

WORKING DISCUSSION PAPER ON MIGRANT-LED COOPERATIVES

This paper was developed by the Jesuit Refugee Service Malta (JRS) and the Malta Cooperative Federation (MCF), as part of an employment project being implemented by JRS Malta which is funded by the Julia Taft Refugee Fund of the US Embassy in Malta.





Introduction

JRS has been offering employment support services for a number of years. These services include a CV and job search service, as well as tackling individual issues such as understanding work contracts, perceived discrepancies in pay, and explaining relevant documentation to employers and clients, such as employment licences (i.e., work permits). Over the years, there have been a number of changes to contend with for service providers, such as the fluctuating numbers of arrivals, governmental response in terms of reception and detention, and changes to law and policy which have starkly affected employment and the world of work for asylum seekers, refugees, and beneficiaries of protection in Malta. All this is against the current backdrop of the European and global context, which is becoming increasingly hostile to refugees.

In addition, the situation of employment for this group of people has, for a long time, been precarious. Due to burdensome documentation requirements, policies restricting access to the labour market, lack of awareness about workers' rights and other reasons, asylum seekers are driven to, or end up working in irregular labour, the shadow economy, where often the pay is not legal, and health and safety conditions tend to be substandard. Even when the employment is regular, other issues persist, such as discrimination in the workplace, a lack of understanding of rights and obligations, and bureaucratic obstacles such as work permits not being issued in a timely manner.

JRS's experience of offering employment support services for many years, alongside the mission to ensure asylum seekers and refugees can lead a life with dignity, has led them to look into alternative ways of working, and working with clients to explore ways that they can reach their full potential. This has included educational pathways (often alongside employment), supporting clients working in self-employment and more recently to explore the option and potential of cooperatives. Under the US Embassy's Julia Taft Fund for Refugees, JRS has been working on a project to empower refugees and asylum seekers to attain economic self-sufficiency and earn their living with dignity. This is partly achieved through our ongoing employment support and activities, information sessions, outreach and in-depth support. In addition, the project aimed to support asylum seekers through the development and provision of guidance and training on how to set up a co-operative.

Discussions were carried out with the Malta Cooperative Federation (MCF) to ascertain whether asylum seekers could in fact be founding members of a cooperative. Currently, there seems to be no precedent, where third country nationals have been founding members of a co-operative (let alone asylum seekers or refugees). On the other hand, there is no mention in the Co-operative Societies Act prohibiting founding members to be third country nationals, asylum seekers or refugees.

Set up in 2012, the Malta Co-operative Federation's main objectives are to:

- a) represent and be a united voice of the Malta Co-operative Movement both nationally and in international forums;
- b) promote the co-operative model to the general public as a viable form of democratic member-controlled enterprise;
- c) provide services to its member societies including training and consultancy services, and hand-holding for start-up co-operatives;
- d) offer member co-operative societies real opportunities to network and synergise together, both nationally and internationally;
- e) provide an open forum for its member co-operatives in which ideas on achieving best practice are discussed and encouraged.

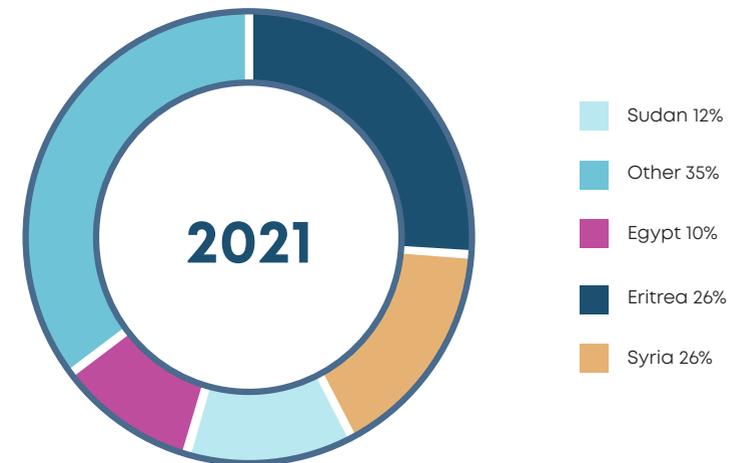
1. Migration context

Malta has been receiving boat arrivals of migrants for over 20 years. Over the years the numbers have fluctuated, depending on different government policies in Malta and across the EU, such as in Italy. For example, 2020 saw 2,281 boat arrivals and in 2021 there were 838 arrivals, a decrease of 63.3% from the previous year.

