

How to secure a regularisation

Case Study

Malta Regularisation



Organisation: Aditus

Year of Regularisation: 2018



Context & Setting the scene

Migration and Geographical context

Malta started receiving regular arrivals of refugees by sea since around 2002, just a couple of years before Malta's accession to the European Union. Before then, refugee arrivals were generally a non-issue since all refugees were resettled out of Malta as a consequence of the fact that Malta had not yet signed up to the 1954 Refugee Convention. In 2001/2002 dynamics changed, as did Malta's legal and political scenario. Small boats departing from Libya would require assistance at sea, leading to the eventual disembarkation in Malta of groups of asylum-seekers predominantly from Somalia, Eritrea, and Sudan and then from several other – mainly African – countries. Between 2002 and 2013 Malta received an average of 1,700 boat arrivals per year, followed by a quieter period due to arrangements with Italy (see Table 1, below). In recent years, arrivals reached records high, and changes were noticed in the profile of asylum-seekers reaching Malta with Syrian and Libyan nationals topping the list. Whilst the vast majority of earlier arrivals were young men in their twenties or thirties, in recent years Malta saw an increase in the number of unaccompanied minors and families.

In view of the countries of origin of the largest groups of asylum-seekers, Malta has always registered a relatively high rate of recognition of international protection, often above 60%. Traditionally a rather insular, conservative and homogenic society, Malta struggled to accept the new challenges presented by this figure: the need to create an environment conducive to integration and long-term settlement, also supporting vulnerable persons unable to be self-reliant and often requiring in-depth support (financial, psychological, medical, etc.). Furthermore, Malta was faced with the new challenge of attempting to organise the removal of persons to countries with which it had no diplomatic relations. Whilst EU funds were heavily relied upon to establish needed asylum and reception regimes, the political and social environment remained hostile to this new reality and was firmly rooted in a public policy approach and discourse focusing on three central pillars: reduction of arrivals by sea; a reception system based on harsh detention and limited support; relocation of persons to other EU Member States.

Within this broader context, and only a handful of failed asylum-seekers returned to their countries of origin, the population of undocumented persons continued to grow. With no access to any

form of legal or social protection and ineligible for resettlement or relocation, many of their communities – largely composed of nationals of West African countries – actually thrived and indicated strong signs of integration potential, forming social and personal ties with Malta and the Maltese. Although undocumented, all failed asylum-seekers who had entered Malta in an irregular manner by boat were granted an immigration document that granted them access to the labour market.

Year of arrival	Number of arrivals
2001	57
2002	1680
2003	502
2004	1388
2005	1822
2006	1780
2007	1702
2008	2775
2009	1475
2010	47
2011	1579
2012	1890
2013	2008
2014	569
2015	106
2016	24
2017	20
2018	1445
2019	3406

History of Advocacy for Regularisation/ rights for Undocumented People

As a response to demands for some form of social protection, in 2010 the Office of the Refugee Commissioner established Temporary Human Protection N (THPN) – in policy but not in law – as a national status for failed asylum-seekers who demonstrated integration efforts. THPN granted holders a renewable residence permit and a small

package of rights, providing a minimum level of protection and acknowledging efforts at integrating.

Whilst civil society organisations welcomed THPN, it was nonetheless clear that holders were dependant on a rather weak policy measure that was being implemented with considerable amounts of discretion.

Impetus and Catalyst

In 2016, a new Refugee Commissioner embarked on a review of THPN with a view to eliminating the administrative burden it placed on the Office¹. No information was provided to the approximately 1,000 THPN holders as to what the review was looking at, the only decision being that all THPN holders whose certificates expired during the review period would not have their THPN renewed, reverting them to the status of undocumented migrants. Simultaneously,

a number of migrants were rounded up and arrested with a view to being removed. This review resulted in the Government's decision not to renew and not to issue any new permits under the Temporary Human Protection N (THPN) regime². 31 October 2017 was indicated as the expiry date of THPN status and THPN holders were invited to start the process of gathering the necessary documentation for them to otherwise regularise their stay in Malta once their THPN expired.

This decision, taken in November 2016, was strongly criticised by civil society organisations, leading to creation of the 'This is Home' campaign³.

The Office of the Refugee Commissioner announced in October 2017 that THPN holders would have their certificates renewed pending the outcome of inter-ministerial discussions. These discussions led to the adoption, in November 2018, of the Specific Residence Authorisation policy.



1 Malta Today, Review of temporary humanitarian protection leaves beneficiaries on the dark, 9 November 2016, https://www.maltatoday.com.mt/news/national/71354/review_of_temporary_humanitarian_protection_leaves_beneficiaries_in_the_dark#.X_73BeA09hH.

