



16<sup>th</sup> April 2021

The Office of the Commissioner for Children together with other organisations working with migrants are deeply concerned regarding the current situation of Unaccompanied Minor Asylum Seekers (UMAS) arriving in Malta.<sup>1</sup> UMAS need **humanitarian protection** and **care**, however, as things stand, they are not being given the protection and care they are **entitled to**.

It has been brought to the attention of the Office that Protection Orders are not being issued for UMAS. The Minor Protection (Alternative Care) Act (Chap 602, Laws of Malta) since the outcome of the age-assessment of the asylum seekers claiming to be minors can be disregarded by the court.

In terms of the Act, the Juvenile Court, which has jurisdiction to hear criminal cases involving minors, was entrusted with the competence to hear and decide applications for the appointment of a guardian and for the issuing of a Protection Order. The age-assessment procedure is incongruent with the spirit of a criminal court since the Juvenile Court does not have a civil jurisdiction. Without documents the age-assessment of UMAS cannot be proven beyond reasonable doubt. Therefore, even though the Act provides for the appointment of a guardian and a child advocate, pending the outcome of the age-assessment procedure, this is still at the discretion of the Court.

Without the issuing of a Protection Order/appointment of a guardian, UMAS are unable to enjoy their rights of access to basic services, such as education and employment. They are also denied access to the asylum procedure which consequently denies them access to the Dublin Procedure to be reunited with family members in other EU Member States where applicable.

Another major concern is the waiting time for age-assessment to be carried out. Those claiming to be minors, who are not evidently minors, are treated as adults pending age-assessment which may have the following consequences:

- They are placed in closed centres for long periods.
- They are placed with adults which can make them vulnerable to bullying, sexual harassment and other forms of abuse and ill-treatment.
- The claiming minor may attain majority whilst waiting for the age-assessment process and outcome.

Although efforts have been made to improve age-assessment, it remains lengthy and lacking in procedural guarantees including the appeal process that is rendered ineffective. Age-assessment relies on language ability and if the claiming minor has language difficulties, the assessment will work against him/her as such outcomes may be grossly misinterpreted. Another concern is that stakeholders, such as the International Protection Agency, are informed about the age-assessment outcome prior to the UMAS.

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<sup>1</sup> The Office of the Commissioner for Children held a stakeholders' meeting with the following organisations: Aditus Foundation, AWAS, Child Protection, IOM, JRS, KOPIN, Malta Police Force, Migrants' Commission, Red Cross and UNHCR.

## Urgent Recommendations

- The Minor Protection Act should be further amended to include **special provisions regarding UMAS**.
- **The voice of the UMAS should be a primary consideration and should be given due weight.**
- The Act should recognise the **validity of the age-assessment** and other proceedings conducted by AWAS.
- The procedure conducted to determine the **veracity of whether the claiming minors are actually minors and to assess their personal and family situation must be laid down in law**, in order to determine (1) whether or not s/he is 'unaccompanied' in terms of law and (2) in their best interest.
- Efforts should be made to ensure that there are **adequate resources** for the age-assessment procedure to be carried out without any delays. Such assessments should be carried out in a safe, child- and gender-sensitive manner with **due respect for human dignity**.
- Age-assessment should only take place when there are substantiated doubts on the stated age and when there is an **absence of evidence**. **Likewise, age-assessment should be carried out for those who may be claiming to be adults but may possibly be minors.**
- Age-assessment should form part of a **comprehensive and multidisciplinary approach** by independent experts. The assessment should balance a range of physical, psychological, developmental, environmental and cultural factors, including documented evidence.
- Where doubts remain about the minor's age after an assessment, the asylum seeker is to be given the **benefit of the doubt and assumed to be a minor, and should not be placed in the closed centre**.
- The court responsible to decide on applications for guardianship and Protection Orders, in the case of UMAS should be **the Civil Court, Voluntary Jurisdiction Section**, in the minor's best interests.
- The Juvenile Court Act should be amended for the Court to become a Court of **Civil judicature as well as Criminal**, together with increasing the competence to hear cases involving minors up to the age of 18.
- A procedure must be put in place to ensure that the minor is granted the protection to their requests for asylum and their need for care. This procedure should also offer a provisional opportunity to give **temporary protections pendente lite**.
- UMAS should be given **access to services** and those who are within the age of mandatory schooling should be **enrolled within the formal educational system at the very earliest**.
- An independent entity, financed but not employed by the Government and separate from AWAS, should serve as tutor to these minors. This entity will ensure that **UMAS are provided with a guardian from the moment their presence in Malta becomes known to the authorities**. UMAS should also be provided with gratuitous legal representation, access to a complaints mechanism/appeals procedure, child-friendly communication, interpretation/cultural mediation and further pedagogical or psycho-social support.
- It is essential to train border, law enforcement staff and other relevant professionals in child-friendly **interviewing techniques** to ensure that **vulnerable children are identified** and provided with the necessary protection and support as soon as possible.

The Office is aware that the agencies, with their limited resources, are striving to ensure that UMAS are treated in the best possible manner. However, we cannot ignore the fact that a number of minors are **blocked in a never-ending waiting process and being denied access to their rights**. The State is failing these minors as the enacted law removed the ability of the Child Protection Services to take effective action. It is paramount that the **Minor Protection Act, which is currently being amended, takes into account these recommendations in the best interests of UMAS**.