Number of arrivals

Year	Number of arrivals
2018	1445
2019	3406
2020	2281
2021	838

Of the arrivals 838 arrivals in 2021, the countries of origin are reflected in the chart below.¹



In May 2022, it was reported that there had only been 1 sea arrival to Malta so far (whilst comparatively at the same date, Italy had taken in 17,257 arrivals)², amid reports of Malta ignoring calls for rescue in its Search and Rescue zone (SAR)³. As of mid-September 2022, figures had increased to 208 arrivals, though still starkly contrasting the figures for other Mediterranean countries such as Spain and Italy⁴. Thus, the landscape has changed in recent years, but whilst arrivals have decreased, there are still a significant number of migrants living in Malta, with different statuses⁵.

1 UNHCR Malta, "UNHCR: Malta Factsheet, December 2021", https://www.unhcr.org/mt/wp-content/uploads/sites/54/2022/02/Malta-Sea-Arrivals-and-Asylum-Statistics_UNHCR_Dec2021.pdf

2 Newsbook, "Malta takes in one asylum seeker in 2022", 25 May 2022, <https://newsbook.com.mt/en/malta-takes-in-one-asylum-seeker-in-2022/>

3 Newsbook, "Malta must face consequences for failure to act in SAR operations – NGO", 15 May 2022, <https://newsbook.com.mt/en/malta-must-face-consequences-for-failure-to-act-in-sar-operations-sea-eye/>

4 UNHCR, "Operational Data Portal: Refugee Situations – Mediterranean Situation", 11 September 2022, <https://data.unhcr.org/en/situations/mediterranean>

5 NB: Asylum seekers and beneficiaries of protection should not be confused with other Third Country Nationals in terms of employment, who come to Malta to work and are issued a Single Permit, which functions as a work visa and residence permit, entitling them to employment (which must be settled before arrival) and residence. This group of migrants falls outside of the scope of this position paper, as the focus of this paper is on asylum seekers, refugees and beneficiaries of protection.

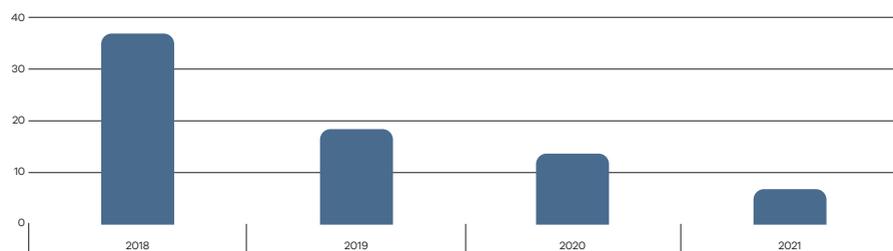
The Malta Cooperative Federation provides support throughout the application process for the formation of a co-operative. The Federation provides hand-holding assistance in designing a business plan and statute, provision of cooperative training, one to one meetings and other necessary support. Furthermore, once the cooperative has been formally registered, the Malta Cooperative Federation provides assistance in accessing national and EU funds, marketing, advocacy and lobbying, national and international networking and use of its premises.

There are many challenges to setting up a cooperative for asylum seekers, refugees and beneficiaries of protection. The working relationship between JRS and the MCF has led to the development of this discussion paper and aims to provide a basis for further discussion with the relevant stakeholders. Together, JRS and MCF have put together a series of recommendations and proposals, that going forward, could form a basis for discussion that may contribute to making the process of setting up a cooperative possible for asylum seekers and refugees, and ultimately present another, more dignified option to work.

1.1 International/national protection

As well as a decrease in arrivals, a decrease in recognition rates can be observed. This rate refers to the numbers of people being awarded protection (national or international), recognising the claim for asylum. Out of 2400 decisions that were issued in 2021, only 8% received some kind of protection (broken down as 1% refugee status, 6% Subsidiary Protection and 1% Temporary Humanitarian Protection). The top five countries of origin receiving protection consisted of Eritrea, Syria, Libya, Sudan and Palestine.⁶ For comparative purposes, in 2018, the recognition rate for protection stood at 35%.⁷ Most of the asylum decisions (which are taken by the International Protection Agency – IPA), are not issued before six months.⁸ The length of time taken for decisions to be taken and the ever-increasing likelihood of rejection for protection leads to a life of uncertainty for asylum seekers. Rejection of asylum status leads to a number of different issues such as fear of deportation, and/or being detained, poor mental health as a result of uncertainty, as well as possible difficulties accessing the labour market legally, and thus not being able to afford basic needs, pay their rent leading to situations of poverty, and often homelessness.

