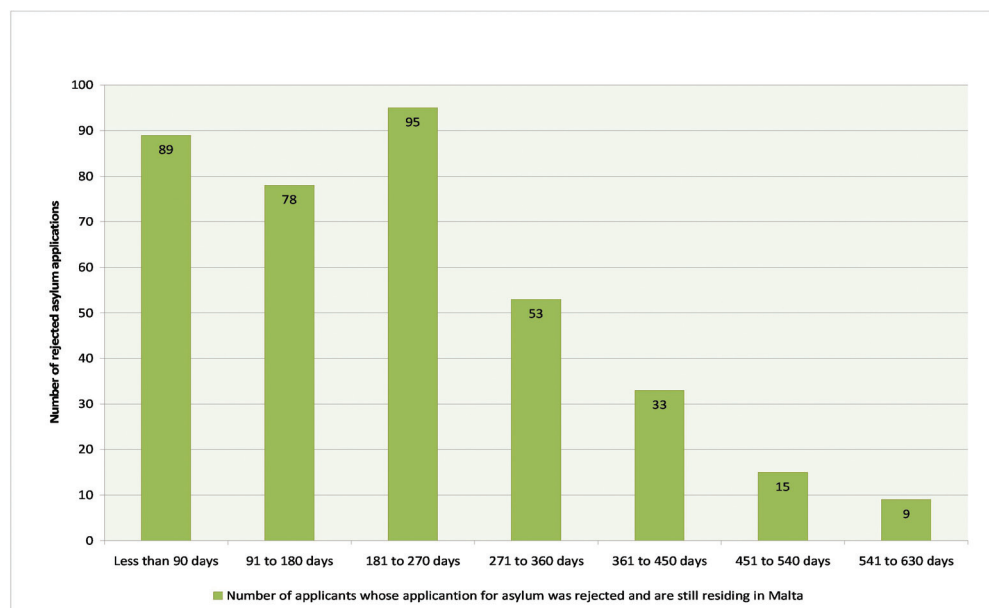
3.7.2 Although this Report primarily focuses on the asylum application process *per se*, cursory observations show that, for some reason or other, a substantial number of rejected asylum applicants, still remain in Malta. Since repatriation data relating to 2010 is being compiled, this audit sought to determine the number of rejected asylum applicants who have not yet been repatriated following the conclusion of their case between 2006 to 2009. As at end 2009, it is estimated that at least 372 applicants whose application for asylum was rejected were still residing in Malta. On average, each applicant who was not granted asylum had already resided in Malta for around seven months. Figure 4 refers.

3.7.3 This Office is fully aware of the considerable challenges and difficulties faced by a small country like Malta in order to repatriate such persons. No repatriation is

possible unless the person's nationality is duly established and the relative travel document issued by the respective country. These problems are accentuated by the fact that it is not in the interest of such rejected asylum seekers to cooperate with the authorities in this regard.

3.7.4 The repatriation of persons who were not granted international protection is rendered more difficult since the administrative capacity required to ensure an effective returns procedure is not fully in place. For instance, Malta lacks a specialised coordinating unit, involving all the major stakeholders in the repatriation process, namely the MJHA, Ministry for Foreign Affairs and Malta Police Force (MPF). The NAO is informed that the major responsibility for repatriation currently falls within the remit of the Immigration Unit within the MPF.

Figure 4 : The non-repatriation of applicants who were not granted asylum (2009)



3.7.5 During audit fieldwork, it also became apparent that Malta does not have diplomatic relations with the countries of origin of many asylum seekers. Such circumstances mainly hinder the repatriation process since communication on an official level with the country of origin, particularly with regards consular issues, is rendered even more problematic.

