I assent.

(L.S.) EDWARD FENECH ADAMI
President

29th July, 2008

ACT No. VII of 2008

AN ACT to amend the Refugees Act, Cap. 420.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. The short title of this Act is the Refugees (Amendment) Act, 2008, and this Act shall be read and construed as one with the Refugees Act, hereinafter referred to as "the principal Act". Short title. Cap. 420.

2. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) the definitions "applicant", "application", "asylum seeker", "humanitarian protection" and "immigration officer" shall be deleted;

(b) immediately before the definition "the Commissioner" there shall be inserted the following new definition:

" "applicant for asylum" means 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 the Refugee Appeals Board;";

(c) immediately after the new definition "applicant for asylum" there shall be inserted the following new definition:

" "application for asylum" means an application made by a third country national or a stateless person which can be understood as a request for international protection under the Convention;";

(d) immediately after the new definition "application for asylum" there shall be inserted the following definition:

" "the Board" means the Refugee Appeals Board as established by article 5;";

(e) immediately after the definition "Convention Travel Document" there shall be inserted the following new definition:

" "country of origin" means the country or countries of nationality or, for stateless persons, of former habitual residence;";

(f) immediately after the definition "dependent members of the family" there shall be inserted the following new definition:

" "determining authority" means the Refugee Commissioner;";

(g) immediately after the new definition "determining authority" there shall be inserted the following new definition:

" "Directives" means Council Directive 2004/83/EC of 29 April 2004 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 and the content of the protection granted and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;";

(h) immediately after the new definition "Directives" there shall be inserted the following new definition:

" "final decision" means a decision on whether the third country national or stateless person be granted refugee status or subsidiary protection status which is not subject to appeal;";

(i) immediately after the new definition "final decision" there shall be inserted the following new definition:

" "first country of asylum" means that country where an applicant for asylum:

(a) has been recognised in that country as a refugee and he can still avail himself of that protection; or

(b) he otherwise enjoys sufficient protection in that country including benefiting from the principle of *non-refoulement* and subject to re-admission to that country;";

(j) immediately after the definition "the High Commissioner" there shall be inserted the following new definition:

" "legal adviser" means a person who is authorised to practise the legal profession in Malta in terms of the Code of Organization and Civil Procedure;"; Cap. 12.

(k) in the definition "manifestly unfounded application" for the words "of these circumstances;" in paragraph (j) thereof, there shall be substituted the words "of these circumstances; or", and immediately after paragraph (j) thereof there shall be added the following new paragraph:

"(k) when the applicant for asylum comes from a safe country of origin;";

(l) for the definition "refugee" there shall be substituted the following:

" "refugee" means 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, but does not include a person excluded in terms of article 12:

Provided that in the case where a person has more than one nationality, the term "country", mentioned above, shall refer to each country of which he is a national, and such a person shall not be considered as not having the protection of his country if, without any founded fear of persecution, he has not sought the protection of one of the countries of which such a person is a national:

Provided further that:

(a) acts of persecution within the meaning of Article 1A of the Convention must be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the right from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner as in paragraph (a) above;";

(m) immediately after the definition "refugee" there shall be inserted the following new definition:

" "refugee status" means the recognition of a third country national or stateless person as a refugee;";

(n) immediately after the definition "refugee status" there shall be inserted the following new definition:

" "remain" means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for asylum has been made or is being examined;";

(o) for the definition "safe country of origin" there shall be substituted the following:

" "safe country of origin" means a country of which the applicant for asylum:

(a) is a national; or

(b) being a stateless person, was formerly habitually resident in that country and he has not

submitted any serious grounds for considering the country not to be a safe country of origin in his particular circumstances;";

(p) for the definition "safe third country" there shall be substituted the following:

" "safe third country" means a country of which the applicant is not a national or citizen and where -

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) the principle of *non-refoulement* in accordance with the Convention is respected;

(c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;

(d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention;

(e) the applicant had resided for a meaningful period of time prior to his entry into Malta;";

(q) immediately after the definition "safe third country" there shall be added the following new definition:

" "serious harm" means:

(a) death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict;";

(r) immediately after the definition "serious harm" there shall be added the following new definition:

" "subsidiary protection status" means the recognition of a third country national or a stateless person as a person eligible for subsidiary protection under Part IV;";

(s) immediately after the new definition "subsidiary protection status" there shall be added the following new definition:

" "unaccompanied minor" means a person below the age of eighteen years who arrives in Malta unaccompanied by an adult responsible for him whether by law or by custom, for as long as he is not effectively taken into the care of such a person and includes any minor who is left unaccompanied after he has entered Malta;";

(t) immediately after the new definition "unaccompanied minor" there shall be added the following new definition:

" "withdrawal of refugee status" means the decision by a competent authority to revoke, end or refuse to renew the refugee status of a person.".

Substitution of article 3 of the principal Act.

3. For article 3 of the principal Act, there shall be substituted the following:

"3. This Act incorporates the obligations assumed by Malta under the Convention and its obligations under the Directives.".

Amendment of Title I in Part II of the principal Act.

4. In Part II of the principal Act for the headings "Procedures" and "Title I - The Refugee Commissioner" there shall be substituted the heading "Refugee Commissioner".

Amendment of Title II in Part II of the principal Act.

5. In Part II of the principal Act for the heading "Title II - Refugee Appeals Board" there shall be substituted the headings "Part III" and "Refugee Appeals Board".

Amendment of article 7 of the principal Act.

6. Article 7 of the principal Act shall be amended as follows:-

(a) for subarticle (2) thereof there shall be substituted the following:

"(2) Appeals to the Board shall be made within fifteen days from the notification on the applicant of the recommendation of the Commissioner. Where the appeal is

entered by the applicant a copy of the appeal shall be served on the Minister and the Commissioner. Where the appeal is entered by the Minister a copy of the appeal shall be served on the applicant and the Commissioner:

Provided that the Appeals Board may assume that the applicant has implicitly withdrawn his application of appeal when it is ascertained that:

(a) he has failed to provide information essential to his appeal unless the applicant demonstrates, within a reasonable time, that his failure was due to circumstances beyond his control;

(b) he has abandoned or left without authorization the place where he lived or was held, without contacting the competent authorities within a reasonable time or he has not, within thirty days, complied with reporting duties or other obligations to communicate.";

(b) in subarticle (7) thereof, for the words "Notwithstanding the provisions of the previous sub-article, a representative" there shall be substituted the words "A representative";

(c) in subarticle (8) thereof, for the words "article 19(1)(b)" there shall be substituted the words "article 25(1)(b)";

(d) in subarticle (9) thereof, immediately after the words "before any court of law" there shall be added the words ", saving the provisions of article 7A"; and

(e) subarticle (11) thereof shall be deleted.

Addition of new article 7A to the principal Act.

7. Immediately after article 7 of the principal Act, there shall be added the following new article:

"Subsequent application after final decision.

7A. (1) A person who has applied for asylum may make a subsequent application after a final decision to the Commissioner for Refugees:

Provided that such application shall only be considered on the presentation of new elements or findings, relating to the examination of whether the person making the subsequent application qualifies as a refugee, and of which the applicant could not have been aware or which he could not have submitted.

(2) The person submitting a subsequent application shall:

(a) indicate facts and provide evidence which justify this procedure; and

(b) submit such new information within fifteen days from the day on which the person making the subsequent application obtained such information.

(3) The examination may be conducted on the sole basis of written submissions and the person making the subsequent application is to be informed of the outcome of the examination and of his right for an appeal.".

Substitution of articles 8 to 18A of the principal Act.

8. For Parts III, IV and V (and articles 8 to 18A therein) of the principal Act, there shall be substituted the following:

"Part IV

Refugee Status
and Subsidiary Protection Status

I - Refugee Status

Qualification for refugee status.

8. (1) A person may apply to the Commissioner, in the prescribed form, and shall be granted refugee protection, where it is established that he faces a well-founded fear of persecution in his country of origin or habitual residence in terms of the Convention.

(2) A well-founded fear of persecution may be based on events which have taken place after applicant has left his country of origin or activities engaged in by applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin.

(3) If the Commissioner recommends the acceptance of the application, the Minister shall make a declaration that applicant is eligible for refugee status, or appeal against such recommendation.