2 Ministry for Home Affairs and National Security, Review of Temporary Humanitarian Protection – N(ew) for failed asylum-seekers, 19 November 2016, <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2016/November/19/pr162593.aspx>

3 Joint NGO Statement on the non-renewal of Temporary Humanitarian Protection N status, 15 November 2016, <https://aditus.org.mt/joint-ngo-statement-non-renewal-temporary-humanitarian-protection-n-status/>.

aditus foundation, Nin-renewal of Temporary Humanitarian Protection N status...what's going on?, 15 November 2016, <https://aditus.org.mt/non-renewal-temporary-humanitarian-protection-n-status-whats-going/>; "The Ministry's plans will render hundreds of men, women and children destitute", 19 November 2016, <https://aditus.org.mt/ministrys-plans-will-render-hundreds-men-women-children-destitute/>.

Advocacy & Campaigning

How did aditus foundation get involved?

aditus foundation has been working in migration and asylum issues since its establishment in 2011 through its advocacy and legal aid activities. Our involvement in the THPN/SRA issue was therefore natural and based on our contacts with the various communities and relevant stakeholders.

Our first involvement was triggered by news of the THPN review, since we had heard that THPN holders would revert to an undocumented status pending the review. Together with two other NGOs (JRS Malta and Integra Foundation), we wrote to the Ministry welcoming the THPN review process yet expressing concern at non-renewal decision. We were all receiving several panicked calls and visits from the community, wondering about their future. At the outset, it was clear to us all that the issue would need us to involve a larger community of NGOs. The simultaneous detention of a group of men from Mali, with the intention to have them removed, raised the tension and urgency levels.

Overall Advocacy Strategy and development

The first public statement expressing serious concern was issued by 16 NGOs, most working closely with migrants. On the same day, due to the numerous calls we were receiving from migrants, NGOs and the media, we published a blogpost presenting all the information we had so far. A position paper was rather quickly drawn up in consultation with several NGOs⁴.

The paper gathered 23 NGOs, including migrant-led groups and NGOs not working directly with migrants, established a set of core values and legal norms, underlined the human and social implications of reverting to undocumented status and presented a series of recommendations. It was in this document that we made the move from merely advocating on the THPN issue to proposing the establishment of legal pathways for regularisation for non-returnable migrants, consisting of the following recommendations framework:

- eligible to non-returnable migrants who are regularly known to the authorities and who have not obstructed return attempts;
- a legal regime, as opposed to a policy;
- the establishment of time-limits (suggested not more than 4/5 years) beyond which failed asylum-seekers would no longer be considered subject to return procedures, if set criteria are met;
- eligibility criteria should not include the requirement to bring documentation from countries or origin;
- regular employment should not be an eligibility requirement;
- shorter time-frames could be offered to those migrants making added integration efforts;
- family unity and the best interests of the child should remain key principles.

The position paper was, in fact, the first formal advocacy effort on the theme of regularisation of undocumented migrants and attempted to capture – in the short time it was drafted – our views on the challenges faced by the communities and how we thought they could be resolved. We presented the paper during an urgent meeting with the Ministry and the other public entities engaged in the THPN review, namely the Officer of the Refugee Commission, Identity Malta (Malta's documentation agency) and JobsPlus (the national employment agency). A few days later another, more detailed public statement was issued by a slightly larger group of NGOs and during her Republic Day speech – on 13 December – the President said that she was *“morally convinced that we should appreciate, and not condemn, persons who are helping to build our prosperity, and who form part of our society, by sending them back...It is immoral to reduce people who have always worked hard and those who genuinely are not able to work, to the brink of poverty or to a perpetual state of destitution.”*⁵

With the decision to extend THPN certificates till end October 2017, we had almost a year to prepare for this deadline and decided to embark on a more structured campaign that would tackle the two inter-related issues: holders of THPN facing non-renewal of their certificates; establishment of a regularisation scheme for undocumented migrants. The three leading NGOs – aditus foundation, Integra Foundation and JRS Malta – met on a regular basis to flesh out the details of the campaign, formulating an advocacy and communications strategy eventually taking the form of the 'This is Home' campaign. Whilst we were dealing with the technicalities of the campaign, other NGOs were mobilising their own

4 Joint NGO input on Temporary Humanitarian Protection N, November 2016, https://aditus.org.mt/Publications/THPNsubmissions_2016.pdf.
5 Times of Malta, Greed, politicians' behaviour, racism...President

sounds stark warnings, 13 December 2016, <https://timesofmalta.com/articles/view/greed-politicians-behaviour-racism-president-sounds-stark-warnings.633760>.

networks and in January 2016 a solidarity walk was organised and attended by thousands of people, including migrants.