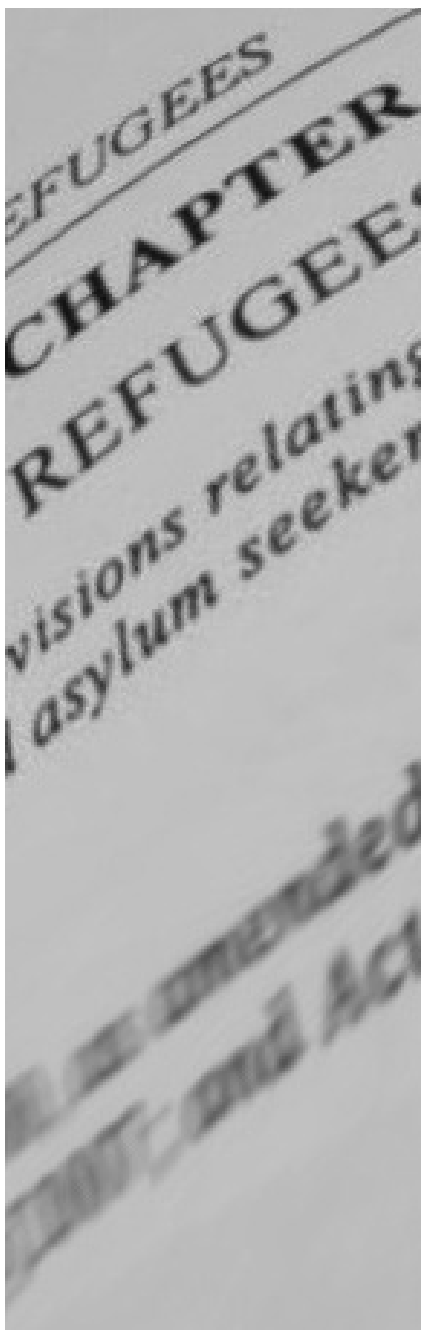
3.7.6 Delays or failure in repatriating applicants who were not granted any form of protection results in Government incurring additional costs. This expenditure at least amounts to the variable costs associated with detention and other related services. Moreover, this results in further pressures on the existing asylum infrastructure.

3.8 Conclusion

3.8.1 The efficiency of dealing with appeals constitutes a critical element in dealing with asylum applications. The importance of this procedure stems from its relevance to the judicial processes involved. Thus, the appeals process must provide for an independent, fair and an impartial review of first instance decisions, as well as ensure that decisions are pronounced within a reasonable period. Moreover, dealing with asylum appeals constituted a public expenditure of over €100,000 and €107,000 in 2009 and 2010.

3.8.2 Although since 2008 the number of outstanding cases has decreased over time, the appeals process is negatively affected through the inability to ensure that legal aid reports – outlining the appellant’s reasons for the RAB’s consideration – are submitted in a timely manner. This situation seriously hindered, and in some cases prohibited, the conclusion of the appeals process within the six month target. Various factors contribute to this situation but the main reason is that the lawyers engaged to assist appellants are not allocating the appropriate priority to asylum cases. Additionally, management control over the provision of free legal aide is weakened since the engaged lawyers are not contractually bound. In such circumstances it is difficult for the TCNU to enforce report submission deadlines.

3.8.3 Although repatriation was not within the scope of this audit, the limited work carried out in this area has shown that this is an extremely problematic issue. The non-repatriation of applicants who were not granted asylum results in extra costs to Government and stretches even further the asylum infrastructure. This situation clearly illustrates that national and international efforts including those in EU forums – such as building upon relative repatriation aspects of the European Pact on Immigration and Asylum – must be intensified to ensure that decisions reached through a fair and costly process are expediently implemented.



Chapter 4

Respecting the rights of asylum seekers

Chapter 4 – Respecting the rights of asylum seekers

4.1 Introduction

4.1.1 The effectiveness of processing asylum seeker applications and appeals entails respecting the rights of asylum seekers as indicated in the various national as well as international regulations and conventions. This requires the Office of the Refugee Commissioner (ORC), Refugee Appeals Board (RAB) and the Third Country Nationals Units (TCNU) within the Ministry of Justice and Home Affairs (MJHA) to adhere to several responsibilities and obligations that emanate from this legal framework.

4.1.2 The National Audit Office (NAO) sought to determine whether the rights of asylum seekers are appropriately safeguarded during the application and appeals processes. Accordingly, this Chapter discusses whether the applicants were appropriately informed of their rights and the extent to which Malta has the appropriate mechanisms to ensure that the rights of asylum seekers are respected.

