European Commission against Racism and Intolerance
Commission européenne contre le racisme et l'intolérance

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# ECRI REPORT ON MALTA

## (fourth monitoring cycle)

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 6 December 2012 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**

# SUMMARY

**Since the publication of ECRI's third report on Malta on 29 April 2008, progress has been made in a number of fields covered by that report.**

A number of criminal law provisions against racism have been enacted, in line with ECRI's General Policy Recommendation No. 7. A new Public Administration Act has entered into force, introducing a Code of Ethics for public bodies and public employees, requiring that public authorities, including law enforcement officials, are placed under a statutory duty to avoid discrimination and to ensure equality in the exercise of their functions. The National Commission for the Promotion of Equality (NCPE) has taken several measures to raise awareness of the provisions in force against racial discrimination[1] and available remedies, and has carried out relevant studies.

Several training initiatives have been taken and information sessions have been held in the field of employment for refugees, persons granted humanitarian protection and asylum seekers. A Migrant Health Unit has been set up in order to address and respond to the specific needs of migrants (lack of knowledge about the health care system, language barriers etc.). Improvements have been made in the climate of opinion and in public discourse with respect to migrants, asylum seekers and refugees.

Subsidiary protection and the principle of non-refoulement are now provided for under Maltese law. Remarkable efforts have been made to improve the asylum determination procedure and to prepare caseworkers. Improvements have been made in the material and living conditions at the Marsa open reception centre.

**ECRI welcomes these positive developments in Malta. However, despite the progress achieved, some issues continue to give rise to concern.**

The Citizenship Act raises a number of issues pertaining to: the large margin of discretion left to the authorities in decisions relating to naturalisation; the absence of a right to appeal against these decisions; and certain cases of loss of citizenship by naturalised citizens. Amendments to the Criminal Code provisions against racism which have been submitted to the Parliament propose to remove national origin and citizenship from the list of grounds for which racist conduct is punished. Most racist comments made on-line, including comments to news articles, go unpunished. Among victims of criminal offences, only Maltese and EU nationals as well as persons who are habitual residents of Malta may apply for compensation before a criminal court. Citizenship, language and religion (in this last respect, with the exception of the field of employment) are still not included among the prohibited grounds of discrimination in the relevant civil and administrative law provisions. Even though a National Action Plan against Racism and Xenophobia has been developed by the NCPE, this has never been adopted or published by the authorities.

Many refugees, persons granted humanitarian protection and immigrants continue to be employed in the informal economy and are exploited by their employers. It is commonplace for visible minorities to be refused entry into bars and clubs and to experience discrimination when using public transportation. Reports made to the police in this connection are often not followed up.

Third-country nationals who have been apprehended or intercepted by the authorities in connection with the irregular crossing of the external border of Malta, do not have a remedy available to challenge the lawfulness of their detention. Malta continues to support a system of mandatory detention of asylum seekers and migrants who have arrived in Malta in an irregular manner. The Immigration Act applies no limit to the

[1] For ECRI, this concept includes discrimination on grounds of ethnic origin, colour, citizenship, religion and language.

detention of migrants in an irregular situation. Two migrants (a Nigerian and a Malian national) died in 2011 and 2012 while in the custody, following their escape from Safi Barracks and their subsequent apprehension. Free legal aid is provided to asylum seekers by the State only at the appeals phase. Decisions of the Refugee Appeals Board (second instance), including those examined under the accelerated procedure, are not subject to appeal or judicial review.

**In this report, ECRI requests that the Maltese authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

The Citizenship Act should be amended so as to: introduce clear, objective and measurable requirements in connection with the acquisition of citizenship through naturalisation; ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality are open to review; and, as concerns cases of loss of citizenship, any less favourable treatment afforded to persons who have acquired their citizenship through naturalisation or registration should be removed*. National origin and citizenship should be maintained as grounds under which racist conduct and racial discrimination are prohibited under criminal law. The provisions which provide that the only victims of crime who may apply for compensation before a criminal court are Maltese, EU nationals or habitual residents of Malta, should be amended. The National Action Plan against Racism and Xenophobia designed by the NCPE should be used by the authorities to devise a policy against racial discrimination.

Steps to counter the labour exploitation of refugees, persons granted humanitarian protection and immigrants should be taken by addressing their over-representation in undeclared employment. The commissioning of studies and awareness-raising campaigns on racial discrimination should be carried out also with respect to access to public places and services and to the entertainment and public transportation sectors.

The relevant legislation should be amended to ensure that all persons held in the detention centres are provided with a speedy and effective judicial remedy. Non-custodial alternatives should be provided to the detention of migrants and asylum seekers; its use should be avoided unless it is strictly necessary in the particular circumstances of an individual case*. A limit to the duration of the detention of migrants in an irregular situation should be provided in all cases under Maltese law. The public should be given full access to the results of the internal and criminal investigations opened further to two deaths in custody in 2011 and 2012. The asylum procedure should be amended so as to ensure: free legal aid as from its outset, in particular at the time when the preliminary questionnaire is filled in; access for asylum seekers to their case files; and a right in all cases to appear before the Refugee Appeals Board*. The Refugee Act should be amended to enable asylum seekers to challenge before a court or a tribunal the decisions rejecting their claims, including those taken further to the accelerated procedure. A long-term integration strategy targeting refugees, asylum seekers, beneficiaries of “local” forms of protection and other migrants should be devised so as to ensure their full integration into Maltese society.

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

# FINDINGS AND RECOMMENDATIONS

## I. Existence and Implementation of Legal Provisions

### International legal instruments

1. In its third report on Malta, ECRI strongly recommended that the Maltese authorities ratify Protocol No. 12 to the European Convention on Human Rights (ECHR). It also recommended that they sign and/or ratify the following international instruments: the European Convention on Nationality; the Convention on the Participation of Foreigners in Public Life at Local Level; the European Convention on the Legal Status of Migrant Workers; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

2. Ecri notes that there has been some progress in the signature and or ratification of the international conventions mentioned in ECRI's third report on Malta. The Convention on Cybercrime was ratified on 12 April 2012. As concerns the European Convention on the Legal Status of Migrant Workers ECRI recalls that, in its fourth monitoring cycle, it has decided to focus on the ratification of a more limited number of instruments than in the third round. As regards the other afore-mentioned conventions, since ECRI's third report, the Maltese authorities have neither signed nor ratified: Protocol No. 12 to the ECHR; the Convention on the Participation of Foreigners in Public Life at Local Level; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). With respect to Protocol No. 12 of the ECHR, ECRI notes that everyone who comes under Maltese jurisdiction already has the possibility of complaining about discrimination at the international level. More specifically, Malta recognises the competence of the Committee on the Elimination of Racial Discrimination to receive and examine communications from individuals who claim that the State has violated rights set out in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Furthermore, Malta has ratified the Optional Protocol to the International Covenant on Civil and Political Rights (the Covenant) and thus recognises the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights provided for under Covenant. As a result, any person subject to Malta's jurisdiction may raise with the Committee on the Elimination of Racial Discrimination and with the Human Rights Committee issues concerning the principles of discrimination and equality before the law[1]. In ECRI's view, ratifying Protocol No. 12 to the European Convention on Human Rights should therefore be regarded as a further step which, in principle, should not present any difficulty. As concerns the Convention on the Participation of Foreigners in Public Life at Local Level, ECRI underlines that this instrument can make an important contribution to the fight against racism[2] and intolerance, by helping to eliminate obstacles to the full participation of all persons in the society of which they are members. As regards the ICRMW, the Maltese authorities have stated that they

[1] ECRI notes however, that the decisions of these international bodies are not binding on national authorities.

[2] ECRI, in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination defines "racism" as the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. It defines "racial discrimination" as any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

do not intend to accede to this instrument, due to the lack of clarity of the concept of "migrant worker" as understood and defined in the ICRMW as well as of the rights attached to the different categories of migrant workers. In this connection, ECRI notes that the Convention distinguishes between rights accorded to all migrant workers and members of their families, rights of migrant workers and members of their families who are documented or in a regular situation and rights of particular categories of migrant workers and members of their families[3]. ECRI considers that ratification of this Convention is instrumental in addressing cases of labour exploitation such as those evoked in the subsection on discrimination in employment in this report, involving, inter alia, migrants in an irregular situation.

3. Moreover, the Maltese authorities have not yet ratified the European Convention on Nationality (signed on 29 October 2003) or the Additional Protocol to the Convention on Cybercrime (signed on 28 January 2003). Ratification of the former would help to introduce clear rules and a means of redress in connection with the acquisition of citizenship through naturalisation (see also the subsection of this report on citizenship legislation). As concerns the latter, the authorities have informed ECRI that ratification is being considered actively. In this respect, ECRI encourages the Maltese authorities to take decisive steps towards ratification as it considers that this international instrument would assist the authorities in tackling effectively and prosecuting cases of hate speech over the Internet.

4. ECRI reiterates its recommendation that Malta signs and ratifies Protocol No. 12 to the European Convention on Human Rights, the Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI also recommends again that Malta ratifies the European Convention on Nationality and the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

**Citizenship legislation**

5. Under the Maltese Citizenship Act, non-nationals can acquire Maltese citizenship in a number of ways, including through naturalisation and registration after marriage[4]. Moreover, provision is made for dual and multiple citizenships[5]. ECRI notes that these provisions are important in order to give the opportunity to non-Maltese legal residents to integrate fully in Maltese society and enjoy full rights, without necessarily renouncing their original citizenship. Nonetheless, the Citizenship Act raises a number of issues which are of concern to ECRI and which pertain to: the large margin of discretion left to the authorities in decisions relating to naturalisation; the absence of a right to appeal against the afore-mentioned decisions; and certain cases of loss of citizenship by naturalised/registered citizens provided for by the law.

6. More specifically, under Article 10 of the Citizenship Act, a person who has lodged an application to acquire citizenship by naturalisation, *may* be granted citizenship if the authorities are satisfied that s/he: (a) has resided in Malta in the year preceding the date of application; (b) has resided for an aggregate period of at least four years over the six years preceding the date of application; (c) has

[3] Including the following categories: frontier workers, seasonal workers, itinerant workers, project-tied workers and self-employed workers.

[4] Under Article 6 of this law, a non-national married to a Maltese citizen may apply and be registered as a Maltese citizen after at least five years of marriage, provided that the spouses are living together when the application is lodged.

[5] As provided for under Article 7 of this law.

adequate knowledge of either the Maltese or English language; (d) is of a good character; (e) and would be a suitable citizen of Malta. ECRI notes that letters (d) and (e) of Article 10 leave a very wide scope of appreciation to the authorities and are not based on objective and measurable criteria. The discretionary nature of these decisions has been confirmed by the authorities. Furthermore, Guidelines issued by the authorities specify that the application must be sponsored by persons that are deemed trustworthy and who are not related to the applicant, one of whom must be either a member of parliament, a judge, a magistrate, an advocate, a public notary, a legal procurator, a medical practitioner, a public officer not below the rank of principal, a police officer not below the rank of inspector or an officer of the Armed Forces of Malta not below the rank of captain. In this respect, ECRI notes that this requirement may *de facto* greatly limit effective access to naturalisation. In addition, civil society has stated that even when the above-mentioned requirements are satisfied, in practice, it may take up 15 to 20 years to obtain naturalisation. ECRI notes that, notwithstanding the margin of appreciation that States normally enjoy in matters concerning citizenship, the requirements provided for under the law for naturalisation should be objective and measurable so as not to leave the door open to arbitrariness and discrimination (*inter alia*, on grounds such as "race"[6], colour, ethnic origin, citizenship, religion or language).

7. Under Article 19 of the same law, the competent authority does not have to provide reasons for the decision to refuse naturalisation, nor is the authority's decision subject to review by court. On this point, ECRI recommends the authorities to amend this provision in line with Article 12 of the Convention on Nationality, providing that States should ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality be open to administrative or judicial review[7].

8. ECRI further notes that, under Article 14(2)(a) and 14(2)(c) of the Citizenship Act, a Maltese citizen who has acquired citizenship by registration or naturalisation may be deprived of the same by order of the competent minister if, *inter alia*: the citizen has by his/her conduct or by speech demonstrated disloyalty or disaffection towards the Maltese President or the Government; or in the seven years following the acquisition of citizenship, the citizen has been sentenced in any country to a punishment depriving personal liberty for a term of no less than twelve months[8]. ECRI notes that the above provisions may amount to

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[6] Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, ECRI, in its General Policy Recommendation No. 7, uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the legislation.

[7] One of the problems is the absence of reasons, which renders any kind of review impossible.