Tactics/Actions employed

The strategy contained the three below components. Each component was further broken down into specific objectives and activities, identifying responsible and collaborating organisations and mapped out in a timeline culminating in the campaign launch:

1. Research and data-collection on specific issues (e.g. legal, economic, social and ethical) in order to develop comprehensive arguments supporting our positions, and in order for us to obtain a better understanding of the needs of the population directly impacted. We agreed that our advocacy activities will be based on the outcomes of this research;
2. Outreach and awareness-raising targeting various stakeholders and having a public-facing component;
3. Legal and political advocacy targeting policy-makers, including the possibility of instituting legal proceedings.

Stakeholders Involved

The campaign grew to include a long list of civil society organisations. This included the NGOs historically working on asylum and migration issues, yet also a broader range of organisations active in social, humanitarian and other fields. Whilst campaign coordination was in the hands of a core group, statements and position papers were released as a large coalition. Various departments at the University of Malta were also represented in the campaign and also triggered an independent reaction from local academics⁶.

Throughout this process, we were also approached by employers, spouses, partners and friends of affected migrants. We provided information and advice whilst also encouraged them to write directly to the Minister and flag their concerns. Our research activities, and our manner of presentation of the data, ensured a particular focus on dependant spouses and children as we were keen to move away from a labour-oriented scheme. In the meantime, the other strategy activities were being worked on.

6 Times of Malta, Deporting migrants 'will have negative effect on Maltese society' – academics, 13 December 2008, <https://timesofmalta.com/articles/view/deporting-migrants-will-have-negative-effect-on-maltese-society.633740>.

Participation of Undocumented People

At all stages of the strategy implementation, we made active efforts to involve migrant communities. Meetings were held with migrant-led organisations and community leaders in order for us to disseminate information about the review and potential implications (group information sessions and Q&As) and also for us to identify participants for our research. This research was one of the main strengths of our strategy, with the results presented during the launch of the 'This is Home' campaign in December 2017. We formulated a questionnaire in order to gather data from the affected population, and identified research participants from our pool of beneficiaries and networks. Between February and May 2017 we interviewed 92 households, totalling 192 individuals including spouses and children. The questionnaire covered legal status, education, employment, family composition and other elements. All participants were either THPN holders or failed asylum-seekers who had been living in Malta between 2002 and 2013. All data was collated and analysed, producing visuals that were shared during the campaign launch. We also extracted key quotes from the interviews, in order to highlight the migrants' voices.

In February 2017, Frederick Ofusu, a Ghanaian national, took his own life, leaving a message that spoke of his desperation at his situation. The joint comment of 15 NGOs flagged the uncertainty created by Government's decision not to renew THPN, emphasising the need to create legal pathways to regularisation⁷.



7 NGOs urge government to work together to avoid migrant hopelessness: Joint NGO Press Release on the death of Frederick Ofusu, 22 February 2017, <https://aditus.org.mt/ngos-urge-government-work-together-avoid-migrant-hopelessness-joint-ngo-press-release-death-frederick-ofusu>.

Evidence or data used to support advocacy

The campaign's advocacy activities were based on the information we were familiar with through our engagement with the affected communities. Yet, acknowledging the limitations of this information in terms of quantity, coverage and level of detail, it was clear that we needed to get a deeper understanding of the issues facing the affected communities. The above-mentioned research activity was intended to fill this information gap, providing the campaign with necessary data (generic yet also individual).

Process of securing commitment

We are not entirely clear as to which campaign elements led to the eventual adoption of the SRA policy. The civil society reaction was indeed a massive one, quite unprecedented for a society that is not often out-spoken or visible on the rights of migrants. This was strengthened by a generally friendly media environment that gave ample space to the campaign. It is also clear that the 2017 change in Minister for Home Affairs and National Security, together with consequential internal changes, had a significant impact on the Ministry's policy approach.