4.2 Asylum seekers rights awareness

4.2.1 The legislative rights of the asylum seekers arising out of this legal framework can be mainly grouped into two categories. The first encompasses the legal rights that are applicable to the process of determining the asylum application. The second category relates to the rights and entitlements pertaining to immigrants, following the granting of refugee status or humanitarian protection.

4.2.2 Asylum seekers upon arrival in Malta are informed of their rights. Such information is primarily provided by the ORC through various media such as through information sessions and posters displayed in detention centres. The information session is intended to provide details on the procedures to be adopted during the asylum application process, the applicants' rights, and how to seek any further assistance should this be required. The information session is generally held in various languages and in small groups of around six persons. In addition to the

initiative of the Maltese Authorities, further information is provided to the asylum seekers by other non-governmental organisations.

4.3 Applicants' rights during the asylum process

4.3.1 The NAO sought to determine the extent to which the ORC safeguards asylum seekers' rights. Since official information in this regard is limited, the NAO obtained indications of such prevalence. For this purpose, 100 cases out of the 2,600 concluded applications by the ORC in 2009 were randomly selected and reviewed by the NAO. The major observations emanating from the study are illustrated hereunder:

- *The right to be assisted by an interpreter during interviews.* In 86 percent of the cases reviewed, the interview with the applicant was held with the assistance of an interpreter provided by the ORC. The interview was held in English without the assistance of any interpreter in eight percent of the cases as this was not requested. The interview was not held for the remaining share since the applications were withdrawn by the ORC.
- *The right to consult a legal advisor.* From the cases reviewed, it resulted that during the course of the application process and during the interview held with the ORC case workers, none of the 100 applicants consulted the services of a legal advisor.
- *The right to consult the High Commissioner of the UNHCR or his representative in Malta.* It resulted that during the course of the application process and during the interview held with the ORC case workers, none of the 100 applicants consulted the United Nations High Commissioner for Refugees (UNHCR) or his representative in Malta for their services in accordance with Article 23(6) of the Refugees Act.

4.3.2 This study also revealed that no requests for the above aforementioned entitlements were declined. These observations tend to suggest that the process of determining the asylum application proceeded in accordance with the stipulated legislative framework.

4.4 Appellants' rights during the appeals process

4.4.1 The NAO also sought to determine whether the asylum applicants' rights were observed during the appeals process. Asylum seekers who wish to contest the ORC's decision have the right to appeal to the RAB. Appellants are also entitled to an interpreter, free legal aide and a representative of the Higher Commissioner of the UNHCR during the appeal.

4.4.2 In this regard, the following observations, based on the entire population of 2,719 decisions for the period 2006 to 2009, were noted:

- *The right to appeal at RAB against a recommendation of the ORC Commissioner.* Most (93 percent) who were not granted full refugee status by the ORC opt to exercise their right of appeal. Such appeals are subsequently processed by the RAB. The ORC informs applicants if they are rejected on how and where an appeal should be made and timeframes of the appeal procedure.
- *The right of having an interpreter to assist at appeal hearings.* The TCNU confirmed that whenever an interpreter was required to assist during an appeal hearing, this service was provided to the asylum seeker.
- *The right of free legal assistance under the same conditions applicable to Maltese nationals.* For the period under study, it resulted that 87 percent of the appellants requested free legal assistance as provided by Government (through TCNU within the

MJHA). An additional two percent opted to utilise the service of a private lawyer. The remaining share made no request for legal aide. The MJHA policy is to satisfy all requests for free legal aide. However, due to the reasons indicated in Section 3.3 there are considerable delays in the provision of this service.