[8] Loss of citizenship may also be ordered by the competent Minister if: (under Article 14(1)) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or (under Article 14(2)(b)) if the citizen has, during any war in which Malta was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or (under Article 14(2)(d)) if the citizen has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither (i) been at any time in the service of the Republic or of an international organisation of which the Government of Malta was a member or (ii) given notice in writing to the Minister of his intention to retain citizenship of Malta. Under Article 14 (3) the Minister shall not deprive a person of citizenship unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Malta and, in the case referred to in paragraph (c) of sub-article (2) of this article, it appears to him that that person would not thereupon become stateless. Under Article 14 (4) before making an order under this article, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this article; and if that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper.

discrimination on grounds of citizenship. Not only do they apply, as far as loss of citizenship is concerned, distinct and less favourable treatment to persons who have been naturalised Maltese or have been registered as Maltese citizens; they may also restrict the fundamental right of freedom of speech of this category of citizens (Article 10 of the ECHR), who may be disinclined to express their political views out of fear of the legal consequences.

9. ECRI recommends that the Maltese authorities amend the Citizenship Act so as to: introduce clear, objective and measurable requirements in connection with the acquisition of citizenship through naturalisation; ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality are open to review ; and, as far as cases of loss of citizenship are concerned, remove any less favourable treatment afforded to persons who have acquired their citizenship through naturalisation or registration – particularly where fundamental rights are concerned.

**Criminal law provisions**

10. In its third report, ECRI encouraged the Maltese authorities to keep the adequacy of the existing criminal law provisions against racism under review, drawing inspiration from ECRI's General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination.

11. Since ECRI's third report, Malta's criminal law provisions against racism have been amended significantly by Act XI of 2009 and are again under scrutiny further to new amendments which have been submitted to the Parliament in 2012. As a consequence of the 2009 amendments, Article 82A (1)[9] on incitement to hatred and Article 222A(2)[10], establishing racial motivation as an aggravating factor for certain offences (i.e. such as bodily harm, threats, private violence and harassment and crimes against property), have been amended; and Articles 82B, 82C, 82D, 82E, 83B have been introduced in the Criminal Code. Article 82A (1) has been strengthened so as prohibit both incitement to violence and incitement to hatred on grounds of colour, race[11], nationality (including citizenship[12]) or ethnic or national origin. Articles 82B and C of the Criminal Code prohibit the condoning in public and the trivialisation of genocide, crimes against humanity, war crimes and crimes against peace, which are directed against a group defined by

[9] Under Article 82A as amended: (I) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or racial hatred or whereby violence or racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months. (II) For the purposes of the foregoing subarticle, "violence or racial hatred means violence or hatred against a group of persons in Malta defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins or against a member of such a group.

[10] Under Article 222A as amended: (2) The punishments established in the foregoing provisions of this sub-title shall also be increased by one to two degrees when the offence is racially or religiously aggravated or motivated, wholly or partly, by xenophobia within the meaning of the following sub articles. (3) An offence is racially or religiously aggravated or motivated by xenophobia if: (a) at the time of committing the offence, or immediately before or after the commission of the offence, the offender demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim's membership (or presumed membership) of a racial or religious group; or (b) the offence is motivated, wholly or partly, by hostility, aversion or contempt towards members of a racial group based on their membership of that group. (4) In subarticle (3)(a): "membership", in relation to a racial or religious group, includes association with members of that group; "presumed" means presumed by the offender. (…) (6) In this article: "racial group" means a group of persons defined by reference to race, descent, colour, nationality (including citizenship) or ethnic or national origins; "religious group" means a group of persons defined by reference to religious belief or lack of religious belief.

[11] For ECRI's approach to the concept of "race" see footnote 5.

[12] ECRI interprets nationality as meaning citizenship.

reference to race, colour, religion, descent or national or ethnic origin[13]. Under Article 82D aiding, abetting or instigating any of the above offences relating to racial violence or hatred is also prohibited. ECRI notes that Article 83B of the Criminal Code now provides for racist, religious or xenophobic motivation of an offence as specific aggravating circumstances in sentencing[14]. Moreover, under the new Article 82E of the Criminal Code, corporate bodies may also be held liable for hate crime[15]. Under Article 222A of the Criminal Code as amended, xenophobic motive is also considered an aggravating factor in sentencing. ECRI welcomes these amendments and notes that they are consistent with its GPR No.7.

12. ECRI notes, however, that certain types of racist conduct outlined in GPR No. 7 are not specifically prohibited under Maltese law. Notably, the Criminal Code does not prohibit the creation or leadership of a group which promotes racism. While it punishes the promotion, constitution, organisation, financing or participation in an organisation of two or more persons with a view to commit criminal offences, it does so only to the extent that the offence is liable to punishment of imprisonment for a term of four years or more. However, if one is to assume that the promotion of racism is prohibited under Article 82(A) of the Maltese Criminal Code, this provision only provides for a term of imprisonment for six to eighteen months. Furthermore, racial discrimination in the exercise of one's public office is not expressly prohibited under the Criminal Code[16].

13. As regards the amendments of the Criminal Code which have been submitted to the Parliament, these concern the criminal law provisions against racism on the whole. They propose to abrogate national origin and citizenship and to include gender and gender identity as grounds under which racist conduct is prohibited. ECRI highlights that racist conduct and racial discrimination may target persons because of their national origin and citizenship; for this reason excluding these grounds from the criminal law provisions against racism is hardly justifiable.

14. ECRI recommends that the Maltese authorities complement the existing criminal law provisions against racism by expressly prohibiting: the creation or leadership of a group which promotes racism; and racial discrimination in the exercise of one's public office as per ECRI's GPR No. 7 paragraph 18 (g) and (h). Furthermore, ECRI strongly recommends that the Maltese authorities maintain national origin and citizenship as grounds under which racist conduct and racial discrimination are prohibited.

15. In its third report, ECRI recommended that the Maltese authorities improve the application of the provisions in force against racism and racial discrimination, including when they are committed through the Internet, the printed press or by politicians. It further recommended that all those involved in the criminal justice system are equipped with knowledge on the above-mentioned provisions and are sensitised on the importance of countering manifestations of racist expression and racially motivated conduct.

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[13] When this conduct is likely to incite violence or hatred against such a group, disturb public order or is threatening, abusive or insulting, the penalty for this offence is eight months to two years of imprisonment.

[14] Notably, under Article 83B, the punishment established for any offence shall be increased by one to two degrees.

[15] Notably they may be subject to a fine; the suspension or cancellation of their license; the temporary or permanent closure of any establishment used in the perpetration of the offence; or the compulsory winding up of the corporate body.

[16] Article 141 of the Criminal Code provides that where a public officer commits an offence, the punishment is to be increased by one degree, unless a specific punishment is envisaged for the perpetration of that offence by the public officer.

16. ECRI notes that, since its third report, there have been very few investigations opened for breach of the criminal law provisions in force against racism. ECRI has been informed by the authorities that Article 82A has been applied only once in 2008 in the context of a judgment against Norman Lowell, head of a political party called Imperium Europe. N. Lowell was found guilty of incitement to hatred and sentenced to a two-year jail term suspended for four years for statements made in the context of two political events and in one article released on the Internet[17]. Furthermore, one person was convicted in 2011 for breach of Article 6[18] of the Press Act to a suspended prison term, for having used racist expressions in his account on Facebook. Two additional cases involving the same charges are under investigation by the police. While ECRI welcomes the fact that in some instances there has been an institutional response to racist expression on the Internet, many of ECRI's interlocutors have highlighted that most racist comments made on-line, particularly comments to news articles, go unpunished. ECRI further notes that, since its entry into force, the provision on racist motivation as an aggravating factor has never been applied. Moreover, ECRI expresses its concern that the investigations opened in 2005 and 2006, in connection with the arson attacks committed against anti-racist organisations and persons who had spoken out against racism (see paragraph 114 of ECRI's third report), have not identified any culprits. The authorities have explained that the investigations were hampered by the refusal of the telephone company concerned by the investigation to provide location data for certain mobile phones. Notably, according to the telephone company, because the data requested did not concern a specific subject, granting access to such data would breach the privacy of an undetermined number of persons[19].

17. As concerns training of those involved in the criminal justice system, ECRI has been informed by legal practitioners that neither lawyers nor judges are provided with specific training on criminal law provisions in force against racism. The authorities have stated that police officers follow training on various subjects, including racist crime (see the section on conduct of law enforcement officials). However, ECRI was informed by representatives of vulnerable groups[20] and NGOs that police frequently do not follow up on complaints lodged by migrants on grounds of racism or racial discrimination (see the subsection of this report on access to public places and services) and that, for this reason, few report them. Such state of underreporting and the underlying reasons are confirmed by the 2009 EU-MIDIS Minorities and Discrimination Survey as well as by the 2011 Qualitative Study on Racial Discrimination in Malta and the Strengthening Equality Beyond Legislation project of the National Commission for the Promotion of Equality (the NCPE). ECRI notes that, other than training on the existence of criminal law provisions against racism and racial discrimination, it is important to sensitise all those involved in the criminal justice system on the importance of countering manifestations of racist expression and racially motivated conduct and to acknowledge racist bias, if and when it is present.

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[17] Mr Lowell was found to have used derogatory and insulting terms in referring to illegal immigrants and the Jewish and Muslim populations in two separate political events hosted by his organisation. He also used threatening and abusive terms in an article he wrote, titled "Coming Cataclysmic Crisis"

[18] Under Article 6: Whosoever, by means of the publication or distribution in Malta of printed matter or by means of any broadcast shall threaten, insult, or expose to hatred, persecution or contempt, a person or group of persons because of their race, creed, colour, nationality, sex disability as defined in article 2 of the Equal Opportunities (Persons with Disability) Act, or national or ethnic origin shall be liable on conviction to imprisonment for a term not exceeding three months and to a fine.

[19] This argument was upheld by the Court of Appeals.

[20] See section on vulnerable/target groups.

18. ECRI reiterates its recommendation to the Maltese authorities to provide regular training to all those involved in the criminal justice system on criminal law provisions in force against racism and racial discrimination and sensitise the same on the importance of: countering manifestations of racist expression and racially motivated conduct; as well of acknowledging racist bias, if and when it is present.

19. In its third report, ECRI recommended that the Maltese authorities ensure that data on the response of the criminal justice system to racist incidents and racist offences is available at all levels of the criminal justice system, from the police to the prosecuting authorities and the courts.

20. As regards the collection of data on the application of criminal law provisions, the authorities have informed ECRI that the department of statistics of the Maltese police files information on the investigations which have been opened relating to racist offences and their outcome. ECRI notes, however, that the information made available by the authorities did not clearly specify, per reference year, the: number of opened investigations, number of cases referred to court, number of discontinued pre-trial investigations and the outcome of the trials. Furthermore, no official data on racist or xenophobic crimes were provided by the Maltese authorities to ODIHR for their annual report on hate crimes in the OSCE region.

21. ECRI recommends that the Maltese authorities collect data on the application of criminal law provisions against racism in a systematic way so that their effectiveness can be assessed, notably by breaking down the information, per reference year, by the: number of opened investigations, number of cases referred to court, number of discontinued pre-trial investigations and the outcome of the trials.

**Administration of justice**

22. ECRI is concerned that, under Maltese law[21], only Maltese and EU nationals, as well as persons who are habitual residents of Malta and who are victims of a criminal offence may apply for compensation before a criminal court. While the law does not provide a definition of "habitual resident", it is self-evident that certain categories of foreigners would be excluded from the remit of the above-mentioned provision, thereby depriving them from the enjoyment of a fundamental right such as the right of access to court (Article 6 of the ECHR). In ECRI's view, this amounts to differential treatment based on the ground of citizenship which has no objective and reasonable justification.

23. ECRI strongly recommends that the Maltese authorities abrogate the provisions of the law which provide that the only victims of crime who may apply for compensation before a criminal court are Maltese, EU nationals or habitual residents of Malta.

24. In addition, ECRI has received information indicating that the rules of release on bail are not applied equally to Maltese nationals and non-nationals and that, for the latter, bail is set extremely high. In this connection, ECRI refers to its considerations on the importance of training all those involved in the criminal justice system (see paragraph 17).

[21] See Article 9 of the Criminal Injuries Compensation Scheme Regulations, Legal Notice 186 of 2012.

## Civil and administrative law provisions

25. As recalled in ECRI's third report (see paragraphs 13 to 15), under the Employment and Industrial Relations Act and subsequent amendments, the Equal Treatment in Employment Regulations and the Equal Treatment of Persons Order prohibit discrimination on grounds of racial or ethnic origin in a number of areas[22]; in the employment field, discrimination is also prohibited on grounds of religion.