Cessation of qualification for refugee status.

9. (1) A person shall cease to possess refugee status if he -

(a) has voluntarily re-availed himself of the protection of the country of his or her nationality, or, having lost his nationality, has voluntarily re-acquired it; or

(b) has acquired a new nationality and enjoys the protection of the country of his new nationality; or

(c) has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(d) can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; or

(e) is a person who has no nationality and, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, is able to return to the country of his former habitual residence:

Provided that in paragraphs (d) and (e), regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

(2) A person who is notified that he has ceased to possess refugee status shall be entitled to appeal against such decision to the Board within fifteen days of such notification and the provisions of article 7 shall *mutatis mutandis* apply to such appeal. The decision of the Board shall be final.

Revocation or refusal to renew refugee status.

10. (1) The Minister shall revoke a declaration of refugee status if he is satisfied, after due investigation, that a person to whom a declaration has been given has been erroneously recognized as a refugee on an application which contains any materially incorrect or false information, or was so recognized owing to fraud, forgery, false or misleading representation of a material or substantial nature in relation to the application:

Provided that he shall be informed in writing that his qualification for refugee status is being reconsidered, is given reasons for such reconsideration and is given the opportunity to submit, in a personal interview, reasons as to why his refugee status should not be withdrawn.

(2) The Minister may revoke or refuse to renew the protection granted to a refugee when:

(a) there are reasonable grounds for regarding him as a danger to the security of Malta;

(b) having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of Malta.

(3) A person, in whose regard the Minister has revoked or refused to renew a declaration under subarticles (1) or (2), shall be entitled to appeal against the revocation to the Board within seven days of the notification of the revocation to him, and the provisions of article 7 shall, *mutatis mutandis*, apply to such appeal.

Expulsion.

11. (1) The Minister may order the expulsion from Malta of any refugee or persons granted subsidiary protection on grounds of national security or public order, and pending such expulsion such person shall be held in custody.

(2) The provisions of article 7 shall, *mutatis mutandis*, apply to expulsion orders issued under this article.

(3) Any refugee to whom this article applies shall be allowed a reasonable period of time within which to seek legal admission into another country.

Exclusion.

12. (1) A third country national or a stateless person is excluded from being a refugee if:

(a) he falls within the scope of Article 1D of the Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, such persons shall *ipso facto* be entitled to the benefits of this Act; or

(b) he is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, or equivalent rights and obligations.

(2) A third country national or a stateless person is also excluded from being a refugee where there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or

(b) he has committed a serious non-political crime outside the country of refuge, including particularly cruel actions even if committed with an allegedly political objective, prior to his admission as a refugee; or

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

(3) Sub-article (2) applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

II - *Non-refoulement*, treatment, resettlement and assistance

Treatment.

13. (1) A person seeking asylum in Malta may apply to the Commissioner in the prescribed form for a declaration and shall be interviewed by the Commissioner as soon as practicable.

(2) An applicant for asylum shall have access to state education and training in Malta and to receive state medical care and services.

(3) Any child or young person below the age of eighteen years falling within the scope of this Act who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for asylum, and for the purposes of this Act, shall be assisted in terms of the Children and Young Persons (Care Orders) Act, as if he were a child or young person under such Act.

Cap. 285.

Prohibition of *refoulement*.

14. (1) A person shall not be expelled from Malta or returned in any manner whatsoever to the frontiers of territories where the life or freedom of that person would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) The provisions of sub-article (1) shall not apply to a refugee or a person enjoying subsidiary protection in respect of whom there are reasonable grounds for regarding him as a danger to the security of Malta, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community.

Resettlement.

15. The Minister may, at the written request of an applicant, or of a recognized refugee or of a person enjoying subsidiary protection, and, where necessary, with the assistance of the High Commissioner, facilitate the resettlement of such person to another country and do all that is required for the purpose.

Assistance.

16. The Commissioner shall ensure as far as possible that the application of this Act is in conformity with accepted international practice, and for this purpose may seek the assistance of the High Commissioner or of any national or international non-governmental body concerned with refugee matters.