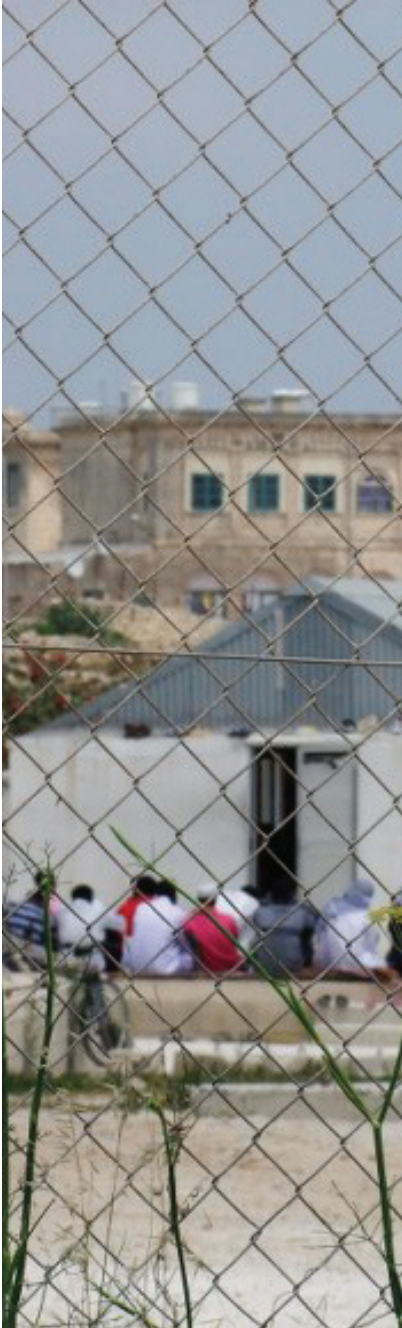
- *The right for a representative of the UNHCR to act an observer during appeal hearings.* Article 7 of the Refugees Act stipulates that a representative of the High Commissioner shall be entitled to attend the sittings of the Board.

4.4.3 These observations indicate that appellants were afforded a fair hearing during their appeal process. This also denotes that the TCNU and the RAB adhered to the relative legal provisions whilst processing appeals applications. However, due to problems observed in this audit in the provision of free legal aide, the appeals process is subject to significant delays.

4.5 Conclusion

4.5.1 The NAO observed that the application and appeals processes proceeded in accordance with the stipulated legislative framework. Asylum seekers were offered ongoing support throughout the processes to ensure a fair and just decision. Moreover, the NAO noted that Malta has the appropriate mechanisms to ensure that the rights of asylum seekers' are respected.

4.5.2 Maltese law does not stipulate any timeframes within which the asylum application and relative appeals process are to be concluded. Consequently, delays in processing asylum applications and appeals do not constitute a breach of applicants' rights. Nevertheless, Maltese Authorities have invested significantly in upgrading the administrative capacity to process asylum application more efficiently thus, as far as possible, upholding the notion of justice within a reasonable period.



Appendices

Appendix I – Direct and indirect costs of processing asylum applications

Background

The NAO sought to determine the cost of processing an asylum seeker application. This exercise was undertaken for various reasons. Official data in this regard is generally limited. Additionally, efforts to merge financial information emanating from the stakeholders involved in the asylum application process have not been carried out frequently and comprehensively. Moreover, future audits or studies undertaken in this area can benchmark the cost efficiency of the asylum process over time. For the purpose of this audit, it was decided that Government expenditure for 2009 be analysed. This decision was mainly based on the fact that, at the time of undertaking this audit, the data pertaining to 2010 was not yet fully available.

Methodology

Various meetings were held with officials from the Ministry for Justice and Home Affairs (MJHA), the Armed Forces of Malta (AFM), and the Malta Police Force (MPF) for the purpose of compiling the related costs. During these meetings, the nominal ledger accounts relevant to all the stages of the asylum seeking process were indicated. Moreover, estimates were prepared by the AFM and MPF for expenditure items not accounted for separately in individual nominal ledger accounts. Other Departments such as the Department of Primary Health Care and the Ministry of Education, Employment and the Family (MEEF) also submitted an account of expenditure incurred in relation to the asylum process.

Meetings were also held with officials of the Detention Service to estimate the average stay in days of an asylum seeker in a closed centre. Other meetings held with the MPF enabled to determine the average stay in days of an asylum seeker at Ta' Kandja. Meetings were also held with the Agency for the Welfare of Asylum Seekers (AWAS) with the aim of determining the average stay in days of an asylum seeker in an open centre. An estimate of the total bed nights in both closed and open centres was calculated from the data provided by these entities following the above meetings.