26. In its third report, ECRI encouraged the authorities to ensure that civil and administrative law provisions provide adequate protection against racial discrimination, notably in connection with: discrimination on grounds of citizenship and language; the need to bring important public functions of public authorities under the scope of anti-discrimination legislation; and the need to place public authorities under a statutory duty to eliminate discrimination and promote equality in the exercise of their functions.

27. On 30 March 2010, a new Public Administration Act entered into force introducing, *inter alia*, a Code of Ethics for public bodies and public employees. ECRI is pleased that under these new provisions, public authorities, including law enforcement officials, are placed under a statutory duty to avoid discrimination and to ensure equality in the exercise of their functions.

28. However, under the Maltese civil and administrative anti-discrimination provisions, citizenship, language and religion (in this last respect, with the exception of the field of employment) are still not included in the prohibited grounds of discrimination. ECRI encourages the authorities to protect people in Malta from discrimination also on these grounds.

29. ECRI recommends that the Maltese authorities include citizenship, language and religion as prohibited grounds of discrimination under the anti-discrimination legal framework in place.

30. As concerns the application of the above-mentioned provisions, the authorities have informed ECRI that they have received a limited number of complaints. These complaints pertain mainly to access to services, places of entertainment housing and employment. No detailed information has been provided to ECRI as concerns discrimination complaints lodged before civil and administrative courts. The National Commission for the Promotion of Equality collects and publishes statistics in relation to the complaints it receives on a yearly basis in its annual report.

31. ECRI further notes that both the Equal Treatment of Persons Order and the Equal Treatment in Employment Regulations provide that associations, organisations or other legal entities having a legitimate interest may engage either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure provided for the enforcement of obligations under these laws. In addition, the National Commission for the Promotion of Equality (NCPE)[23] may opt to refer an allegation of discrimination to the

[22] Namely: social protection, including social security and healthcare, social advantages, education, access to and supply of public goods and services which are available to the public, including housing, and services provided by banks, financial institutions and insurance companies.

[23] The National Commission for the Promotion of Equality is an independent, government funded body established in January 2004. Its primary role is to monitor the implementation of the Equality for Men and Women Act, the Equal Treatment of Persons Order and the Access to Goods and Services and their Supply (Equal Treatment) Regulations. The Commission promotes equality and carries out the following activities: awareness raising, research, implementation of projects and complaint handling. Its mandate encompasses, inter alia, discrimination on grounds of religion, belief and racial or ethnic origin in the fields of employment, banks, financial institutions and education, as well as discrimination on grounds of, inter

competent court on behalf of the person discriminated against. Notwithstanding the above, regrettably, neither associations nor trade unions nor the NCPE have taken up discrimination complaints on behalf or in support of claimants.

32. In its third report, ECRI urged the Maltese authorities to raise awareness of the provisions in force against racial discrimination and the existing remedies to seek redress among the general public and, in particular, among potential victims of racial discrimination.

33. ECRI is pleased to note that some measures going in this direction have been taken by the NCPE. Notably, with the aid of cultural mediators, the NCPE has organised information sessions at the open reception centres (in Marsa and at the Hal Far "tent village"), targeting in particular the African community, on the rights stemming from anti-discrimination legislation and on how and where to report incidents of discrimination. ECRI welcomes this project and invites the Maltese authorities to replicate and extend these types of information sessions in order to reach out to all possible groups of concern to ECRI.

**Anti-discrimination bodies and other institutions**

34. In its third report, ECRI recommended that the Maltese authorities strengthen the independence of the NCPE. ECRI notes that since its third report, Act IV of 2009 has amended the Equality for Men and Women Act (establishing, *inter alia*, the NCPE) and has better spelt out the independent nature of the NCPE; however, the modalities of appointment of the Commission and its structure remain unchanged. Notably, the Commissioner for the Promotion of Equality and the other six members of the Commission are appointed by the Government and report to the latter through an annual report. In this respect, ECRI draws the Maltese authorities' attention to ECRI's GPR No. 2 and, in particular, to the recommendations made therein which aim to safeguard the independence of specialised bodies and to avoid undue interference from the State, both with reference to the modalities of appointment of its members and its funding.

35. As already observed in the subsection on civil and administrative law provisions of this report, some discrimination complaints on grounds of racial and ethnic origin have been lodged before the NCPE since 2008. The limited number of complaints received has been ascribed by civil society to the limited powers attributed to this body. This finding is supported by a study of the NCPE[24] showing that 85% of interviewees belonging to a "minority ethnic group" did not report instances of racial or ethnic discrimination to the authorities because they believed that the situation would remain unchanged. In this respect, ECRI recalls that the NCPE may mediate or call upon a person to redress the situation; its decisions, however, are not binding or enforceable. The NCPE may also, *inter alia*, refer a case to civil courts where the complainant may claim compensation, or help the alleged victim institute proceedings. However, as mentioned earlier, it has not exercised this prerogative thus far. A study carried out by the NCPE on racial discrimination in Malta also shows that 70% of the interviewees belonging to a minority ethnic group had no knowledge of the NCPE's existence and role. ECRI therefore recommends that greater resources be spent in raising vulnerable groups' awareness of the NCPE and other authorities competent to receive discrimination complaints. Initiatives such as those described in paragraph 33 of this report are welcome and should be replicated.

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alia, racial or ethnic origin in the provision and supply of goods and services. The Commission is composed of a chairperson (the Commissioner for the Promotion of Equality) and six other members, at least three of whom are women.

[24] See the report on Underreporting of discriminatory incidents in Malta drawn up under the Strengthening Equality Beyond Legislation project (see also section on Education and Awareness Raising).

36. ECRI also notes that some grounds of discrimination which are of concern to ECRI, notably citizenship, language and religion, as well as the field of employment, fall out of the scope of the NCPE's mandate. Although the DIER[25] may investigate alleged cases of discrimination in employment on a number of grounds, including race, ECRI notes that it is a government department and, as such, falls short of fulfilling the requirement of independence for equality bodies. Furthermore, the fragmentation of the competence to hear complaints on racial discrimination between the NCPE and the DIER is also seen as hindering the adequate treatment of cases of multiple discrimination.

37. ECRI recommends that the Maltese authorities ensure that the national specialised body for combating racism and racial discrimination is entirely independent and is responsible, *inter alia*, for: hearing and considering complaints in all fields of life (both private and public) on grounds of "race", colour, language, religion, citizenship or national/ethnic origin; providing assistance to victims; initiating and participating in court proceedings; monitoring legislation and providing advice to legislative and executive authorities; raising awareness on issues of racism and racial discrimination among society and promoting policies and practices to ensure equal treatment, as per ECRI's GPR No. 2.

38. ECRI welcomes the NCPE's dynamism in carrying out surveys and studies on racial discrimination. In addition to a qualitative study on racial discrimination (see the section of this report on monitoring and data collection and the subsection on civil and administrative law provisions), the NCPE carried out research on the preferred media of "minorities" and held two information sessions targeting the African community (see the subsection of this report on civil and administrative law provisions). Furthermore, ECRI was informed that a new campaign called "I'm not racist but" has been launched, focusing on discrimination of "minority ethnic groups", such as the African community in Malta, in the field of housing. Notably, the NCPE will strive to empower the members of this group to advocate their rights and at the same time it will address home owners and estate agents on the illegality of racial discrimination. These studies and projects are in ECRI's view, essential for raising awareness on racial discrimination, as well as for collecting the information needed to develop an anti-discrimination policy.

39. ECRI notes that a National Action Plan against Racism and Xenophobia (NAPARX) was developed by the NCPE in 2010. The overarching aims of the plan are to: provide strategic direction to combat racism and xenophobia and to develop a more equal, inclusive and intercultural society. These aims are made operational through a number of strategic objectives to be achieved, as well as specific initiatives to be taken over a three-year period in the fields of employment, education and training, health and social services, housing, racist violence, media and policing. NAPARX also addresses a number of overarching issues such as: awareness raising, mainstreaming, data collection, empowerment and reporting of discriminatory incidents and plans to propose a number of concrete actions. ECRI has been informed that NAPARX has not been formally adopted or published by the authorities and that, as it stands, it serves as guidelines for the NCPE. ECRI regrets that the work undertaken under NAPARX was not formally endorsed by the authorities and used to develop an anti-discrimination policy.

[25] The DIER is competent to receive racial discrimination complaints in the field of employment. It hears complaints, carries out investigations and may impose sanctions. For instance, it may declare null and void any clause in a contract or in a collective agreement which is discriminatory and order the payment of sums of money as compensation to the aggrieved party.

40. ECRI recommends that the Maltese authorities use the National Action Plan against Racism and Xenophobia designed by the National Commission for the Promotion of Equality in order to devise an anti-discrimination policy.

41. As concerns instances of racial discrimination which concern the public sector, ECRI has noted a possible overlap between the competencies of the NCPE and of the Ombudsman[26]. In this respect, ECRI's attention has been drawn to a number of proposals which would amend the mandate of one of these two institutions and consequently eliminate the overlap. The first proposal contemplates the possibility to extend the NCPE's mandate to cover discrimination complaints also on grounds of religion and in the fields of employment and financial services. A second proposition, contained in a draft law amending the Ombudsman's Act, provides for the extension of the Ombudsman's mandate so as to cover the defence of human rights in general, not only limited to the public sector. The Ombudsman would therefore chair a commission which would comprise both members of civil society and the Commissioner of the NCPE (see the subsection on civil and administrative law provisions) as well as the Commissioners of other bodies such as, for example, the Commission for Children. This commission would, in particular, promote and provide human rights education and training; recommend to the Government how human rights standards should be reflected in Maltese legislation, policy and practice; promote a debate on human rights issues as part of the legislative process; carry out inquiries into human rights concerns; and publish and promote research and reports on human rights[27]. ECRI expresses interest in these proposals and stresses that, whatever the outcome might be, the authorities need to ensure that the specialised body for combating racism and racial discrimination is entirely independent and is responsible, *inter alia*, for hearing and considering complaints in all fields of life (from both the private and the public sector) on grounds of "race", colour, language, religion, citizenship or national/ethnic origin.

## II. Discrimination in Various Fields

### Employment

42. ECRI notes that persons who have been granted subsidiary protection may now apply for social assistance (an allowance) if they are unable to work, including for health reasons. This measure has proved to be an incentive for persons with subsidiary protection to move out of the open reception centres and seek more suitable accommodation (persons living in the open reception centres in fact are entitled to food and transportation allowance and lose it once they leave), and is therefore to be commended. However, ECRI has been informed by representatives of migrants and of civil society that, in practice, the allowance is not always granted even though the applicant satisfies the requirements.

43. ECRI recommends that the Maltese authorities ensure that all persons who have been granted subsidiary protection and are entitled to receive social assistance actually receive it in practice.

44. In its third report on Malta, ECRI strongly recommended that the Maltese authorities take steps to counter the labour exploitation of refugees, persons granted humanitarian protection and immigrants by addressing their over-representation in undeclared employment. It urged the Maltese authorities to

[26] The Ombudsman is an Officer of Parliament, appointed by the President acting on a resolution of the House of Representatives, supported by no less than two thirds of all its members. The Ombudsman's mandate is to investigate administrative complaints regarding the public sector.

[27] For the sake of exhaustiveness, ECRI recalls that a third proposal is to provide the Ombudsman with the right to appoint Commissioners to investigate complaints in specific areas of public administration, notably one for higher and tertiary education, one for the environment and one for health.

ensure that the labour inspection step up their work to identify and redress these situations. It strongly recommended that the Maltese authorities ensure that the fines imposed on those who employ immigrants illegally have a meaningful deterrent effect.