III - Subsidiary Protection Status

Qualification for subsidiary protection status.

17. (1) Upon the recommendation of the Commissioner of Refugees, the Minister shall declare that subsidiary protection status be granted to an applicant for asylum whose application has been dismissed but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his country of origin, or in the case of a stateless person, to his country of former habitual residence, would face a real risk of suffering serious harm, and the Commissioner shall continue to be able to make such a recommendation in cases where the real risk of suffering serious harm arises even after a decision not to grant subsidiary protection has been taken:

Provided that a third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes or is a person who instigates or otherwise participates in the commission of such crimes; or

(b) he has committed a serious crime; or

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or

(d) he constitutes a danger to the community or to the security of Malta:

Provided further that paragraphs (a), (b), (c) and (d) shall also apply to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein:

Provided also that the decision concerning the granting of subsidiary protection shall be given in conjunction with the formal determination that the applicant does not meet the criteria of a refugee under this Act.

(2) The Refugee Commissioner may exclude a third country national or a stateless person from being eligible for subsidiary protection if applicant, prior to his admission to Malta, has committed one or more crimes, outside the scope of sub-article (1), which would be punishable by imprisonment had they been committed in Malta and if applicant left his country of origin solely in order to avoid sanctions resulting from these crimes.

Actors of real risk or serious threat.

18. The following may be considered as actors of real risk of serious harm in terms of subarticle (1) of article 17:

(a) the State;

(b) parties or organizations controlling the State or a substantial part of the territory of the State;

(c) non-State actors, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including international organizations, are unable or unwilling to provide protection against the acts mentioned in article 17(1).

Actors of protection.

19. (1) Protection may be provided by:

(a) the State; or

(b) parties or organizations, including international organizations, controlling the State or a substantial part of the territory of the State.

(2) Protection is provided when the entities mentioned in sub-article (1) take reasonable steps to prevent the acts mentioned in article 17(1) by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

Internal protection.

20. (1) As part of the assessment of the application for international protection, the Refugee Commissioner may determine that the applicant is not in need of international protection if, in the exercise of his functions, he deems that in a part of the country of origin there is no well-founded fear of being subject to the acts mentioned in article 17(1) and the applicant is reasonably expected to stay in that part of the country.

(2) Sub-article (1) may apply notwithstanding any obstacle or difficulty which the applicant may have to return to his country of origin.

Cessation of qualification of subsidiary protection status.

21. Subsidiary protection shall cease if the Minister is satisfied, after consulting the Commissioner, that the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required:

Provided that regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

Revocation or refusal to renew subsidiary protection status.

22. The Minister shall revoke or refuse to renew the subsidiary protection status of a third country national or a stateless person if:

(a) after having been granted subsidiary protection status, that person should have been or is excluded from being eligible for subsidiary protection in accordance with article 17(1); or

(b) that person's mis-representation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.

Part V

Accelerated Procedures

Manifestly unfounded applications.

23. (1) A person seeking asylum in Malta in terms of article 8 shall be examined under accelerated procedures in accordance with this article when his application appears *prima facie* to be manifestly unfounded.

(2) Where the Commissioner is *prima facie* of the opinion, at whichever stage, that the application is manifestly unfounded, the Commissioner shall examine the application within three working days and shall, where applicable, recommend that the application is manifestly unfounded.

(3) The recommendation shall immediately be referred to the Chairman of the Board who shall examine and review the recommendation of the Commissioner within three working days.

(4) The decision of the Chairman of the Board on whether the application is manifestly unfounded shall be final and conclusive and, notwithstanding the provisions of any other law, no appeal or form of judicial review shall lie before the Board or before any other court of law.

(5) Where, following the procedures outlined in the previous provisions of this article, an application is rejected, the Chairman of the Board shall send a copy of the decision with the grounds therefor to the Minister and the Commissioner.

(6) Any interview with the applicant under the foregoing provisions of this article shall, where necessary, be conducted in private and with the assistance of an interpreter. The applicant shall also be informed of his right to obtain the services of a legal adviser to assist him during accelerated proceedings and to consult the High Commissioner.

(7) Where the application is considered not to be manifestly unfounded such application shall be examined under normal procedures as provided under this Act.