Difficulties encountered during the process of determining the cost of an asylum application

The NAO encountered a number of challenges and constraints in determining the costs of processing asylum applications, namely that:

- i. information had to be gathered from a number of Ministries and Departments;
- ii. delays were experienced in receiving this information since in certain cases the information had to be compiled specifically for this exercise;
- iii. costs ascertained were based on both amounts included in nominal ledger accounts and estimates prepared by the Ministries/Departments; and
- iv. some costs had to be apportioned between the different stages of the asylum seeking process on the basis of information provided by Ministries/Departments and professional judgement.

The reconciliation between EU funds received and incurred in relation to the asylum seeking process and repatriation was considered to be outside the scope of the audit.

Study limitations

The following costs were not included in the computation of expenditure since the relative information was not available:

- i. Expenses relating to Mater Dei operations.

- ii. Expenditure relating to visits and/or stays by asylum seekers at Mater Dei Hospital.
- iii. Expenses relating to Social Security benefits to the refugees.

Sources of information

Data relating to the cost of processing asylum applications was determined from various official sources. This section presents the source documents utilised to determine costs relating to the various processes and relative operations.

The cost relating to the processing of asylum applications and appeals were derived from:

- i. Nominal Ledger accounts from vote 41 – MJHA, including Third Country Nationals (TCN) Account;
- ii. European Refugee Fund III (EU funds) falling under the responsibility of the MJHA (vote 41); and
- iii. Departmental computation of salaries from FS3s.

Costs relating to the accommodation of asylum seekers in closed (detention) centres and open (reception) centres were determined from:

- i. Nominal Ledger accounts from vote 41 – MJHA, including TCN Account;
- ii. TCN accounts from vote 7 – Armed Forces of Malta (AFM); and
- iii. Estimates prepared by the AFM, MPF, the Department of Primary Health Care, and the MEEF.

The costs relating to the repatriation of asylum seekers were determined from:

- i. Nominal Ledger accounts from vote 41 – MJHA;
- ii. European Return Fund (EU funds) falling under the responsibility of the MJHA (vote 41); and
- iii. Estimates prepared by the Ministry of Foreign Affairs.

Cost analysis

This section discusses the cost incurred by Government to process and provide accommodation services to asylum seekers. These costs are presented into the following four distinct stages:

- i. The process of filing an asylum application with the Office of the Refugee Commissioner (ORC).
- ii. The processing of filing an appeal with the Refugee Appeals Board (RAB).
- iii. Accommodation of asylum seekers in closed (detention) centres.
- iv. Accommodation of asylum seekers/refugees in open (reception) centres.

The total cost of processing an asylum application in 2009 was determined by estimating the average costs of the aforementioned processes and operations. In each case these costs were further classified as direct and indirect.

The unit cost estimations, relating to the processing of asylum applications and appeals, the relative calculations were based on concluded cases. This approach was adopted since information indicating the stage of processing of outstanding applications was not available.

Processing asylum applications

During 2009 the total cost for processing asylum applications amounted to €514,127. Table 14 refers.

Table 14 : Costs incurred by the ORC to process applications (2009)

	Total cost (€)	Percentage of total cost
Salaries of ORC staff	392,722	76.4
Professional services	67,530	13.1
Administrative costs	53,875	10.5
Total costs	514,127	100.0
Total concluded cases in 2009	2,600	
Average cost per concluded application	€197.74	

The direct costs involved in the processing of an asylum application comprise:

- i. the cost of salaries pertaining directly to processing asylum applications;
- ii. professional services relating mainly to interpretation services and asylum determination services, and
- iii. administration costs incurred directly in the asylum application process.

The indirect costs relating to the processing of an asylum application include:

- i the portion of salaries allocated to general administrative work and staff training;
- ii the cost of professional services allocated to general administrative work and staff training; and
- iii general administrative costs not directly related to the asylum application process.

The direct and indirect costs of processing an asylum application for 2009 are presented in Table 15.