45. As far as the employment conditions of refugees, persons granted humanitarian protection and immigrants are concerned, the analysis of ECRI's third report (paragraph 73) remains valid. As confirmed by the study on Migrant Workers published by Malta's General Workers Union (the GWU) and by the 2010 Fundamental Rights Agency's (FRA) Annual Report, many of these workers continue to be employed in the informal economy and are exploited by their employers, particularly in the construction sector. In addition to the payment of wages which are far lower than the national minimum wage, this study highlights that often health and safety standards are disregarded. Furthermore, because their employment is not registered, they are not entitled to social benefits such as paid leave and sick leave. ECRI's attention has been drawn in particular to cases of persons residing in the open reception centres (mostly Africans with varying types of statuses) who loiter in the streets and in the roundabouts, waiting to be offered work. In one case for example, representatives of civil society informed ECRI that after a day of hard labour, several of these workers were paid 25 cents, instead of 25 Euros as they had been promised. ECRI notes that some action has been undertaken by the GWU in order to counter this phenomenon: for example, this trade union has launched a campaign that addresses racial discrimination and advocates integration; moreover it has proposed the naming and shaming of employers who exploit migrant workers. According to the FRA report on the Impact of the Racial Equality Directive: a survey of trade unions and employers in the Member States of the European Union (Malta), the Maltese Trade Unions have stressed the need for more awareness-raising campaigns so that employers and employees become more aware of their rights and obligations. Other than the initiative described in paragraph 48 of this report aimed at providing opportunities of regular employment, ECRI is not aware of any campaign led by the Maltese authorities addressing the labour exploitation of migrants. As concerns in particular the action of the Labour Inspectorates in countering the exploitation of migrants, statistics of the Employment and Training Corporation (ETC) show that the number of illegal employment situations detected has increased from 291 in 2007/2008 to 365 in 2009 and 373 in 2010. As regards the strengthening of sanctions against employers who exploit migrants, ECRI notes that on the normative level some measures have been taken. More specifically, ECRI has been informed by the authorities that Malta has transposed into its legal framework (through Legal Notice 432 of 2011) EU Directive 2009/52/EC, providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals[28] and that places of employment are being monitored accordingly and, in case of infringement, appropriate action is taken.

46. ECRI reiterates its recommendation to the Maltese authorities to take steps to counter the labour exploitation of refugees, persons granted humanitarian

[28] Its Article 5, in particular, provides: (1) An employer shall be liable, on conviction and in addition to any penalty imposed by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, to pay: (a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least equivalent to the national minimum wage, unless either the employer or the employee can prove otherwise; (b) an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines; (c) where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned; and (d) the costs of return of illegally employed third-country nationals in those cases where return procedures are carried out.

protection and immigrants by addressing their over-representation in undeclared employment.

47. In its third report ECRI recommended that the Maltese authorities extend support for training initiatives in the field of employment for refugees, persons granted humanitarian protection and asylum seekers. It recommended that they evaluate these initiatives together with the trainees and training institutions involved in order to increase their effectiveness.

48. ECRI is pleased to note that many welcome initiatives have been taken in this respect. The ETC has held information sessions about work permits and legal employment in detention centres for migrants and asylum seekers. In the course of 2009 two projects focusing on language training, employment and employability, as well as on cultural and civic orientation for asylum seekers, were implemented, namely COPE (Coordination and Provision of Welfare Services in Closed Centres) and EQUAL. As concerns more in particular the EQUAL project on integration of asylum seekers into Maltese society, its aim was to improve access to employment and improving employability, by providing support and guidance, *inter alia*, in compiling personal profiles and drafting CVs. The Agency for the Welfare of Asylum Seekers (AWAS) has also organised language training sessions for persons detained in detention centres and for residents of open reception centres. Furthermore, AWAS has been leading the Sparklet project (Supporting open and closed[29] reception systems in Malta by profiling, action research and knowledge transfer), which aims to enhance asylum seekers and migrants' understanding and knowledge of life in Malta and in Europe, thereby increasing their chances to integrate into Maltese society. Another noteworthy initiative is the Employment Support Initiative for Refugees and Beneficiaries of Protection funded by the EU and implemented by AWAS, the ETC and the Foundation for Shelter and Support to Migrants. Its aim is to provide support/advice to refugees and persons granted subsidiary protection and improve their employment skills. Under this project employment support offices have been set up in certain open reception centres (at Marsa and at the Hal Far "tent village") to help their residents find legal employment and prevent them from resorting to the illegal market. ECRI considers this last initiative particularly promising and encourages the authorities to pursue and strengthen it.

**Access to public places and services**

49. In its third report on Malta, ECRI strongly recommended that the Maltese authorities address racial discrimination in access to places of entertainment, public transport and the private housing market. In particular, it recommended that they take a public stance condemning such forms of discrimination, stressing that all such instances are illegal and will not be tolerated and that they ensure that the Equal Treatment of Persons Order is applied effectively. In addition, ECRI strongly recommended that action be taken to raise the awareness of racial discrimination among those working in the entertainment sector, including owners, managers and security personnel, in the public transport sector and, to the extent possible, among private landlords.

50. Despite the fact that the Equal Treatment of Persons Order prohibits discrimination on grounds of racial or ethnic origin (see paragraph 25) in the provision of goods and services, 35% of Africans who participated in the 2009 EU-MIDIS survey claimed they had faced discrimination in cafés, restaurants, nightclubs or shops in the 12 months prior to the research. Representatives of migrants and of civil society have confirmed to ECRI that it is commonplace for visible minorities to be refused entry into bars and clubs and that reports made to

[29] In this report "detention centres".

the police in this connection are not followed up. According to a report of the NCPE (see footnote 24), most instances of racial discrimination, however, were experienced when using public transportation. ECRI's sources have confirmed, in fact, that it is not uncommon for drivers of public transportation to refuse persons considered to be migrants to board the bus or to refrain from stopping at bus stops located in areas in which refugees, asylum seekers and migrants live. ECRI notes that in one incident reported in a national newspaper, a bus driver violently assaulted and verbally abused a family of migrant background, calling them "trash". The event was reported to the police by a Maltese lawyer. The authorities have informed ECRI in this respect that the lawyer withdrew the complaint after the bus driver presented his apologies to the police. ECRI notes that in recent years two Black bus drivers have been recruited and that this may have a positive impact on the attitude towards visible minorities in this field. However, no other specific action has been taken by the authorities in order to address, raise awareness and combat racial discrimination in the fields of transportation and the entertainment sectors.

51. According to various sources, including a publication of the NCPE[30], persons of migrant background continue to be confronted frequently with racial discrimination when looking for a place to rent. As noted earlier in this report, most of the discrimination complaints on grounds of race and ethnic origin received by the NCPE were precisely in the field of housing. According to the NCPE's qualitative study on racial discrimination in Malta, examples of such discrimination included being: refused housing; regularly checked by the landlords; and made felt unwelcome by neighbours. By way of example, ECRI notes that in 2011 an advertisement for rental accommodation was posted on-line, specifying that Arabs and Blacks were not welcome. This case was taken up by the NCPE. In another advertisement for a furnished apartment for rent, the furniture was described as fit for Blacks. ECRI notes that the NCPE has been proactive and has planned a number of measures in order to assess and combat racial discrimination in the field of housing. In addition to a situation-testing exercise, in which persons using an Arabic accent responded on behalf of the NCPE to advertisements of flats for rent, ECRI recalls the project "I'm not racist but" (see paragraph 38). This project encompasses a study on the housing options available to migrants and, as already explained, plans to address home owners and estate agents on the illegality of racial discrimination. ECRI welcomes these extremely positive initiatives and urges the authorities also to address the fields of transportation and the entertainment sector and, more in general, access to public places and services.

52. ECRI strongly encourages the Maltese authorities to extend the initiatives launched by the National Commission for the Promotion of Equality in the field of housing (notably the commissioning of studies and the awareness raising campaigns on racial discrimination) also to the fields of access to public places and services in general and, more specifically, to the entertainment and public transportation sectors.

**Health**

53. ECRI is pleased to note that in August 2008, a Migrant Health Unit was set up within the Department of Primary Health in order to address and respond to the specific needs of migrants (lack of knowledge about the health care system of the host country; language barriers etc.), in light in particular of the heavy influx of migrants registered in recent years. The objectives of this unit are to: provide community based health education to migrants in their mother tongue (addressing issues such as access to the Maltese health care system, nutrition,

[30] See the NCPE's qualitative study on Racial Discrimination in Malta.

food and kitchen safety, H1N1 - Swine flu, sexual & reproductive health); help migrants access health care services; provide translated material; train health care professionals and students on culture and diversity issues in health care; and train cultural mediators. The services provided are free of charge.

## III. Racist Violence

54. In its third report on Malta, ECRI urged the Maltese authorities to bring all those responsible for racially motivated violence to justice without delay and ensure that they are adequately punished.

55. According to the 2009 EU-MIDIS survey, 29% of the respondents of the survey (immigrants from Africa) claimed that they had been victims of racially motivated assault, threat or serious harassment. The report further shows that over 50% of the racially motivated assaults had not been reported to the police, on the most part, for lack of confidence in the authorities. ECRI has received some reports of violent attacks on migrants, particularly of African origin, which were allegedly ignored by the police. Furthermore, it has been informed of violent offences having been committed against migrants near the Hal Far and Marsa open reception centres for asylum seekers and refugees, such as, for instance, the throwing of bags of urine and pepper spraying[31].

## IV. Climate of Opinion, Racism in Public Discourse and the Media

### Climate of opinion and racism in public discourse

56. In its third report on Malta, ECRI recommended that the Maltese authorities promote a public debate on immigration and asylum that reflects the human rights dimension of these phenomena and that they provide more information on the circumstances from which immigrants and asylum seekers are fleeing. It further added that political parties should take a firm stand against any forms of racism, racial discrimination and xenophobia. ECRI also recommended that the Maltese authorities adopt *ad hoc* legal provisions targeting specifically the use of racist and xenophobic discourse by exponents of political parties, including, legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts (as per ECRI's GPR No. 7 on national legislation to combat racism and racial discrimination).

57. ECRI has been informed by the authorities that a conference was organised in June 2011 on the occasion of the 60th anniversary of the Geneva Convention and the tenth anniversary of the Office of the Refugee Commissioner, titled The asylum procedure and then what?. During the conference, the Office presented two studies on a sample of persons benefiting from international protection and another sample of persons whose asylum claim had been rejected and who nonetheless were still in Malta and in the process of being considered for a form of "local" protection[32]. These studies examined the efforts made to integrate into Maltese society. During the conference representatives of the UNHCR and persons belonging to the above-mentioned categories were also present to share their views. The conference's aim was to inform the public on the conditions of these persons and their efforts to integrate into society, as well as to provoke a debate on these issues. The authorities have also stated that the conference had ample media coverage.

[31] Other incidents have also been described in other sections of this report (see paragraphs 52 and 95-96 of this report). As concerns the results of the investigations of the arson attacks committed in 2005 and 2006 against anti-racist organisations and persons who had spoken out against racism, these are discussed in paragraph 16 of this report.

[32] On this concept see below.

58. ECRI notes that all of its interlocutors have drawn a parallel between the general climate of opinion and the political discourse vis-à-vis migrants, asylum seekers and refugees, and the number of arrivals in Malta. The climate of opinion and the political discourse were particularly negative in 2008, year which registered a peak in arrivals, and improved in the course of 2010, when the numbers were curbed due to the much contested push-back agreements entered into by Italy and Libya[33] (with a slight relapse in 2011 due to an increase of arrivals further to the beginning of the conflict in Libya). ECRI notes that discussions held with Maltese civil society have clearly highlighted an improvement in the climate of opinion and in public discourse with respect to migrants, asylum seekers and refugees. For instance, according to the UNHCR's report on Public Perception about Refugees and Migrants in Malta, 54% of the interviewees did not consider migration to be a threat to their way of life in the local community[34]. Furthermore, politicians appear to be more conscious of the type of language used when broaching these issues. Nonetheless, ECRI has been informed that the incorrect use of the terms irregular migrant, asylum seeker and refugee persists, to a certain degree, in both the press and political discourse. There has also been a case of a Member of Parliament having submitted a parliamentary question on migration issues associating migrants to rare diseases[35]. In addition, further to the death of a Malian migrant in custody on 29 June 2012, allegedly caused by the blows inflicted by the detention personnel (see the subsection on migrants of this report), the Nationalist Party issued a statement expressing concern about racist sentiments expressed in the media and in politics. Moreover, a serious incident which deserves particular attention is the distribution of flyers signed by the K.K.K. near the Marsa and Hal Far open reception centres stating "hunting season on land and on sea for illegal migrants and foreign workers is open all year round".

59. ECRI reiterates its recommendation to the Maltese authorities to promote a public debate and raise awareness on the issues of immigration and asylum that reflects the human rights dimension of these phenomena, providing more information on the circumstances from which immigrants and asylum seekers are fleeing and clearly explaining the difference between persons with a protection status and irregular migrants.

60. As concerns political parties who have expressed strong anti-immigrant views and resorted to racist and xenophobic propaganda, ECRI is pleased to note that one of these, Azzjoni Nazzjonali, founded in 2007, was disbanded in 2010 and transformed into a pressure group, due to the poor results obtained during the national and EU parliamentary elections. Imperium Europe[36], on the other hand, is registered as a political party but is represented neither in the national nor in the European Parliament. Its founder (see the subsection on criminal law provisions of this report) has been convicted on charges of incitement to hatred and has expressed racist opinions in the course of interviews on TV, which have led to the host TV station being fined (see the subsection on the media).