(8) Without prejudice to the generality of the foregoing provisions of this article, if in the process of examining any application submitted in terms of article 8, the Commissioner arrives at the conclusion that the application should be dealt with under accelerated procedures on the basis of its being *prima facie* manifestly unfounded or because the applicant has found or could have found safe protection elsewhere in terms of the Convention and the Directives, the application shall be dealt with under accelerated procedures and the foregoing provisions of this article shall *mutatis mutandis* apply.

(9) If an applicant holds a travel document issued by a safe third country pursuant to the Convention and the Directives, he may be declared to have been safe from persecution in such State and his application shall be dealt with under accelerated procedures in accordance with the foregoing provisions of this article.

Inadmissible applications.

24. (1) The application of any person in Malta seeking recognition of refugee status and who falls under any one of the following conditions, shall be inadmissible if:

(a) another Member State has granted refugee status or is obliged to examine the particular application for asylum in terms of Council Regulation (EC) 343/03 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant;

(c) a country which is not a Member State is considered as a safe third country for the applicant;

(d) the applicant is allowed to stay in Malta on some other grounds and as a result of this he has been granted a status comparable to the rights and benefits of the refugee status;

(e) the applicant is allowed to stay in Malta on some other grounds which protect him against *refoulement* pending the outcome of a procedure for the determination of his status;

(f) the applicant has lodged an identical application after a final decision;

(g) a dependant of the applicant lodges an application after consenting to have his case be part of an application made on his behalf, and there are no facts relating to the dependant person's situation which justify a separate application;

(h) has been recognized in a country which is not a member state as a refugee and can still avail himself of that protection or otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*, and such person can be re-admitted to that country; or

(i) is a national or citizen of any safe country of origin listed in the Schedule or, if he is not a national or citizen thereof, he has a right of residence therein.

(2) The provisions of subarticles (2), (3), (4) and (5) of article 22 shall apply *mutatis mutandis* to inadmissible applications.

(3) The Minister may by regulations amend the list of countries specified in the Schedule, provided that only countries which in his opinion are countries of safe origin may be listed in the said Schedule, sohowever that the Minister shall remove from the said Schedule any country which in his opinion is no longer a safe country of origin.".

Renumbering of articles 19 and 20 of the principal Act.

9. Articles 19 and 20 of the principal Act shall be renumbered as articles 25 and 26 thereof respectively.

Amendment of article 25 of the principal Act.

10. Article 25 of the principal Act as renumbered shall be amended as follows:

(a) in paragraph (f) of sub-article (1) thereof immediately after the words "permits to recognized refugees" there shall be added the words "and their family members, and persons enjoying subsidiary protection";

(b) immediately after paragraph (g) thereof there shall be added the following new paragraphs:

"(h) for implementing the provisions of the European Union Council Directives relating to refugees and ancillary matters;

(i) for providing that any person who contravenes or fails to comply with the provisions of any one or more regulations, shall be guilty of an offence against the regulations and for establishing the penalty for infringement of such regulations of a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500) or imprisonment not exceeding three months, or of both such fine and imprisonment.".

Amendment of the Schedule to the principal Act.

11. The Schedule to the principal Act shall be amended as follows:

(a) for the words "(Article 18A)" there shall be substituted the words "(Article 24)";

(b) the words "Bulgaria" and "Romania" shall be deleted; and

(c) immediately after the word "Uruguay" there shall be added the words "Member States of the European Union and European Economic Area".

Amendment of the Immigration Act.
Cap. 217.

12. In subarticle (1) of article 36 of the Immigration Act, for the words "for carrying the purposes or provisions of this Act into effect." there shall be substituted the words "for carrying the purposes or provisions of this Act into effect, and such power shall include that of providing that any person who contravenes or fails to comply with the provisions of any one or more regulations shall be guilty of an offence against such regulations and of establishing the penalty for

such infringement which shall be a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500) or imprisonment not exceeding three months, or both such fine and imprisonment.".

Passed by the House of Representatives at Sitting No. 34 of the 16th July, 2008.

LOUIS GALEA
Speaker

PAULINE ABELA
Acting Clerk to the House of Representatives