Table 15 : Direct and indirect costs of processing asylum application (2009)

	Total cost (€)	Percentage of total cost
Direct costs: Salaries	293,832	57.2
Professional services	63,028	12.3
Administration costs	34,136	6.6
Total direct costs	390,996	76.1
Indirect costs: Salaries	98,890	19.2
Professional services	4,502	0.9
Administration Costs	19,739	3.8
Total indirect costs	123,131	23.9
Total cost of processing an asylum application	514,127	100.0
Total concluded cases in 2009	2,600	
Average cost per concluded application	€197.74	

Processing of appeals

During 2009 the total cost for processing an appeal amounted to €100,694. Table 16 refers.

Table 16 : Cost of processing appeal applications (2009)

	Total cost (€)	Percentage of total cost
Salaries of Board Members, RAB staff and ORC staff working on appeals	74,718	74.2
Professional services	22,318	22.2
Administrative costs	3,658	3.6
Total costs	100,694	100.0
Total concluded cases in 2009	413	
Average cost per concluded appeal application	€243.81	

The direct costs include:

- i. the cost of salaries of Board Members;
- ii. time spent by ORC staff working directly on appeals; and
- iii. professional services relating mainly to the provision of legal aid to asylum seekers.

The indirect costs include:

- i. the cost of salaries of other staff working at the RAB and not dealing directly with appeals; and
- ii. total administrative costs.

The direct and indirect costs of processing an appeal during 2009 are presented in Table 17.

Table 17 : Direct and indirect costs of processing an appeal (2009)

	Total cost (€)	Percentage of total cost
Direct costs: Salaries of RAB Board Members	33,562	33.4
ORC staff working on appeals	7,288	7.2
Professional services	22,318	22.2
Total direct costs	63,168	62.8
Indirect costs: Indirect Salaries	33,868	33.6
Administration Costs	3,658	3.6
Total indirect costs	37,526	37.2
Total cost of processing an asylum application	100,694	100.0
Total concluded cases in 2009	413	
Average cost per concluded appeal application	€243.81	

Accommodation and related costs in closed (detention) centres

During 2009 the accommodation and related costs incurred in a closed (detention) centre amounted to around €12 million. Table 18 refers.

Table 18 : Detention costs (2009)

	Total cost (€)	Percentage of total cost
Salaries	5,685,634	47.1
Meals	4,304,890	35.7
Primary Health Care Costs	148,133	1.2
Personal supplies	186,550	1.5
Water and electricity	489,858	4.1
Maintenance and upkeep	1,159,804	9.6
Motor vehicle expenses	40,570	0.3
Uniforms	47,316	0.4
Administrative expenses	15,971	0.1
Total cost	12,078,726	100.0
Total asylum seeker days	525,552	
Cost per asylum seeker per day	€22.98	

The direct and indirect costs of accommodating asylum seekers in closed (detention) centres during 2009 are presented in the Table 19.

Table 19 : Direct and indirect costs of accommodating asylum seekers in closed centres (2009)

Description	Total cost (€)	Percentage of total cost
Direct costs		
<i>Salaries</i> : Permanent staff at detention centres	3,089,486	25.58
AFM personnel	1,564,504	12.95
MPF personnel	1,017,829	8.43
Department of Primary Health Care Staff	8,850	0.07
Total direct salaries	5,680,669	47.03
<i>Meals</i> : Asylum seekers in detention centres	4,212,224	34.87
<i>Primary Health Care Costs</i> : Medication and Services	70,285	0.58
Medical services	67,332	0.56
Other health services	8,406	0.07
Total direct primary health care costs	146,023	1.21
<i>Personal supplies</i> : Hygiene supplies	130,980	1.08
Telephone cards	55,570	0.46
Total direct personal supplies	186,550	1.54
<i>Water and electricity</i>	482,046	3.99
<i>Maintenance and upkeep</i> : Operating materials and supplies for maintenance works	507,519	4.20
Repair and upkeep of public property	330,180	2.74
Refurbishment works at Ta' Kandja detention centre	236,689	1.96
Waste disposal costs	74,209	0.61
Sundry repairs	3,536	0.03
Total direct maintenance and upkeep costs	1,152,133	9.54
<i>Transport</i> : Fuel	22,098	0.19
Other transport expenses	2,885	0.02
Total direct transport costs	24,983	0.21
TOTAL DIRECT COSTS	11,884,628	98.39
Indirect costs		
<i>Salaries</i> : Board of Visitors for Detained Persons	4,965	0.04
<i>Meals</i> : Distributed during rescue operations	92,666	0.77
<i>Primary Health Care Costs</i> : Medical services to AFM personnel	2,005	0.02
Medication and services	105	0.00
Total indirect primary health care costs	2,110	0.02
<i>Water and electricity</i>	7,812	0.07
<i>Maintenance and upkeep</i> : General maintenance works	7,671	0.06
<i>Motor vehicle expenses</i> : Maintenance to private bus	13,979	0.12
Motor vehicle repairs	1,608	0.01
Total indirect motor vehicle expenses	15,587	0.13
<i>Uniforms</i>	47,316	0.39
<i>Administrative expenses</i> : Office services	8,619	0.07
International memberships	3,001	0.03
Stationery	1,625	0.01
IT consumables	1,375	0.01
Professional services	1,351	0.01
Total indirect administrative expenses	15,971	0.13
TOTAL INDIRECT COSTS	194,098	1.61
TOTAL COST	12,078,726	100.00
Total asylum seeker days for 2009	525,552	
Cost per asylum seeker per day	€22.98	