Decrease in recognition rate: 2017-2021



Asylum seekers can be granted different statuses to remain in Malta or their asylum claim can be rejected. They can be granted refugee status (as per the UN Convention on the Status of Refugees), Subsidiary Protection (according to EU law), or Temporary Humanitarian Protection (as now provided for by the Refugees Act, as amended in 2020). An additional residence status for migrants, Specific Residence Authorisation (SRA) was first launched in 2018 to replace THP-n status (Temporary Humanitarian Protection (new), but then the eligibility criteria was strictly revised in 2020. Applicants must have entered the country prior to 1st January 2016 and have stayed for at least 5 years, working for at least 9 months per year. Moreover, they must have had their application for international protection finally rejected and be able to demonstrate 'good conduct'. In order to renew their status, they must prove their integration efforts through language certificates, integration course certificates or a formally submitted integration request, per the I Belong Programme.⁹ A statement of 25 November 2020, signed by 25 NGOs working in the migration field, argued that the revised SRA policy will result in people remaining undocumented and thus without access to basic services and the possibility to access and exercise their basic rights.¹⁰ As of the end of 2020, the status was no longer being granted to new applicants, but existing holders still hold the status and can renew it if they still meet the stringent eligibility criteria.

⁶ UNHCR Malta, "UNHCR: Malta Factsheet, December 2021".

⁷ Malta Today, "Malta with seventh highest number of approved asylum applications in EU compared to population in 2018", 25 April 2019, https://www.maltatoday.com.mt/news/national/94569/malta_with_seventh_highest_number_of_approved_asylum_applications_in_eu_compared_to_population_in_2018#.YyBWl6RBy3A

⁸ Asylum Information Database (AIDA), "Country Report: Malta: 2021 Update", 2021, https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-MT_2021update.pdf, p.33.

⁹ European Website on Integration, "Malta: Significant changes to Specific Residence Authorisation policy", 24 November 2020, https://ec.europa.eu/migrant-integration/news/malta-significant-changes-specific-residence-authorisation-policy_en

¹⁰ aditus Foundation, "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/?fbclid=IwAR3Z4PehEgWvRZWWXhJhoMFxi2D4W7LhQWcwX64rFhdE0U7gFQlputRD6E#.YyB91aRBy3D>

1.2 Integration Policy

Malta adopted its first integration strategy, Integration = Belonging, in December 2017 which includes an Action Plan. The Migrant Integration Action Plan set out a series of measures and identified institutions responsible for each action, as well as a timeline for their implementation. This included measures on employment, working with Jobsplus and the relevant ministries. As part of this strategy, the "I Belong" integration programme was launched in July 2018. Free of charge and voluntary, it can be followed by all TCNs upon submitting a formal request for integration.¹¹ This Strategy and Action Plan ran until 2020, and to date, no updated policy document has been published nor does it seem that an update is currently being developed.

1.3 Employment situation

In May 2021, a new policy was put into place that meant that those persons coming from so-called "safe countries" (as stipulated by Maltese law) could not access the labour market for nine months after submitting their application for asylum. NGOs and other bodies in Malta deemed this decision discriminatory, stating that it would lead to exploitation, as desperation and the need to survive would lead to these people working illegally, fuelling severe poverty and the inability to access basic human rights such as healthcare and education.¹²

Policies such as this further add to the already difficult climate for employment for asylum seekers and refugees in Malta. For several reasons, this population ends up in jobs and sectors that are often below their skills level. These reasons include difficulties getting their skills and qualifications recognised officially, language barriers as well as racial discrimination and different treatment from employers. Certain sectors such as cleaning and construction employ many asylum seekers, but certain issues remain prevalent. These include employers not applying for employment licences (work permits), long delays in these permits being issued, employers not renewing them in time, work contracts not being issued, tax contributions not being paid by the employer (but deducting money from employees' wages nonetheless), contracts being ended abruptly or not renewed, or wage payments not being affected as agreed. Asylum seekers from sub-Saharan Africa are especially vulnerable to exploitation and abuse; including low wages, unpaid wages, excessive working hours, irregular work, unsafe working conditions and employment in the shadow economy.¹³ Adding to this, asylum seekers and migrants may also face racial discrimination in the workplace, from employers and other employees. Additionally, employment licences are issued to rejected asylum seekers and asylum seekers in the name of the employer, who also then becomes the tax representative of the asylum seeker. This ties them to that particular job and employer and reduces their autonomy and mobility.

