

Briefing Note: How to Score Better on MIPEX

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This briefing note is a side output of the Migrant Integration Policy Index developed by the People for Change Foundation and providing recommendations on how, based on existing indicators, Malta can improve its integration policy in the interest of third country nationals. These recommendations are based on the MIPEX indicators applied to the latest edition of the Index published in 2015.

In the latest edition of MIPEX, Malta ranked 33rd out of 28 Countries. See the country specific results here: <http://mipex.eu/malta>.

Overall it is noted that a number of entitlements to which this document refers are available usually for specific subsets of migrants (generally speaking asylum seekers and beneficiaries of international protection). There is however the need to both ensure that these entitlements are clarified and formalized and to expand their reach to all migrant groups in Malta. The failure to formalize these requirements means that there is no possibility of redress in case of problems in accessing specific entitlements.

1. Labour Market Mobility

- Allow immediate access to the labour market and self employment for residents on temporary residence / work permits and on family reunion permits ensuring easier access to the labour market.
- Ensure equality of access to higher education and vocational training for all categories of third country nationals including short term migrants, beneficiaries of protection and family members of third country nationals.

- Ensure that study grants are available to third country nationals including residents on temporary work permits and on family reunion permits.
- Ensure that recognition of qualifications (including in regulated professions) acquired outside the EU is facilitated ensuring the same procedures and fees as for EU/EEA nationals.
- Develop further programmes aimed at providing third country nationals with targeted training other than generic language training (e.g bridging courses, job specific language training etc.) as well as programmes to encourage the hiring of TCNs (e.g employer incentives, work placements, public sector commitments etc).¹
- Develop national programmes to specifically address the labour market situation of migrant youth and migrant women.
- Ensure that TCNs have a right to a resource person, mentor or coach link to the Employment and Training Corporation and that employees of ETC are trained to address the specific needs of migrants.
- Develop and implement active policies of information on the rights of migrants in various areas including the rights of migrant workers.
- Ensure that TCNs have equal access to social security
- Ensure that TCNs have equal access to housing assistance including access to social housing, rent subsidies etc.

2. Family Reunification for Third Country Nationals

Reduce the residence requirement for sponsors before being able to apply for family reunification and reduce the permit duration required for the sponsor to be eligible for family reunification. Ensure that all timeframes are clearly established and published, that potential beneficiaries are aware thereof and that arbitrariness is avoided.

Expand the statuses that allow an individual to apply for family reunification.

¹ See in this regard research conducted by The People for Change Foundation, commissioned by the International Organization for Migration.

Expand the definition of family member for the purpose of family reunification eligibility to cover dependent adult children, dependent relatives in the ascending line and persons in a stable long-term relationship.

Ensure that language courses are available and accessible for persons seeking to reunite with family members and that participation does not become a barrier to family reunification.

Ensure that when considering whether an applicant for family reunification meets the economic resources requirement the standard is set at the level of social assistance (meaning that he/she is not expected to earn more than what social assistance would provide), and that no income sources is excluded from consideration when counting the totals.

Reduce the maximum length of the application procedure to below 6 months and reduce the costs of application and or issue of status.

Ensure that the status of the reuniting family members is of the same validity as the sponsor's residence permit and is renewable.

Clarify the grounds for rejecting, withdrawing or refusing to renew family reunification status. In particular ensure that: the breakdown of family relationship (before three years) and when the original conditions (economic requirements) are not longer satisfied are not grounds for such withdrawal.

The legislation should explicitly provide that, before refusal or withdrawal, the deciding entity should take into account: the solidity of the sponsor's family relationship, the duration of the sponsor's residence in country, existing links with the country of origin and physical or emotional violence. In case of violence, an autonomous residence permit should be offered.

Provide for the right to an autonomous residence permit for other family members having joined the sponsor within 3 years.

Allow family members access to employment and self-employment in the same way as the sponsor.

3. Education

Develop targeted State supported measures to increase participation of migrant pupils and to increase migrant pupils' successful completion of compulsory education including to address early school leaving and absenteeism.