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[33] This agreement provided for the returning of any boat intercepted on the open sea between Italy and Libya to their country of origin and established, amongst other things, joint patrols in the waters between the two countries. ECRI in its fourth report on Italy (and other international human rights bodies) considered that this could result in denying individuals the possibility of claiming asylum and in exposing individuals who are in need of protection to the risk of refoulement.

[34] There were, however, significant regional differences on this point.

[35] Notably, this question was presented on 11 January 2010 and asked "Can the Minister say what was the number of persons who were admitted to hospital because of rare diseases during 2009? How many of them were of a foreign nationality?"

[36] Its stated aim is that "Malta will be the first liberated nation in the whole White World - liberated from the enemy within and the enemy without".

61. In sum, while taking note of an improvement in the general climate of opinion and political discourse as concerns immigration, asylum seekers and refugees, ECRI regrets that no specific debate has been held by Parliament. It urges the authorities to introduce legal provisions allowing for the suppression of public financing for political parties whose members are responsible for promoting racism (see ECRI's GPR No. 7 on national legislation to combat racism and racial discrimination), as well as to propose provisions within the Parliament's Code of Ethics which punish racist conduct, including racist speech. The current Code of Ethics, in fact, does not address racist speech or incitement to hatred of MPs.

62. ECRI furthermore urges the authorities to introduce legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist acts, as well as to propose provisions within the Parliament's Code of Ethics which sanction racist speech or conduct.

**The media**

63. In its third report on Malta, ECRI encouraged the Maltese authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that the material they publish does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups vulnerable to racism, including irregular migrants, asylum seekers and refugees. ECRI recommended that the Maltese authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved. ECRI further recommended that the Maltese authorities support research on the way in which the media deal with issues of immigration and contribute to promoting acceptance of difference in Maltese society.

64. As mentioned in paragraph 58 of this report, there continue to be instances in which the media use interchangeably the terms illegal migrants, asylum seekers and refugees, thereby creating confusion and an incorrect perception in the public opinion on the legal status and the personal situation of these vulnerable groups. At the same time, ECRI has been informed that certain media, most notably the Times of Malta, have started to reverse this trend and are increasingly careful in using the correct terminology. ECRI further notes that there continue to be examples of sensational reporting and/or cases in which irregular migrants, asylum seekers and refugees are portrayed in a negative way. For instance, further to violent riots in the Saafi detention centre, 23 migrant defendants were ushered in the tribunal through the front door (instead of the back door) and were photographed while handcuffed in groups of two and wearing tattered clothing; footage showing them was broadcast. At the same time, there have also been examples of more balanced reporting and cases in which migrants have been cast in a positive light. For example, an Eritrean refugee who lost his life while trying to rescue a tourist who was drowning was portrayed by the media as a national hero. More generally, the authorities have informed ECRI that journalists have received training in relation to racism and racial discrimination.

65. ECRI encourages the authorities, through the National Commission for the Promotion of Equality or the Broadcasting Authority[37], to continue offering journalists training in issues concerning the fight against racism and racial discrimination and on ways in which the latter can contribute to promoting acceptance of different vulnerable groups.

[37] See paragraph 68.

66. In its third report, ECRI recommended that the Maltese authorities ensure that all instances of incitement to racial hatred are duly prosecuted, including when they are committed through the Internet.

67. As concerns the prosecution of cases of incitement to hatred, including when committed through the Internet, ECRI refers to paragraph 16 of this report. Furthermore, ECRI notes that in the present day there is no authority which monitors comments on newspaper websites made in reaction to their articles. In this connection, as confirmed by representatives of civil society, it is not infrequent that comments to articles reporting on migrants, asylum seekers and refugees express racist views or use racist discourse. ECRI has been informed by the authorities that there is a cybercrime unit within the police; however, it focuses chiefly on child pornography. Nevertheless, the police authorities may act *ex officio* in cases of breach of anti-discrimination legislation or incitement to hatred.

68. As concerns the monitoring of the broadcast media, the Broadcasting Authority[38] monitors and regulates all radio and television broadcasts originating from Malta and ensures, *inter alia*, that they do not breach the Broadcasting Act, including its provisions against racial discrimination (Articles 16K(c)[39] and 13(2)[40]). ECRI has been informed that the Broadcasting Authority monitors continuously the media and that, as a result, most cases of breach of the Broadcasting Act are raised *ex officio*. It may, however, also react to complaints lodged by the public and can issue fines ranging up to 34 000 Euros. As concerns in particular cases relating to racial discrimination, the Broadcasting Authority in 2010 issued a fine of 2 300 Euros to a TV station that broadcasted live an interview of Mr Lowell. During this interview, Mr Lowell had stated that any parent who adopts an African child should be deported to Africa and had cited extracts of his book denying the Holocaust.

69. ECRI notes that there is no regulatory authority entrusted with the task of monitoring systematically the printed press and respect of the Press Act, including its provisions against racial discrimination and incitement to hatred (notably, its Article 6[41]). Complaints for breach of Article 6 of the Press Act are examined by the prosecutor's office. ECRI has been informed that an Ethics Commission has been set up by the Institute of Journalists and that it is competent to consider complaints made against journalists for any alleged

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[38] The Broadcasting Authority is an independent statutory body, provided for by the Constitution of Malta, consisting of a Chairman and four other members appointed by the President of Malta acting in accordance with the advice of the Prime Minister given after consultation with the Leader of the Opposition.

[39] Article 16K provides in its letter (c) that audiovisual commercial communications (provided by media service providers) shall not: (…) (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. ECRI notes that this provision does not cover discrimination on grounds of language.

[40] Article 13(2) provides that in so far as general interest broadcasting services are concerned and where the Authority allows news and current affairs programmes to be broadcast by such services, it shall be the duty of the Authority to satisfy itself that, so far as possible, the programmes broadcast by any general interest broadcasting service complies with all or any of the following requirements as the Authority may impose in the broadcasting licence, that is to say - (a) that nothing is included in the programmes which offends against religious sentiment, good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling.

[41] Article 6 provides that whosoever, by publication or distribution in Malta of printed matter, or by means of any broadcast, shall threaten, insult, or expose to hatred, persecution or contempt, a person or group of persons because of their race, creed, colour, nationality, sex, disability as defined in Article 2 of the Equal Opportunities (Persons with Disability) Act, or national or ethnic origin shall be liable on conviction to imprisonment for a term not exceeding three months and to a fine (multa).

breach of the provisions on ethical behaviour as outlined in the Code of Ethics for journalists. The Code of Ethics, however, does not mention racism, racial discrimination or incitement to hatred. The Ethics Commission takes action against journalists who breach the Code of Ethics on a "name and shame" basis; it cannot issue fines or take legal action against journalists. In addition, representatives of civil society have informed ECRI that this Commission is not well known by migrants, refugees and asylum seekers. More generally, ECRI notes a disparity between the broadcast media and the printed press as concerns their monitoring and the array of means of redress available for breach of provisions against racism and racial discrimination.

70. ECRI recommends that the Maltese authorities ensure that an independent body be mandated to receive complaints (or to raise cases *ex officio*) for breach of the Press Act and that it be empowered to impose sanctions. This body's mandate should then be publicised as widely as possible.

## V. Vulnerable/Target Groups

### Muslim communities

71. In its third report on Malta, ECRI recommended that the Maltese authorities closely monitor the situation as concerns manifestations of Islamophobia and react to any manifestations that may occur.

72. ECRI is not aware of any noteworthy developments in this field. However, as stated above, persons from North Africa, the Middle East and persons believed to be Arabs are among those most affected by discrimination in housing and access to places of entertainment (see the section of this report on discrimination in various fields). In this connection, the 2009 EU MIDIS survey highlights that 64% of the Muslim respondents claimed they had been discriminated against in the twelve months prior to the interview[42]. This was the highest percentage within the EU. However, it is interesting to note that most Muslims participating in this study believed that this discrimination was not attributed to religion but to their ethnic origin.

### Jewish communities

73. In its third report on Malta, ECRI recommended that the Maltese authorities closely monitor the situation as concerns manifestations of antisemitism and react to any manifestations that may occur. It drew the attention of the Maltese authorities to its GPR No. 9 on the fight against antisemitism, which contains practical guidance on measures governments can take to this end.

74. ECRI notes that the Jewish community in Malta is very small (around 120 persons). With the exception of the incidents mentioned in paragraphs 16 and 68 of this report, concerning racist discourse against Jews pronounced by the politician N. Lowell, ECRI has not been informed of any antisemitic incident.

75. As concerns the recommendation made to the authorities to monitor manifestations of antisemitism, ECRI is not aware of any developments in this field.

[42] The areas of discrimination considered in the report were nine, notably: 1) when looking for work; 2) at work; 3) when looking for a house or an apartment to rent or buy; 4) by healthcare personnel; 5) by social service personnel; 6) by school personnel; 7) at a café, restaurant or bar; 8) when entering or in a shop; 9) when trying to open a bank account or get a loan.

## Migrants

76. Malta's territory (316 square kilometres) and its population density (around 1211 persons per square kilometre), make it one of the smallest member states of the Council of Europe with one of the highest population densities. This must be borne in mind when analysing the issues related to the arrival of irregular migrants and asylum seekers in Malta. The data provided by the authorities on the number of persons who have reached Malta by sea in an irregular manner show that, in 2008, 84 boats arrived with a total of 2 775 people on board, 98% of whom applied for asylum. By comparison, in 2007, a total of 1 702 migrants arrived by boat and, in 2009, 1 475 persons, 89% of whom applied for asylum. In 2010 there was a significant drop in the number of arrivals by boat as a result of the pushback agreement entered into by Italy and Libya[43]. In 2010, in fact, only two boats reached Malta's shores carrying 47 persons on board. These figures, however, increased dramatically once again further to the conflict in Libya in 2011 and the Arab spring revolution, with the arrival of nine boats carrying 1 579 persons. It is widely acknowledged that the high number of arrivals has put Malta under a disproportionate strain and that the initiatives aimed at resettling asylum seekers and refugees in other countries, while positive, have provided thus far only a partial response[44].

- *Detention*

77. In its third report, ECRI recommended that the Maltese authorities ensure that the persons held in detention centres have a remedy available to challenge the lawfulness of their detention which complies with the requirements of Article 5(4) of the ECHR[45]. In other words, the detained person must have the opportunity to question whether his/her detention is consistent both with national law and the ECHR, including its general principles, and is not arbitrary (see also paragraph 833 in this connection).

78. Under Article 11(8) of Legal Notice 81 of 2011 on Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, third-country nationals who are detained for the purpose of removal may now institute proceedings before the Immigration Appeals Board[46] to contest the *lawfulness*[47] of their detention and such proceedings are subject to speedy judicial review. ECRI notes however that, regrettably, third-country nationals who have been apprehended or intercepted by the competent authorities in connection with the irregular crossing of the external border of Malta are not included in the scope of application of this provision[48]. The overwhelming majority of irregular migrants therefore cannot challenge the lawfulness of their detention and, as was the case at the time of ECRI's third report, can only ask that the

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[43] See above.

[44] With approximately 1 000 asylum seekers/refugees having been relocated in twelve countries, including France, Germany and the USA, since 2007.

[45] Article 5(4) of the ECHR reads: Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

[46] The Immigration Appeals Board is a non-judicial body composed of a lawyer who presides it, a person versed in immigration matters and another person appointed by the President of Malta acting on the advice of the Minister responsible for immigration. It is competent to hear and determine appeals or applications under the Immigration Act.

[47] ECRI is not aware of any cases in which this concept has been interpreted. According to ECtHR in Louled Massoud v. Malta, the criminal courts interpret their competence in reviewing the lawfulness of irregular mingrants' detention in a narrow manner.

[48] See Article 11(1) of Legal Notice 81 of 2011 on Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations.

Immigration Appeals Board review the reasonableness of the detention as regards the duration or because there is no reasonable prospect of deportation[49].