¹¹ Ministry for European Affairs and Equality, "Migrant Integration Strategy & Action Plan Integration = Belonging: Vision 2020", December 2017, https://ec.europa.eu/migrant-integration/library-document/integration-belonging-migrant-integration-strategy-action-plan_en

¹² Malta Today, "Asylum claimants denied work if they hail from 'safe countries'", 5 June 2021, https://www.maltatoday.com.mt/news/national/110086/asylum_claimants_denied_work_if_they_hail_from_safe_countries?fbclid=IwAR2pzFDHsXeDnPOXUliuhKkOpCGJSLAXBkaHJFPV5AFR7vQZ09FT84SWYNU#.YyCAkArBy3C

¹³ European Commission, "Challenges in the Labour Market Integration of Asylum Seekers and Refugees", May 2016, https://ec.europa.eu/migrant-integration/library-document/challenges-labour-market-integration-asylum-seekers-and-refugees_en, p.10.

Bureaucratic processes in order to cancel, renew and change the licences can also complicate matters. Employment licences are generally issued for 3 (for rejected asylum seekers) to 6 months (for asylum seekers). The maximum period of validity is 12 months. Refugees and other beneficiaries of protection can apply for an employment licence in their own name (usually valid for one year), and it is their responsibility to renew it. It must be ensured in all cases, that the employment licence has the correct job title for the work the employee is doing. This is important as it goes onto their employment history which can be checked for relevant experience. If this isn't correct it may well hold them back from accessing other job or educational opportunities. As well as the long time taken for the permits to be issued, the short time span for which employment licences are issued can put employers off from applying for them, as they need to be renewed regularly.¹⁴

These employment policies, as well as the situation with regard to legality of jobs, bureaucracy and documentation issues etc, both in general and with regard to employment, lead many migrants to consider other options, which may empower them to feel more dignified in their work. These include self-employment, something which many asylum seekers may have pursued previously in their countries of origin. However, there are still a number of barriers faced by asylum seekers and refugees in this regard. One has to establish themselves and gather up a client base, have a solid business plan, and figure out taxes and accounting. There are also other barriers that may be associated with self-employment which could affect asylum seekers disproportionately when compared to locals, such as the need for one's own transport given that asylum seekers and rejected asylum seekers are not able to have a driver's licence, for example.

2. Cooperatives

The option of cooperatives presents an alternative for those who want something else: a fairer and more dignified way of working. The option of setting up a cooperative could give asylum seekers autonomy, agency, and a more dignified way of achieving their economic, social and cultural aspirations.

2.1 What is a cooperative?

A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled business. Cooperatives are people-centred and are run by their members. They are ethical businesses that abide by seven internationally recognised principles which include democratic member control, autonomy and independence, and concern for the community. They are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity.

Cooperatives are about democratic decision-making and since members of a co-operative are also its owners, members actively participate in the decision-making process. The emphasis is on the person, rather than on the financial muscle of the member and they operate on the principle of 'one-person-one vote' in strategic business decisions.

¹⁴ European Commission, "Challenges in the Labour Market Integration of Asylum Seekers and Refugees", May 2016, https://ec.europa.eu/migrant-integration/library-document/challenges-labour-market-integration-asylum-seekers-and-refugees_en, p. 8-9.

Cooperatives can be found in any economic sector and, like any other business, must run a surplus to be successful. Cooperatives can be run by workers, producers, professionals, users, consumers or a hybrid. Members get to decide how to distribute the surpluses generated through the cooperative's economic activity. Surpluses can be shared among members, reinvested in the cooperative, go to a social cause or a mix of these.

Cooperatives, like companies, enjoy limited liability status and have a legal personality which is distinct and separate from that of its members.

2.2 Cooperatives in Malta

Cooperatives in Malta have been around since 1947, starting in agriculture and fisheries. Nowadays, cooperatives are found in many other sectors such as consultancy, management and marketing, media, transport, health, sports, agriculture, maritime, archaeology, education, fishing, restoration, tourism, social economy, arts, recycling and community care.

Cooperatives in Malta are regulated by the Co-operative Societies Act (Chapter 442 of the Laws of Malta).

2.3 What are the benefits of cooperatives for asylum seekers, refugees, and beneficiaries of protection?

Cooperatives provide persons at risk of labour exploitation (in its many forms), unsafe work practices, human trafficking and modern slavery with an opportunity to be in meaningful and dignified employment, while at the same time be part of strategic business decisions which put their economic, cultural and social aspirations at their core.

Migrant-led, worker-run cooperatives could benefit workers who are being exploited or exposed to unsafe work practices. This is because members of a cooperative will have control over the work conditions they choose to work in, which in turn may lead to an increase in these same standards throughout the whole sector. These cooperatives could either provide labour to existing projects and businesses or else provide the service directly themselves to customers, removing the middle-man.