Provide an explicit obligation within the national legal framework for all categories of migrants, including undocumented migrants, to have same access to education as nationals including with regards to non-compulsory education.

Formalize the assessment of prior learning and language qualifications obtained abroad for migrant pupils including by ensuring that the assessment is based on standardized quality criteria and tools and that trained staff administer the relevant assessment.

Continue to provide continuous and ongoing education support in Maltese and English language for migrant pupils in compulsory education and pre-primary education as well as providing for interpretation services for families of migrant pupils for general educational advice and guidance at all levels. Such provision should include: communicative literacy (general fluency in reading, writing, and communicating in the language) and academic literacy (fluency in studying, researching and communicating in the language of the school academic setting). Provisions in this regard should include a requirement for courses to use established second-language learning standards, a requirement for teachers to be specialized and certified in these standards and the monitoring of curriculum standards. Measures in this regard have already commenced with the induction courses offered to migrant students and should be further built upon.

Collect and analyze migrant specific results on pupil monitoring.

Develop targeted policies to address the educational situation of migrant groups including the systematic provision of guidance (e.g teaching assistance and homework support) and the systematic provision of financial resources).

Ensure that teacher training (both pre-service and in-service) and professional development programmes require courses that address migrant pupils' learning needs, teachers expectations of migrants pupils and specific teaching strategies to address this.

Provide for the option (in or outside school) to learn immigrant languages as well as about migrant pupils' cultures and their / their parents' country of origin.

Develop and implement effective monitoring structures for potential segregation between educational institutions at all levels including special needs education.

Implement measures to support migrant pupils and their communities in the education of their children including by providing community level support for parental involvement in their children's learning, requirements for school level support to link migrant students and their schools including school liaison workers as well as measures to encourage migrant parents to be involved in school governance including Parent Teachers Associations.

Undertake measure to support bringing migrants (first and second generations) into the teacher workforce.

Ensure that the official aims of intercultural education include the appreciation of diversity and as delivered both as a standalone curriculum subject and integrated throughout the curriculum. Develop training tools to support teachers in this endeavor.

Provide support for public information initiatives to promote the appreciation of cultural diversity throughout society.

Ensure that daily life at school can be adapted based on cultural or religious needs to order to avoid exclusion of pupils. Such adaptation might include one or a few of the following: changes to existing school timetable and religious holidays, educational activities and uniforms.

Teacher training and professional development (both pre-service and in-service) programmes should require intercultural education and the appreciation of cultural diversity for all teachers.

4. Healthcare

Clarify existing legislation relating to the healthcare entitlements of migrants, which are often vague and incomplete.

When migrant workers pay national insurance they should be entitled to access healthcare services on the same level as Maltese persons using the national health services, without the need for private health insurance.

Make explicit provisions regarding access to healthcare for undocumented migrants.

5. Political Participation

Consider extending the right to vote in national and local elections.

Develop structurally organized consultation of immigrant populations or with immigrants associations for policies that are relevant for foreign residents.

Set up a consultative body for foreign residents with members elected by foreign residents or appointed by associations of foreign residents. The consultative body

should be chaired by participants (foreign resident / association of foreign residents). Selection criteria for the consultative body should be established in order to ensure representativeness including both genders and diversity of nationalities and ethnic groups.

The consultative body should have the right to be consulted on policies affecting foreign nationals as well as the right of initiative including the drafting of its own reports or recommendations even when it is not consulted to the right to have a response by the national authority to its advice or recommendations.

Similar consultative bodies should also be considered on the local level, especially in cities and towns with larger migrant populations.

Malta should build on existing measures and adopt an active policy of information to migrant groups including through the one stop shop idea.

Ensure that migrant groups have access to national and EU funding that is available for organizations in Malta, including by providing training and support on how to access such funding opportunities.

6. Long Term Residence

Reduce the required time of habitual residence before a TCN can apply for and acquire long term residence in Malta. Consider expanding the list of residents permits considered when assessing eligibility for long term residence including for instance considering residence as a student.