79. Under this same provision, the Immigration Appeals Board, regardless of the reasonableness, will not grant release from detention in a number of cases, including when the identity of the detainee has yet to be verified, in particular when he/she has destroyed his/her travel or identification documents or used fraudulent documents. For this reason, coupled with the fact that proceedings before the Immigration Appeals Board may be lengthy[50], the ECtHR in Louled Massoud v. Malta found that proceedings before the Immigration Appeals Board did not qualify as a speedy and effective remedy to challenge the lawfulness of detention. The authorities have informed ECRI that the lawfulness of the detention may be challenged also before the Constitutional Court and under Article 409A of the Criminal Code. However, as for the first remedy, in the above-mentioned case, the ECtHR found that constitutional proceedings are too cumbersome for the purposes of Article 5(4) of the ECHR and would therefore not be considered as involving a speedy review of the lawfulness of the detention. As for proceedings before criminal courts, the latter have acknowledged their limited competence, stating that, given that there is a law authorising continued detention, they could not look into other circumstances which would render the detention illegal, such as incompatibility with the Constitution or with the ECHR. Criminal courts therefore cannot be considered an effective remedy for the purposes of Article 5(4) of the ECHR. Consequently, the ECtHR found that the applicant (an irregular migrant who had been detained while his application for asylum had been pending as well as after its rejection) had not had at his disposal under domestic law an effective and speedy remedy for challenging the lawfulness of his detention.

80. In their action report submitted to the Council of Europe's Department of the Execution of Judgments of the European Court of Human Rights concerning the case Louled Massoud v. Malta, the Maltese authorities have committed to setting up a second chamber in the Immigration Appeals Board. ECRI notes that this measure, while potentially tackling the problem of the length of the proceedings before the Immigration Appeals Board, does not address all the other legal lacunae identified above.

81. ECRI recommends that the Maltese authorities amend their legislation in order to ensure that all persons held in the detention centres are provided with a speedy and effective judicial remedy to challenge the lawfulness of their detention.

82. In its third report, ECRI called upon the Maltese authorities to identify and implement non-custodial alternatives to detention for irregular migrants and not to resort to detention unless it is strictly necessary in the particular circumstances of an individual case.

83. ECRI notes that regrettably Malta continues to support a system of mandatory detention of asylum seekers and migrants who have arrived in Malta in an irregular manner (see the sub section on detention of irregular migrants of ECRI's third report on this point). The authorities maintain that the latter remains a necessity because the identity of the irregular migrants cannot be ascertained upon their arrival and for security reasons. In this connection, ECRI observes that Article 5(1) of the ECHR allows under (f) for the "lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or a person against whom action is being taken with a view to deportation or extradition". In

[49] See Article 25A of the Immigration Act.

[50] Lasting up to three months or more. In some cases, decisions were rendered after the release of the detainee.

the case Saadi v. the United Kingdom, the first limb of Article 5(1)(f) was interpreted by the European Court of Human Rights (ECtHR) to mean that persons who apply for asylum upon arrival in the State, remain "unauthorised entrants" and may therefore be detained in order to prevent their unauthorised entry. However, in this same judgment the ECtHR specified that, in order to be legitimate, the detention should not be arbitrary, that is: (a) it must be carried out in good faith; (b) it should be closely connected to the purpose of the detention; (c) the place and conditions should be appropriate and (d) the length of detention should not exceed that reasonably required for the purpose pursued. Furthermore, in Louled Massoud v. Malta, the ECtHR specified that in order for the detention to be lawful and not arbitrary (e) the detainee should have an effective remedy by which to challenge it.

84. As regards point (d), ECRI notes that the Immigration Act applies no time limit to the detention of migrants in an irregular situation. While subsidiary legislation[51] provides for a maximum period of detention of 12 months, this provision does not apply to third-country nationals who have been apprehended or intercepted in connection with the irregular crossing of the external border of Malta (and who have not subsequently obtained an authorisation or a right to stay in the country). Nonetheless, under Government policy, irregular migrants are detained for a maximum of 18 months if they have not applied for asylum or if their asylum claims have been rejected. As concerns persons who have lodged an asylum request, they are detained for a maximum of 12 months as Regulation 10(2) of the Reception Regulations provides that asylum seekers are granted access to the labour market if a decision at first instance has not been taken within one year of the lodging of their application for asylum. In other words, the above-mentioned regulation has been interpreted as meaning that asylum seekers are released from detention if their application is still pending after one year. Notwithstanding the above, ECRI notes that Government policies have no legal force; therefore the risk that persons detained under the Immigration Act are deprived of their liberty for an indeterminate period, cannot be entirely ruled out.

85. As concerns point (b), in the case Louled Massoud v. Malta, the ECtHR found that the applicant had been kept in detention even though it was clear that his deportation was no longer feasible; therefore, in this case, the detention was not closely connected to its purpose. As regards point (e), ECRI finds that Malta lacks an effective remedy to challenge the lawfulness of detention (see paragraphs 78 and 800 of this report). For all of the above-mentioned reasons, and in light of Resolution 1707(2010) of the Parliamentary Assembly of the Council of Europe (on the Detention of asylum seekers and irregular migrants in Europe), as well as other instruments of soft law[52], ECRI deems that the detention of irregular migrants and asylum seekers should be resorted to with caution, after first reviewing all other alternatives to detention.

86. ECRI strongly recommends that the Maltese authorities provide non-custodial alternatives to detention and refrain from resorting to the detention of migrants

[51] Article 11 of Legal Notice 81 of 2011 on Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations.

[52] See also the UNHCR's Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers and Alternatives to Detention. In particular, these Guidelines state that mandatory or automatic detention is arbitrary as it is not based on an examination of the necessity of the detention in the individual case. There may be three purposes for which detention may be necessary in an individual case, namely to protect: public order (including to prevent absconding and/or in cases of likelihood of non-cooperation; in connection with accelerated procedures for manifestly unfounded or clearly abusive claims; for initial identity and/or security verification; and to record, within the context of a preliminary interview, the elements on which the application for international protection is based, which could not be obtained in the absence of detention), public health or national security. The consideration of alternatives to detention is part of an overall assessment of the necessity, reasonableness and proportionality of detention.

and asylum seekers unless it is strictly necessary in the particular circumstances of an individual case.

87. ECRI also recommends that third-country nationals who are detained with a view to deportation should be freed when it is clear that it is no longer possible to effect the deportation.

88. It further recommends that the Maltese authorities provide under Maltese law a limit to the duration of the detention of migrants in an irregular situation in all cases, in line with Directive 2008/115/EC on common standards and procedures in member States for returning illegally staying third-country nationals.

89. In its third report on Malta, ECRI urged the Maltese authorities to improve the material conditions of detention centres for irregular migrants and to ensure that adequate standards of living are thoroughly met in all such centres. It further encouraged the Maltese authorities to replace all police and military staff of the Detention Service with civilian personnel. It also urged the Maltese authorities to provide detained migrants with learning opportunities, including language or work-related training and the provision of general knowledge about the functioning of the society.

90. ECRI acknowledges the fact that the European Committee for the Prevention of Torture (the CPT) is the monitoring body of the Council of Europe which is best placed for assessing the material conditions of places of detention, including the detention centres for migrants, as well as the treatment of persons detained therein[53]. ECRI, nevertheless, takes note of the information it has received by the authorities that on 31 March 2012, two out of the three detention centres were in use (Safi Barracks and Lyster Barracks) and held 543 migrants and asylum seekers. The authorities have also informed ECRI that they have successfully replaced many army and police staff with civilian personnel in the detention centres. Whereas in 2005 there were, respectively, 122 and 54 army and police personnel, in 2012 the staff included 40 army, one police and 140 civilian officers. ECRI commends the authorities' efforts and encourages them to complete the transition to staffing composed solely of civilian personnel.

91. As concerns the provision of learning opportunities and other meaningful activities while in detention, AWAS has organised language training sessions for persons detained in closed centres and has been leading the Sparklet project which aims to enhance asylum seekers' and migrants' understanding and knowledge of life in Malta and in Europe (see paragraph 48 of this report for other initiatives). Furthermore, a cultural mediator is made available at the detention centres to assist the detainees with the asylum application process and psychological support is provided by a number of NGOs. In addition, NGOs organise some activities such as sowing lessons for women, yoga and the projection of educational programmes. Nonetheless, many representatives of civil society have pointed out that there is an extremely limited array of meaningful activities available to detained migrants and that in many cases their mental health deteriorates. A number of suicide attempts have also been brought to ECRI's attention.

92. In its third report ECRI encouraged the authorities to train all Detention Service personnel in human rights, including non-discrimination, and in dealing with persons of different backgrounds in a sensitive manner. It urged the Maltese authorities to ensure that any treatment of detainees by Detention Service

[53] In its visit to Malta of 26 to 30 September 2011, the CPT reviewed the conditions in the detention centres for immigrants at Lyster and Safi Barracks (Council of Europe News Flash, Strasbourg, 05.10.2011).

personnel which does not respect the detainees' rights and dignity be swiftly and adequately addressed.

93. The authorities have informed ECRI that, since 2008, the detention personnel receive training on a yearly basis, including by the UNHCR and by NGOs, and that in the course of 2012 special training sessions on the treatment of women and children were held. ECRI, however, has not received any information indicating that training on human rights and anti-discrimination provisions is provided. Furthermore, ECRI is concerned about the climate in the detention centres and the treatment afforded to detainees. Notably, in 2008, 2009 and in 2011 protests involving a high number of detained migrants ended in violence at Safi Barracks. The authorities have informed ECRI that, as concerns the riots of 2008 and 2009, internal investigations were carried out by the authorities and recommendations were made. The inquiry concluded that some detainees had been subject to undue physical treatment and that in a number of cases excessive force had been used by the detention personnel. The inquiry did not, however, identify the personnel who were responsible for such acts. Furthermore, to ECRI's knowledge, no criminal investigation was opened. As regards the riot of 2011, the authorities have informed ECRI that a criminal investigation had been opened against a number of migrants. An internal inquiry had also been launched by the authorities who had found that some detention personnel might have used more force than necessary. Although some internal measures were taken, ECRI has not been informed of the nature of these measures, nor the reason why criminal proceedings were not opened in this connection.

94. ECRI also expresses its deep concern about the death of two migrants, respectively of Nigerian and Malian origin, in 2011 and 2012 while they were in the custody of detention personnel, following their escape from Safi Barracks and their subsequent apprehension. A criminal investigation was opened in 2011 following the first death and is still pending. The Attorney General has filed an application before court to inquire why the magistrate in charge has not completed the statement of the facts of the case (process-verbal, which by law, in cases of a violent and suspicious death, must be concluded within 60 days from the incident). An internal inquiry was also commissioned by the Ministry of Justice; however, only a brief summary of the findings was published, stating that there were grounds for disciplinary action against some detention officials and making some recommendations related to the training of detention personnel. Following the second incident (that involving the Malian national in 2012), the Prime Minister has decided to launch an independent inquiry into the death of both migrants and has appointed a judge to: determine whether the detention personnel were negligent or abused their power; establish whether the recommendations made in the above-mentioned inquiry were implemented; assess aspects such as the organisation of and the conditions in the detention centres. A criminal investigation has also been launched for the death of the Malian national and two soldiers have been charged with his murder. ECRI welcomes the interest shown by the public in both incidents as well as the fact that they were followed by a criminal as well as an internal investigation. It urges the authorities to conclude the inquiries as quickly as possible and make their findings public, in order to shed light into the nature of these incidents. It further notes that the significant number of riots, the conclusions of the authorities' inquiries that more force than necessary was used to quash some of them and the two violent deaths which occurred while the victims were in the custody of detention personnel, raise a reasonable doubt as to the methods used by detention personnel and the treatment afforded to persons detained in the closed centres.

95. ECRI recommends that the Maltese authorities conclude as soon as possible all the inquiries and the criminal investigations opened further to the deaths of a Nigerian and a Malian national in 2011 and 2012, while in the custody of detention personnel and give the public full access to the results.

96. ECRI strongly recommends the Maltese authorities to provide detention personnel with training on human rights, including provisions against racial discrimination. ECRI further recommends that the authorities raise the detention personnel's awareness of the fact that abuse of power and the use of excessive force will be severely punished.

97. In ECRI's third report, ECRI strongly recommended that the Maltese authorities improve access to detention centres by the media and civil society organisations.

98. ECRI has been informed by the authorities that the media and NGOs may visit the detention centres and are given access within days from their request.

99. In its third report, ECRI also encouraged the Maltese authorities in their efforts to ensure that all unaccompanied minors and persons suffering from serious physical or mental conditions are promptly identified and released from detention[54].

100. ECRI has been informed by the authorities that vulnerable persons, including unaccompanied minors, women with children, families and disabled persons are not subject to detention. In case of uncertainty, the freedom of such persons is restricted only until the necessary medical clearances are obtained. The identification and release from detention of the above mentioned categories of migrants slows down when there is a surge in the arrival of migrants at the island. As a consequence, in 2008 many unaccompanied minors were placed in detention centres for longer periods of time. However, more recently, unaccompanied minors are placed under a care order and accommodated in specific centres for youths; alternatively, they are first placed in a detention centre and, once a care order has been issued, they are transferred to an open reception centre within a maximum period of 21 days. The 2010 FRA report on Separated Asylum-seeking Children, however, stated that all children who had been interviewed had spent a period of detention ranging from one to six months. Furthermore, ECRI notes that the living conditions in the large open reception centres such as Hal Far are not adequate for vulnerable persons and that other arrangements should be sought (see the subsection on accommodation of this report).