Key Challenges

These are the main challenges we faced before and during the campaign:

1. The agenda was not really ours since the campaign – including the call for regularisation – was a response to the decision not to renew THPN. This not only meant that timelines and planning were almost entirely out of hands, but that we were working against a very tight and predetermined timetable that was linked to the THPN issue. Whilst the association of the two issues (THPN and regularisation) proved to be a useful one, it did have its drawbacks.
2. Since the campaign was not a free-standing one, but 'imposed' on us due to the urgency of the THPN issue, we were only able to allocate to it those resources that we were already operating with. This meant that we were unable to dedicate sufficient time, energy and resources to the campaign, as we were all simultaneously continuing our regular operations, projects and other initiatives.
3. In Malta there are only a very small number of migrant-led organisations or groups, and these are largely informal groups without the capacity to engage too heavily in advocacy or campaigning. We were in touch with most of them throughout the campaign and their input was invaluable.

A number of elements worked in favour of the campaign:

1. Our interlocutor at the Ministry was very familiar with the realities and issues we were flagging in the campaign, being a former colleague with two NGOs and UNHCR Malta. This allowed us to have in-depth discussions on technical issues within a positive and open environment.
2. Calls for regularisation were strengthened by the triggering THPN issue and also by the parallel illegal detention of the Malian men. The latter incident attracted intense media attention, allowing us to emphasise the impact of living in a legal limbo with the constant threat of detention and removal. The men were eventually released following a legal battle in court, and whilst the Ministry vehemently insisted that their entirely random arrest and detention were unrelated to the THPN issue, it is clear that the issues were interlinked – directly or indirectly.

Media in Malta is generally migrant-friendly, saving some notable exceptions. This allowed the campaign and the issues to be given full and favourable coverage.

Key points of learning

Being the first large-scale campaign we organised, the process was an intense learning experience. Major lessons learnt include the following:

1. The campaign narrative, discourse and demands are more well-received when based on the realities lived by the communities. Far from being a useless cliché, it is undoubtedly a key point for such campaigns not merely in advising the publication of human stories but – more broadly and more intensely – to actually base the entire campaign on the communities themselves. In the absence of too many migrant-led community organisations, our own work needed to be based on individual outreach activities with either individual/families or informal gatherings of undocumented persons. It was therefore difficult for us to elevate the undocumented person to the level of campaign partner, although it is clear to us that that would have been the preferred model.
2. A media that is friendly, knowledgeable and engaged is fundamental. This requires a constant dialogue with key representatives to ensure use of appropriate terms, allocation of necessary space, tone, editorial approach, etc.
3. Not all issues, arguments and points need to be made public. Much of our dialogue with Government happened behind closed doors, on the basis of mutual trust in the confidentiality and discretion of the process. Given the highly-charged public sentiment on such issues, it is understandable that Government would prefer to adopt a cautious approach, including as to whether it is actually engaging with NGOs.
4. Campaigns require funding and planning. Since our campaign was largely a reactive one, borne of a reaction to drastic Government decisions, it was necessary for us to operate within difficult timeframes and budgets. We would have benefitted from a longer planning phase, and from funds specifically allocated to campaign activities.

Implementation

Negotiation and involvement of NGOs in scheme creation

In December 2017, the 'This is Home' campaign was launched⁸. The research data and our campaign recommendations were shared, reflecting the priorities identified in the above-described strategy. On the campaign's website, we shared short video clips of interviews with migrants who had settled in Malta as well as a petition inviting followers to write to the Prime Minister to resolve the THPN issue and explore regularisation options. The campaign also had a social media aspect.

A few days after the campaign's launch, the NGO coalition was contacted by the Ministry, inviting us to discuss the campaign's aims. This was the first of a series of meetings where the issue of regularisation was discussed in increasingly greater detail. Once the Ministry confirmed its plans to revise its decision to terminate THPN and replace it with a more structure scheme, we agreed to hold closed meetings with the Ministry to share recommendations and input.

The negotiations delved into the technical aspects of the scheme and generally were positive insofar as many of our recommendations were taken on board in the final scheme. It was clear that some issues were non-negotiable, such as the emphasis on employment as the key eligibility criteria. This being the first exercise of its kind in Malta, we agreed to move cautiously, keeping our recommendations and demands within the understood context. All parties were keen to get the new regime approved, as a possible starting point. Given the overall political climate in Malta in relation to migration, some core issues were not explored by mutual agreement.

Simultaneously, in April the Ministry launched a public consultation on its intentions to adopt the SRA policy, with a series of questions relating to details such as assessment of residence and employment, vulnerable applicants and the transition from THPN to SRA.

Internal communication within the NGO group remained on-going throughout, as we approached the Ministry with a common front. Dialogue with the Ministry was open, honest and effective and remains, in our view, an example of good practice of in-depth consultation between Government and civil society.