Ensure that language and integration courses do not become a further barrier to the acquisition of long-term residence. Such courses should be voluntary and accessible including by providing courses at different times, and through online mediums. The language or integration courses should be implemented by language or education specialists who are independent of government.

Should course requirements be maintained, these should take into account individual abilities (incl. educational qualifications) as well as providing exemptions for vulnerable groups (incl. based on age, literacy, mental/physical disability etc). The courses should be offered at no or nominal costs whilst study guides should be available in order to aid preparation of assessments.

Overall, it is critical that clarity is established and discretion avoided in order to ensure transparency of process and outcome.

7. Access to Nationality

Consider reducing the period of time an individual is required to be in the country before he becomes eligible for citizenship.

Clarify, in information booklets on accessing citizenship, the implications of the Civil Unions Act on the right to acquire citizenship for persons in a civil union.

Allow similar rights to spouses for partners and co-habitees of nationals or EU Nationals seeking to move to Malta.

Consider facilitating the process of acquiring citizenship for second and third generation migrants (born in Malta to foreign parents).

Requirements of language courses and tests should be revised in line with the recommendations above in the context of long term residence.

The criminal record exclusion from citizenship should be restricted to serious crimes or a qualifying period should be used instead of outright refusal.

Clarify the conditions for the acquisition of citizenship, clearly explaining what the standards that are applied mean and how one can prove that they meet the standards. Discretion of the Minister responsible should be curtailed and individuals would have the possibility of reasonably assessing their prospects of success including through the availability of measurable criteria. For instance, the requirement of 'good character and suitable citizen' should be clarified in terms of what it means in practice.

Ensure that all powers of refusal are explicitly provided, and that there are legal guarantees and redress in case of refusal including the right to receive a reasoned decision by the administrative authority making the decision, the right to appeal and the right of representation before an independent administrative authority and/or a court.

8. Anti-Discrimination

Expand the anti-discrimination provisions to cover also nationality discrimination. Ensure that the existing provisions on non-discrimination on the basis of nationality are applied consistently, and that the protection is also expanded to other migrant groups.

Adopt clear provisions prohibiting racial profiling by law enforcement officials, and providing persons affected by such practices appropriate remedies.

Adopt legal provisions specifically addressing the situation of multiple discrimination, including when one of the grounds of discrimination is nationality discrimination.

Promote measures to support the reporting of discriminatory incidents including through raising awareness and supporting third party reporting mechanisms.

Ensure that the decisions of the equality body (NCPE or the HREC) are binding and that an appeal of these decisions is possible before the national courts.

Shorten the length of judicial proceedings in the context of discrimination cases in order to ensure people are not disincentivised from seeking redress in cases of discrimination.

Ensure that national legislation allows for situation testing and statistical data as potential evidence in court.

Allow for the possibility of class action (that is Court claims where one or more names claimants pursue a case for themselves and the defined class against one or more defendants) and *actio popularis* (action to obtain a remedy by a person or group in the name of the collective interest).

Ensure that the equality body has the legal standing and requisite resources (human and financial) to engage in judicial and administrative proceedings on behalf of a complainant as well as the right to institute proceedings in its own name.

Require the relevant government authorities to disseminate information, ensure social dialogue around issues of discrimination and provide for structured dialogue with civil society on issues of anti-discrimination (including on the ground of nationality).

Ensure that mechanisms are in place to review mainstream legislation to ensure compliance with anti-discrimination and equality law (including impact assessments, reporting and research).

Beyond the Human Rights and Equality Commission, ensure that there is a specific government department directly working on anti-discrimination and equality, and that covers all discrimination grounds.

Further extend the current legislation to not only require public bodies to promote equality in general in carrying out their functions but also to ensure that parties or individuals to whom they award contracts, loans, grants or other benefits respect non-discrimination.

Ensure that the new equality legislation being developed makes specific provision allowing for positive action measures and the assessment of these measures.