Notes to the Table 19:

- i. The salaries of MPF personnel include the remuneration of police officers stationed at fixed points at Mater Dei Hospital, St Luke’s Hospital and Mount Carmel Hospital, the emoluments of police escorting asylum seekers to hospitals, the salaries of Police stationed at Ta’ Kandja Detention Service and Trades Section Maintenance, and the emoluments of the MPF personnel working in the Immigration Section. The cost of indirect salaries comprises the emoluments paid to the members of the Board of Visitors for Detained Persons.
- ii. In 2009 the total expenditure on meals in Closed Centres amounted to €4.3 million. An amount of €172,108 from the cost of meals was reimbursed by the EU fund “ERF 2000 Provision of Food Supplies”.
- iii. Direct primary health care costs include an estimate of the cost of pharmaceutical supplies issued from Mater Dei and Primary Health Dispensing Pharmacies, the provision of immunisation services and other medical services. Indirect primary health care costs include the medical services provided to AFM personnel. The cost of medical services does not include expenditure incurred in respect of surgical operations performed and expenses relating to visits at Mater Dei Hospital.
- iv. The cost of uniforms, classified as an indirect cost, represents the expenditure incurred in replacing uniforms of AFM personnel.

Accommodation and related costs in open centres

During 2009 the accommodation and related costs incurred in open centres are managed by a number of entities that are mainly non-governmental organisations, amounted to around €5 million. Table 20 refers.

Table 20 : Open centres costs (2009)

	Total cost (€)	Percentage of total cost
Allowances	2,402,836	45.9
Salaries	291,760	5.6
Primary Health Care Costs	107,184	2.0
Professional services	2,169,072	41.5
Tuition fees exemptions	98,800	1.9
Maintenance and upkeep	139,900	2.7
Transport expenses	18,130	0.3
Administration	4,443	0.1
Total costs	5,232,125	100.0
Total refugee days for 2009	800,260	
Cost per refugee per day	€6.54	

The direct and indirect costs of accommodating refugees/asylum seekers in open centres during 2009 are presented in Table 21.

Table 21 : Direct and indirect costs of accommodating refugees/asylum seekers in open centres (2009)