Announcement, Dissemination and Outreach

The Specific Residence Authorisation (SRA) policy was announced on 16 November 2018, two years after the initial decision not to renew THPN certificates. The campaign publicly welcomed the policy adoption, praising not only its content and policy objectives, but also the form of engagement that marked its development⁹. With the policy document, the Ministry and the Parliamentary Secretariat for Reforms, Citizenship and Simplification of Administrative Processes also published the SRA Application Form, an Information Leaflet and an Information Note. The Leaflet contained the scheme information: eligibility criteria, processing, special provisions for THPN holders, renewal, family unity provisions, required documentation. The Note provided logistical information to applicants, particularly since there was the need to distinguish between new SRA applicants and former THPN holders who would smoothly transition from THPN to SRA.



Applications and Process

THPN holders received notification of the policy, inviting them to approach the implementing agency, Identity Malta, in order to have their documents converted. Implementation of the new policy was quite problematic. Whilst THPN holders were automatically granted SRA without any assessment, new applicants needed to gather a long list of documents confirming their employment, payment of fiscal contributions and participation in integration programmes covering a period of 5 years. Problems were also registered with long queues outside the Agency's offices, resulting in applicants spending the night outside the offices hoping to be able to hand in their applications the following day.

Outcomes

In October 2020 the SRA policy was revised. This time round, there was no consultation or dialogue process. Instead, the Ministry for Home Affairs, Law Enforcement and National Security issued a statement¹⁰ announcing the revisions, setting a 31 December 2020 deadline for any new applications (including unsuccessful renewals) and essentially including within the new policy the above-mentioned practices observed in the previous two years¹¹. Following adoption of the revisions, urgent meetings were held with the Ministry, quite unsuccessfully. An NGO comment was published, and at the time of writing discussions are underway exploring campaign options¹².

⁸ The website is no longer accessible as, at the time of writing, it is being updated as part of the revival of the campaign due to the November 2020 revisions to the SRA policy.

⁹ Making Malta Home! NGO Response to the Launch of the Specific Residence Authorisation policy, 16 November 2018, <https://aditus.org.mt/making-malta-home-ngo-response-to-the-launch-of-the-specific-residence-authorisation-policy>.

¹⁰ Parliamentary Secretariat for Citizenship and Communities, Updating of the Policy regarding Specific Residence Authorisation, 24 November 2020, <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/November/24/pr202363en.aspx>.

¹¹ Ministry for Home Affairs, Law Enforcement and National Security, Policy Regarding Specific Residence Authorisation. Updated policy – October 2020, October 2020, <https://identitymalta.com/wp-content/uploads/2019/10/SRA-updated-policy-Nov2020.pdf>.

¹² A new policy that will lead to increased social exclusion and poverty, 25 November 2020, <https://aditus.org.mt/a-new-policy-that-will-lead-to-increased-social-exclusion-and-poverty>.

Key Challenges

In the months following the launch of the SRA policy, we realised applicants were facing other issues linked either with the policy formulation or with its interpretation by the implementing agency, namely:

1. Family unity was not being interpreted as intended in the policy. Whereas the policy spoke of processing family units as one application, looking at the situation of the main applicant, dependant family members were being made subject to all the eligibility requirements including irregular entry before 2016. This resulted in families with different members have different statuses, including children.
2. Many migrants were simply unable to keep all the documentation relating to their work history, either because they worked in odd jobs without any formal documentation or simply because they weren't as diligent as is necessary to keep every single payslip and contribution receipt for five years.
3. The SRA policy does not envisage an appeal process and, being merely a policy and not a legal procedure, suffers from a serious lack of procedural fairness. No formal rejection letters were provided by the Agency to rejected applicants.

Procedures for renewing SRA status were never too clear. This problem was clearly seen in 2020 when the first SRA certificates were up for renewal and the SRA policy was revised.

Key points of learning

Since the launch of the SRA scheme we have been providing information and advice to eligible persons and to persons who were unsuccessful in their applications. We have also been liaising regularly with other NGOs on the issue, particularly with a view to monitoring implementation of the policy for the provision of feedback to the Ministry. Meetings with Identity Malta were also organised in order to flag concerns and provide comment on implementation.

Key points of learning during this stage include:

1. Although we have been monitoring the implementation quite closely, we have not been able to do this systematically or in a structured manner. This is mainly due to the facts so many other priorities intervened and that no specific planning/resource allocation was dedicated to this follow-up activity.
2. Engagement with the Ministry over implementation should have been more frequent, primarily in order to avoid situations where the implementation steered away from the policy's original intentions in reflection of new policy approaches.



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RISE UP stands for Rights, Innovation, Solutions and Evidence based policy for Undocumented People.