Workers are empowered as they will form part of the decision-making processes that affect their lives and livelihoods. What is beneficial for worker-cooperatives can also potentially be beneficial to the economic sector they engage in.

2.4 Starting a cooperative in Malta

Starting up a co-operative society is similar to creating any other business. The primary differences lie in the minimum number of members needed to form and manage a cooperative and in its democratic structure. The start-up process of a co-operative in Malta currently requires the involvement of a minimum of 5 members (persons or entities). Persons interested in forming a cooperative need to submit a number of documents to the Cooperatives' Board, which is the Regulator of all cooperative societies in Malta.

As with other business start-ups, founding members, and eventually, new intakes, have to undergo a due diligence process which needs to be vetted by the Regulator before that Member is formally accepted.

2.5 What are the main barriers in setting up a cooperative?

There currently are no restrictions at law for any person local, EU, or third country national to become a member of a cooperative. The Regulator follows national adopted due diligence procedures with respect to money laundering and/or financing of terrorism, in accordance with legislation. In practice, this means that asylum seekers coming from certain countries (such as those where terrorist organisations are active) might find it very difficult to provide the necessary documentation to satisfy these checks. Some countries of origin cannot be approached for protection reasons. These same due diligence processes create hurdles even once a co-op is registered, particularly with subject persons including banks, notaries, estate agents, lawyers, accountants and auditors of financial statements. It is fair to note that this due diligence process is also mandatory for other legal vehicles.

Another challenge to running a cooperative as a going concern is when members are barred from remaining in Malta, which might result in the co-operative being shorn of active members who need to physically work in Malta, even though these persons may still technically remain members of the cooperative.

Both JRS and MCF believe that the co-operative model of enterprise is the right fit for asylum seekers and beneficiaries of protection. However, these barriers present notable challenges to the setting up of migrant-led co-operatives.

3. Recommendations and proposals

In 2022, the situation with regards to migration is complex. Whilst arrival numbers have decreased, there is a population of refugees and asylum seekers whose access to livelihoods has deteriorated to steep increases in cost of living and changes in policy. With regard to employment and access to the labour market, many issues persist, including difficulties obtaining work permits and not being paid or treated fairly. On a broader level, some asylum seekers and even refugees and other beneficiaries of protection feel stuck in certain sectors or jobs where they don't feel valued, dignified or able to reach their full potential. The option of cooperatives presents an alternative way of working and of doing business, that promotes equity and fairer decision-making, giving the members more agency in their decisions as to how the business is run. However, the process of setting up a cooperative is lengthy and cumbersome and there are various requirements that are harder to fulfil for this population. Moreover, up until now, no asylum seeker, refugee or beneficiary of protection has attempted to apply to set one up, meaning that the outcome of this is not yet known. Worker-run cooperatives should be promoted among the migrant population, who should be encouraged to become full members. Membership in a cooperative will address problems such as labour exploitation, unsafe work practices, human trafficking and modern slavery and facilitate the ability to work in a more dignified and fulfilling manner.

In order to make cooperatives more accessible to the population of asylum seekers, refugees and beneficiaries of protection, JRS and MCF propose the following:

- Initiate an inter-agency exercise to identify any procedural and legislative hindrances for migrants to become full members of cooperatives and strive to reduce such hindrances.
- Identify enabling articles within the existing legislation that can facilitate asylum-seekers forming a business entity.
- Any legislative reforms should be made in full consultation with relevant stakeholders with a view to improve access to cooperatives by the asylum-seeking population
- The legislation in Malta should cater for the possibility that any third country national with the right to work in Malta has to be given the right to be a member in any legal entity, including a cooperative society.
- Include cooperative membership as part of migrant induction programmes (such as "I Belong") and other information provision relating to integration and employment options.
- Work with the relevant authorities (Cooperatives Board, Ministry and FIAU) to explain that whoever is doing due diligence on an asylum seeker cannot get in touch with the asylum seeker's country of origin as this would put them at risk. The failure of obtaining due diligence clearance should not be used as a reason for refusing to accept membership in a cooperative or any other entity.
- Organise and offer training on cooperatives to all those working with migrants – in particular entities and NGOs with a focus on integration and employment in order to present cooperatives as an alternative option.
- Organise training on migration for all those working with cooperative authorities in order to understand the particularities of migration and the different legal statuses afforded to people and the rights they may or may not have.
- Cooperatives Board is to provide information on cooperatives, and to communicate with potential co-operators in English