	Total cost (€)	Percentage of total cost
Direct costs		
<i>Allowances:</i> Per diem allowances ²²	1,735,000	33.16
Allowances for subsidiary protection	667,836	12.76
Total direct allowances	2,402,836	45.92
<i>Salaries:</i> MPF personnel	278,284	5.32
Department of Primary Health Care staff	13,476	0.26
Total direct salaries	291,760	5.58
<i>Primary Health Care Costs:</i> Medication and medical services	107,024	2.05
<i>Professional services:</i> Payments to entities running open centres		
AWAS	1,492,729	28.53
Suret il-Bniedem	444,072	8.49
Emigrants Commission	220,624	4.22
Peace Laboratory	11,647	0.22
Total direct professional services	2,169,072	41.46
<i>Exemptions of tuition fees:</i> University and Junior College	98,800	1.89
<i>Maintenance and upkeep:</i> Payment to Suret il-Bniedem – upgrading of infrastructure at Marsa open centre	68,910	1.32
General maintenance works	68,386	1.30
Total direct maintenance and upkeep costs	137,296	2.62
TOTAL DIRECT COSTS	5,206,788	99.52
Indirect costs		
<i>Primary Health Care Costs:</i> Medication and services	160	0.00
<i>Maintenance and upkeep:</i> General maintenance works	2,604	0.05
<i>Transport:</i> Purchase of two new cars	18,130	0.35
<i>Administration Costs:</i> AWAS IT System for per diem allowances	2,385	0.04
Translations and transcripts	2,058	0.04
Total indirect administration costs	4,443	0.08
TOTAL INDIRECT COSTS	25,337	0.48
TOTAL COSTS	5,232,125	100.0
Total refugee days for 2009	800,260	
Cost per refugee per day	€6.54	

Note: Part of the cost of upgrading the AWAS IT System will be financed from the European Refugee Fund.

Other Costs

The following costs have not been included in the above list of expenditure as these expenses would have been incurred irrespective of whether the related service was provided to nationals or asylum seekers/refugees. The costs indicated in Table 22 are being reproduced as forwarded by MJHA.

²² The per diem allowances include all payments payable to individuals residing in the open centres.

Table 22 : Other costs incurred (2009)

	Total cost (€)	Percentage of total cost
Educational costs: School transport	4,377	2.45
Schooling	137,233	76.68
In Service	17,470	9.76
Total educational costs	159,080	88.89
Primary Health Care Costs: GP services at Health Centres	19,337	10.80
GP services at Detention Centres	552	0.31
Total primary health care costs	19,889	11.11
TOTAL COSTS	178,969	100.00

Asylum application processing and related operational costs

The costs incurred at each stage of processing an asylum application are presented in Table 23.

Table 23 : Processing and related operational costs (2009)

	Total cost (€)	Percentage of total cost
Processing an asylum application	514,127	2.8
Processing an appeal at the RAB	100,694	0.6
Accommodation of asylum seekers in closed (detention) centres	12,078,726	67.4
Accommodation of asylum seekers in open centres	5,232,125	29.2
TOTAL COSTS	17,925,672	100.0

In addition to the costs indicated in this appendix, Government incurs repatriation costs in cases where any form of asylum status is declined.

Repatriation expenditure

An asylum seeker may be repatriated by the Maltese Authorities if the asylum application is rejected (activities of forced return) or the asylum seeker/refugee opts voluntarily to return to his home country.

During the period August 2007 to January 2009, asylum seekers who sought voluntarily return were provided with training to start a business in their country. Additionally, an incentive package of €5,000 was paid to each asylum seeker concerned to achieve this purpose. This project, referred to as *Dar Project*, was co-financed by the EU. The EU's share amounted to €433,497.

The repatriation costs incurred during 2009 in relation to forced or voluntary return are presented in Table 24.

Table 24 : Repatriation costs (2009)

	Dar 1 Project Expenses (€)	Dar 2 Project Expenses (€)	Total Cost (€)	Percentage of total cost
Voluntary Return (Dar Project)				
Incentive Packages	91,000	489,000	580,000	65.99
Travel – air tickets to returnees	27,294	49,651	76,945	8.76
Administrative expenses incurred by MFA	11,379	24,466	35,845	4.08
Total cost	129,673	563,117	692,790	78.83
Activities of Forced Return: Travel			186,075	21.17
Total Repatriation expenses			878,865	100.00

Only the 2009 costs pertaining to Dar Project have been included in the repatriation expenses. Both projects have been administered by the MFA. However, the expenses incurred by the MFA in respect of Dar 2 Project have been refunded by the MJHA.

The cost of incentive packages is the major source of repatriation expenditure. The remaining costs relate to the administration of the Dar Projects and include the cost of salaries, professional services and travel by staff.

The Dar Projects have since been taken over by RESTART Programme which is providing financial support package in kind of up to €2,500 to assist the reintegration of migrants back in their country of origin.

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