101. ECRI strongly recommends that the Maltese authorities ensure that all unaccompanied minors and persons suffering from serious physical or mental conditions are promptly identified and transferred to an appropriate, non custodial setting, suitable for their vulnerable condition.

[54] According to 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, the following categories are considered "vulnerable persons": minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

- *Migrants at sea*

102. In its third report on Malta, ECRI called on the Maltese authorities to continue to protect the right to life of migrants at sea and to do so in all circumstances where they are in a position to ensure that this right does not come under threat.

103. ECRI acknowledges Malta's merit in carrying out rescue operations in its search and rescue zone (SAR zone)[55]. Nonetheless, there have been reports according to which some migrants at sea were not rescued, even though they had been spotted by a Maltese military patrol[56] or had been located in Malta's SAR zone. According to the Council of Europe Commissioner of Human Rights, in one incident in 2009, a boat from Libya was adrift in the Mediterranean sea for twenty days. The persons aboard were reportedly not rescued by the Maltese military patrol which had approached the boat and had offered food, water and fuel. According to the authorities, these persons had refused assistance and insisted on proceeding to Lampedusa. As a result, only five out of more than 70 people (mainly Eritreans) survived. The UNHCR has also expressed concern about a rescue operation in June 2010. It noted that Malta had relied on Libyan vessels to conduct the rescue operation inside Malta's SAR zone. The migrants (including three women and an eight year old child), almost all Eritreans, were taken to Libya. According to the Council of Europe Commissioner of Human Rights, a similar incident happened in July 2010, whereby 55 Somali nationals travelling from Libya were intercepted at sea by a Maltese military vessel in its SAR zone. 28 were allowed on board and were taken to Malta; the remaining 27 boarded a Libyan ship which appeared on the scene and began to undertake rescue operations simultaneously and were returned to Libya, where[57] they were reportedly beaten and tortured. The authorities have stated that they could not forbid the Libyan unit from providing assistance and that the 27 migrants returned to Libya voluntarily, although this has been contested. In this connection, ECRI reminds the Maltese authorities that the prohibition of torture and inhuman or degrading treatment is a human right which admits no derogation and that Parties to the ECHR must ensure that their actions do not expose people to such treatment. Furthermore, Libya is not a party to the 1951 Convention on the Status of Refugees and does not have asylum legislation or procedures in place to allow asylum seekers to lodge asylum requests. Therefore, relinquishing responsibility for rescue operations to Libya implies accepting the possibility that persons will be subject to ill-treatment or torture, or will be sent back to a country where they are at risk of persecution on account of their race, religion, nationality, membership of a particular social group or political opinion.

104. ECRI has also been informed that there are frequent disputes between Italy and Malta concerning search and rescue operations, particularly in cases of boats located in Malta's SAR region which are physically closer to the Italian island of Lampedusa. Malta, on the one hand, claims that disembarkation should occur at the nearest port of call regardless of the SAR zone in which the boat is located. Italy, on the other hand, claims that responsibility over the SAR zone takes precedence. The authorities have stated that the different interpretation of the law by Malta and Italy has never resulted in the failure to rescue persons or to any loss of life and that rescues have always been conducted first and only afterwards have disembarkation issues been addressed. Nevertheless, ECRI

[55] Under the 1979 International Convention on Maritime Search and Rescue, a SAR zone is an area of defined dimensions within which search and rescue services are provided. A State's responsibility with regard to its SAR zone is primarily to ensure, through co-ordination, that all persons in distress within the zone are promptly rescued and disembarked at a place of safety.

[56] Under Article 12 of the 1958 Geneva Convention on the High Seas, States must require the master of a ship sailing under its flag to render aid to persons in distress at sea.

[57] According to this same report.

considers that it is unacceptable that legal disputes of this nature could potentially result in failure to rescue persons in distress as well as delay access to safety and assistance.

105. ECRI recommends that the Maltese authorities find a solution, together with all the other countries in the region, concerning the disembarkation of persons rescued at sea.

- *Right to marry*

106. ECRI's attention has also been drawn to the refusal of the Public Registry to allow migrants who have not qualified for refugee status or subsidiary protection to get married. The Public Registry claimed that the right to marry can be enjoyed only by persons who are legally in Malta (including refugees and those granted subsidiary humanitarian status). One complaint on this issue was lodged before the Maltese Ombudsman, who concluded that, while the State is entitled to legislate on and prohibit marriages of convenience, the decision of the Public Registry violated Article 12[58] and 14[59] of the ECHR, as the right to marry is a fundamental right which should be enjoyed by everyone. He accordingly asked the Public Registry to allow these persons to get married. ECRI shares the Ombudsman's analysis (see also the subsection on integration for other issues related to integration).

107. ECRI recommends that the Maltese authorities ensure that the right to marry is enjoyed by all persons present in Malta.

**Refugees and asylum seekers**

108. In order to reach an accurate understanding of the legal and policy framework in place in the field of asylum, it is important to bear in mind that Malta has the highest ratio of asylum applications *per capita* among Council of Europe member States. This clearly poses an enormous challenge to the authorities from the perspective of ensuring adequate reception conditions and prospects of integration[60]. Whereas the recognition rate of refugee status is about 4%, the general recognition rate (when considering also other forms of international protection) is about 56% and is considered to be a very good average and the highest of all EU member States.

- *Procedure*

109. Since ECRI's third report, Council Directive 2004/83/EC83 (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 Directive 2005/85/EC (on minimum standards on procedures in Member States for granting and withdrawing refugee status) were transposed into the Maltese legal order. As a result, the Refugees Act was amended in July 2008 and Legal Notice 243 of 2008 entered into force. Further to the above amendments, subsidiary protection is now provided for

[58] On the right to marry.

[59] On the prohibition to discriminate.

[60] In 2007, 1 379 asylum applications were lodged, 7 persons were granted refugee status, 620 persons received subsidiary or humanitarian protection and 352 applications were rejected; in 2008, 2 607 asylum applications were lodged, 19 persons were granted refugee status, 1394 persons received subsidiary or humanitarian protection and 1302 applications were rejected; in 2009, 2 389 applications for asylum were lodged, 20 persons were granted refugee status, 1676 received subsidiary protection or humanitarian and 895 applications were rejected. In 2010, 144 asylum applications were lodged, 44 persons were granted refugee status, 166 persons received subsidiary or humanitarian protection and 120 applications were rejected. In 2011, 1 862 asylum applications were lodged, 68 persons were granted refugee status, 811 persons received subsidiary or humanitarian protection and 706 applications were rejected.

under Maltese law. Under Article 17(1) of the Refugees Act, subsidiary protection is granted when the applicant does not qualify for refugee status, but where there are substantial grounds for believing that, if returned to the country of origin, or in the case of a stateless person, to the country of former habitual residence, the applicant would face a real risk of suffering serious harm. Under Article 14(1)(b) of Legal Notice 243, persons who have been granted subsidiary protection may: remain in the country; be granted personal identification documents, including a one-year renewable residence permit; travel especially when serious humanitarian reasons arise requiring the person's presence in another State; have access to employment, core social welfare benefits, appropriate accommodation, integration programmes, State education and training, and may receive core State medical care. As regards in particular the core social benefits, ECRI has been informed that in the past, these had not been clearly defined by the law and that, in practice, persons with subsidiary protection did not receive them. However, in 2011, the authorities issued a policy clarification specifying that beneficiaries of subsidiary protection can receive certain forms of social assistance from the Department of Social Security, if for instance they cannot work. In the past this category (and migrants in general) were only entitled to a monthly allowance of maximum of 130.48 Euros per month, as long as they were registered as residents in one of the open reception centres.

110. ECRI also notes that a new provision, Article 14, has been introduced in the Refugees Act, providing for the principle of non-refoulement.

111. In its third report, ECRI recommended that the Maltese authorities ensure that the rights attached to possession of humanitarian protection are laid down in statute.

112. ECRI notes that the rights of persons having been granted temporary humanitarian protection (THP) are still based on national policy and are not laid down by statute. This "local" form of protection is granted on an *ex gratia* basis, when applicants are found not to be eligible for asylum or subsidiary protection but are considered to be in need of protection for special humanitarian reasons: (a) when the applicant is a minor; (b) on medical grounds; or (c) other humanitarian grounds, (d) when a former applicant for international protection cannot be returned to his/her country of origin due to legal or factual reasons and through no fault of his/her own. Temporary humanitarian protection for former applicants for international protection (THPN) was also introduced as an additional form of "local" protection in 2010. The latter is, again, given on an *ex gratia* basis by the Office of the Refugee Commissioner (the Office) after consultation with the Ministry of Home and Parliamentary Affairs, to persons whose asylum application has been rejected, who have lived in Malta for at least four years and who can prove that they have made efforts to integrate in Maltese society, for instance, by attending language courses or through employment. ECRI was informed by civil society that persons benefiting from THPN sign an informal agreement with the Refugee Commissioner that they will make efforts to integrate into society. Both forms of "local" protection are valid for one year and may be renewed. In principle, beneficiaries of THP and THPN are entitled to the same rights as those granted to beneficiaries of subsidiary protection; however, there is uncertainty as to the rights that these persons enjoy in practice. ECRI notes that, with no doubt, these new forms of protection go well beyond the minimum requirements established by the Qualification Directive of the EU and offer an unparalleled opportunity to persons who would otherwise be obliged to leave the country or stay illegally, to live and work in Malta. Nonetheless, persons who have been granted these forms of protection should be entitled to legal certainty as concerns the rights attached to their status and should be provided with a means to claim their rights, should these be denied.

113. ECRI recommends that the Maltese authorities ensure that the rights attached to temporary humanitarian protection and temporary humanitarian protection for former applicants for international protection, are laid down by statute.

114. In its third report, ECRI recommended that the Maltese authorities take steps to speed up the examination of asylum applications, and, inter alia, that they ensure that the Office of the Refugee Commissioner is staffed at all times in a manner that is adequate to deal with the caseload. It further encouraged the Maltese authorities in their efforts to ensure that all persons entitled to refugee status actually secure this status. To this end, it recommended in particular that the Maltese authorities intensify their efforts to train the caseworkers of the Office of the Refugee Commissioner.

115. ECRI notes that the Maltese authorities have made remarkable efforts to improve the asylum determination procedure and the preparation of the caseworkers. In 2010 the Office announced that it would strive to complete the asylum determination procedure within six months of the lodging of an application. Indeed this objective has been reached, with some cases, according to the authorities, being concluded within two months. This result has been obtained through a reorganisation of the Office's work, encompassing: a country desk system (whereby asylum determination officers work on a specific group of third-country nationals); new expertise in language analysis to determine an applicant's country of origin; new expertise in document analysis; and the setting-up of 12 mobile offices, in one of the detention centres, to carry out interviews and provide information to asylum seekers (see paragraph 1200). ECRI further notes that, since its third report, there has been an increase in the Office's staff, which now comprises: the Refugee Commissioner, an assistant Refugee Commissioner, 11 caseworkers (with three more to be employed in the course of 2012), three senior caseworkers (with one more to be employed in the course of 2012), one head of administration, one IT officer, four clerks, an auxiliary and one person from the European Refugee Fund (ERF).

116. As regards training the caseworkers of the Office, much has been done since ECRI's third report. In 2009, 2011 and 2012 several training sessions were delivered in Malta and abroad to Maltese caseworkers on document analysis with a view to assessing the documents submitted by asylum seekers in a more efficient and modern way. A training programme for newly recruited caseworkers covers topics such as international refugee law, relevant national law, interviewing techniques and searching for information on countries of origin. After their training, they are monitored and coached for a period of time by experienced caseworkers. The Office has also participated to workshops of the Network of Asylum Practitioners (EURASIL), focusing on specific countries or particular topics. Furthermore, 14 caseworkers participated in training provided on the European Asylum Curriculum by the European Asylum Support Office (EASO)[61] on a number of topics such as human rights, interviewing children and persons suffering from serious physical or mental conditions, and techniques to draft asylum determination decisions. The 14 case workers were then required to train their colleagues on these topics.

117. While the above measures are apt to ensure a more speedy and efficient asylum determination process, ECRI considers that the observation made in ECRI's third report, concerning the tendency to grant humanitarian protection to applicants who, in some cases, may qualify for refugee status, may still be valid. Indeed, the recognition rate for subsidiary or temporary humanitarian protection has increased since ECRI's third report; however, the recognition rate for refugee

[61] This office has been set up in Malta, inter alia, in order to provide technical advice and assistance to member States experiencing pressure on their asylum and reception systems.

status is stable at around 4%, notwithstanding the fact that most applications are lodged by nationals of Somalia and Eritrea, countries which, generally, generate a high number of refugees (see paragraph 1033).

118. ECRI encourages the Maltese authorities in their efforts to ensure that all persons entitled to refugee status actually secure this status.

119. In its third report, ECRI encouraged the Maltese authorities to ensure that information is available to detained migrants on their rights, including the right to seek asylum, in a language that they understand. It further recommended that they take steps to improve asylum seekers' access to professional interpretation and translation services.

120. ECRI notes that much has been done in this respect. Notably, the Office has launched the ERF Project (2009-2011) and the Emergency Measures Project (August 2009 - January 2010). The former aimed adequately to prepare third-country nationals for their asylum determination process, by providing individual assistance in filling in their registration form (the preliminary questionnaire) and organising information sessions on their rights and obligations. Through this project, an information booklet and a video (translated into 11 languages and including subtitles) have also been made available. As concerns the latter project, its funds were used, inter alia, to set up 12 mobile offices at Safi Barracks for information sessions and interviews. The authorities have informed ECRI that, as a result of the implementation of the above-mentioned projects, within one to two working days of the arrival of the irregular migrants, staff from the Office visit the detention centre and provide information about the asylum procedure. The staff divides the migrants in groups of six persons, according to their language and vulnerability. The group then receives a presentation in which basic information on the asylum procedure is given, followed by the projection of a video with more in-depth information. The prospective applicants are then given the opportunity to put questions and are asked whether they would like to apply for asylum. If so, the applicant is provided with an interpreter who gives assistance in filling in the preliminary questionnaire. In the questionnaire, the prospective applicant indicates his/her wish to apply for asylum, the underlying reasons for such application, as well as other personal information. After this phase, applicants are provided with an information booklet about the asylum system, which contains a transcript of the audio-visual presentation in 11 languages. As is explained in other parts of this report, AWAS and NGOs, through the project Sparklet, also provide a two-hour induction course providing cultural orientation to the asylum seekers.

121. ECRI commends the steps taken by the authorities in providing information on the asylum procedure and urges them to continue this exemplary work. ECRI deems however that the provision of information could be improved by including in the information booklet (which is a transcript of the video) and in the video, a clarification of the concept of refugee. More specifically, the grounds on which a person must fear persecution in order to qualify as a refugee should be explained[62]. Applicants, in fact, may not be familiar with the concept of refugee and may, for that reason, either deem that certain important information is irrelevant or, alternatively, that some irrelevant information is important. This should be done, all the more, because at a very early stage of the procedure, through the preliminary questionnaire, asylum seekers are asked to put in writing the reasons why they are seeking asylum.

[62] The current text of the booklet in fact states "an asylum seeker is a person who has left his country because of particular problems and has sought asylum in another country but who is still awaiting for a decision on his/her application for asylum".

122. ECRI recommends that the Maltese authorities provide at the earliest stages of the asylum procedure, during the information sessions and in the information booklet, a definition and an explanation of the concept of refugee; the persecution grounds should figure therein.

123. As concerns the provision of interpretation and translation services, the authorities have informed ECRI that, in the past, they had encountered difficulties in this field. Notably, notwithstanding the authorities' efforts to train them, many interpreters had left the country or found other jobs. In 2011, however, six new interpreters from the United Kingdom were hired on a consultancy basis for the following languages: Bengali, Punjabi, Urdu, Amharic and Oromo. Furthermore, the Office has acquired videoconferencing equipment which is used for certain applicants for whom an interpreter is not available (an interpreter in the United Kingdom would provide its services through this means). ECRI welcomes the steps taken.

124. In its third report, ECRI recommended that the Maltese authorities make free legal aid available to asylum seekers from the outset of the asylum procedure.

125. ECRI notes that the situation has not changed since ECRI's third report. Asylum seekers have the right to be assisted by a lawyer during all of the phases of the asylum procedure[63]; however, free legal aid is provided for by the State only before the Refugee Appeals Board, at the appeals phase. ECRI stresses the importance of the provision of free legal aid from the outset of the asylum procedure, in other words, already at the stage of the filling-in of the preliminary questionnaire. As noted above, information such as the reasons why the asylum seeker is applying for asylum is provided already at this stage and may therefore be potentially decisive for the outcome of the procedure. It is therefore imperative that the asylum seeker be afforded legal advice as to his/her rights and as to what is relevant for his/her application - all the more, in light of reports showing that the reversal of first instance decisions by the Refugee Appeals Board is close to nil. Given that most applicants arriving by boat and asking for asylum are indigent, the only means to ensure that they benefit in practice from legal assistance is to provide free legal aid. ECRI recalls in this respect that, with reference to detained asylum seekers, the Parliamentary Assembly's resolution of January 2010 on the detention of asylum seekers and irregular migrants in Europe has called on Member States to ensure that that they be guaranteed effective access to legal advice, assistance and representation of a sufficient quality, and legal aid be provided free of charge. Although the authorities have stated that asylum seekers receive a copy of their application form and their interview notes (verbatim transcript of the interview) and that a copy of the decision is made available to them as soon as the case is closed, ECRI has received information indicating that, particularly when detained, asylum seekers have experienced difficulties in accessing their case files.

126. ECRI notes that under Article 7 (9) of the Refugee Act, the decision of the Refugee Appeals Board (at second instance) is final and may not be appealed before any court of law. The same rule applies to decisions made according to the accelerated procedure under Article 23, although the authorities have informed ECRI that no asylum requests have ever been processed under the accelerated procedures by the Office of the Refugee Commissioner. According to the authorities, the Refugee Appeals Board has the status of a judicial authority. ECRI is not convinced that this body, whose three members are appointed by the Prime Minister, qualifies as an independent and impartial judicial mechanism nor that the above provisions are in line with Directive 2005/85/EC, which provides

[63] See Article 4(2) of the Procedural Standards in Examining Applications for Refugee Status Regulations.

for the right of asylum seekers to an effective remedy before a court or a tribunal against a decision taken on their application for asylum. Finally, as concerns the appeals phase of the asylum procedure, ECRI has been informed by the authorities that asylum seekers may be refused an oral hearing before the Refugee Appeals Board.

127. ECRI strongly recommends that the Maltese authorities amend the asylum procedure so as to ensure: free legal aid as from the outset of the asylum procedure, in particular at the time when the preliminary questionnaire is filled in; the asylum seeker's access to his/her case file; and a right in all cases to appear before the Refugee Appeals Board at the appeals stage.

128. ECRI recommends that the Maltese authorities amend the Refugee Act in order to ensure that asylum seekers are granted an effective remedy before a court or a tribunal against a decision taken on their application for asylum, including when such decision has been taken further to the accelerated procedure.

- *Accommodation*[64]

129. In its third report on Malta, ECRI encouraged the Maltese authorities in their efforts to provide accommodation to refugees and asylum seekers and to ensure that the material conditions in all open reception centres meet adequate standards of living. It further encouraged the authorities to consider ways in which the combined system of accommodation in the open reception centres and financial support could be adjusted so as to favour the gradual development of residents' self-reliance and early integration into society.

130. There are a number of open reception centres for refugees and asylum seekers in Malta run by AWAS and/or subcontracted to other organisations. On April 2012, 1 652 persons were lodged in these centres, the largest being the Hal Far centre (comprising the "tent village", the hangar complex, the women's centre, the family centre and the centre for unaccompanied minors – see also ECRI's third report on Malta) and the centre in Marsa.

131. ECRI's interlocutors have all highlighted an improvement in the material and living conditions at the Marsa open reception centre since ECRI's third report. More specifically, 32 members of personnel provide medical, psychological and educational support to the residents. As was mentioned in other parts of this report, an employment office has been set up in Marsa to assist persons living in the centre in finding employment. Furthermore, some refurbishment works have been carried out.

132. As concerns the Hal Far open reception centre, both the authorities and civil society have highlighted that the family centre and the centre for unaccompanied minors are of high standards. As concerns the "tent village" (see paragraph 60 of ECRI's third report), the authorities have informed ECRI that in the course of 2012 the tents will be replaced by containers with funding provided by the ERF. ECRI's delegation visited the "tent village" in April 2012 and observed that indeed, many containers were already in place and others were being installed. However, many tents, accommodating several individuals and families, remained. The living and material conditions they offered were clearly inadequate in many respects, including from the point of view of the occupant's privacy and protection from inclement weather. As concerns the containers, ECRI deems that they are not fit for long-term stay, *inter alia* because in the summer months high temperatures are reached therein. Moreover, ECRI deems that such accommodation is not appropriate for families. Notably, ECRI met one family with

[64] See also the part on detention of the subsection on migrants.

an infant living in one such container, together with other individuals/families; their privacy was ensured only by means of a number of sheets which had been put and served as a partition. Furthermore, the temperature inside the container was elevated even though it was April. ECRI noticed that several other families with small children were lodged in the "tent village".

133. ECRI recommends that the Maltese authorities ensure that families with children who seek asylum, are recognised refugees or are otherwise entitled to be lodged in a reception centre, be accommodated in a family centre with appropriate living conditions.

134. As concerns the hangar complex, the authorities have informed ECRI that all the families which were previously lodged there were either resettled in Germany or relocated in other open reception centres. ECRI noted during its visit that only men were lodged in the hangar complex and that the accommodation consisted in multiple occupancy containers. ECRI was also informed by the authorities that the sanitary facilities at the hangar had been refurbished. ECRI's considerations concerning the adequacy of living conditions in the containers, apply also to the hangar complex.

135. As regards the women's centre, representatives of civil society have informed ECRI that there had been problems related to hygiene and to the bathroom getting flooded. When ECRI visited the establishment, only few women were accommodated there. The conditions appeared to be adequate. ECRI is pleased to note information provided by the authorities that extensive refurbishment took place in the summer of 2012 and that bars evoking a custodial setting were removed.

136. ECRI shares the view expressed by various representatives of civil society that most open reception centres are not fit for long-term stay, *inter alia*, for the reasons outlined in the paragraphs above. Furthermore, their isolation and their concentration in particular areas have contributed to creating an environment similar to a ghetto. The provision of certain forms of social assistance to beneficiaries of subsidiary protection (see paragraph 42 of this report) has been considered as a positive measure in order to incentivise persons living in reception centres to find alternative and more suitable accommodation. However, as previously stated, there is no clear evidence that such social assistance is indeed disbursed. Furthermore, the latter covers only persons with subsidiary protection who cannot work.

137. ECRI recommends that the Maltese authorities provide accommodation to refugees and asylum seekers in open reception centres which meet adequate standards of living. In particular the authorities should address the problems relating to excessive heat, inclement weather and lack of privacy. It further encourages the authorities to ensure that persons with subsidiary protection and with other forms of "local" protection be granted social assistance so as to provide them with an incentive to find alternative accommodation suitable for long-term stay.

- *Integration*

138. In its third report ECRI strongly recommended that the Maltese authorities take responsibility for issues of integration of immigrants, refugees and persons granted humanitarian protection in Malta. In so doing, it recommended that they support and make the most of existing expertise in the non-government sector in these fields.

139. ECRI notes that in 2005 the Ministry of Justice and Home Affairs and the then Ministry for the Family and Social Solidarity published the "Irregular Immigrants,

Refugees and Integration: Policy Document". However, in its second and third reports, ECRI noted that Malta considered itself as a transit country for immigrants. Its authorities continue to stress that few have Malta as their intended destination and that, because of the country's limited surface, resettlement is the main durable solution for migrants. ECRI finds it, therefore, not surprising that Malta is still very low on the Migrant Integration Policy Index (MIPEX), ranking 28th out of 31 MIPEX countries. ECRI has been informed that a national report on strategies for social protection and social inclusion (2008-2010) has been drafted by the authorities with a number of objectives related to integration. Notably, its stated aim is to promote integration of third-country nationals through: taking initiatives to increase the employability of refugees; more effective use of detention periods for irregular immigrants; measures to enhance the well-being of asylum seekers; measures to improve the services available to asylum seekers; and public awareness measures to address racism. In this report, the Maltese authorities commit to: set up a Refugee Advisory Service to help refugees find work; undertake research to identify barriers to employment and training faced by non-Maltese nationals; improve reception conditions in line with international standards; improve conditions in open centres; strengthening AWAS; provide information on asylum seekers' rights and obligations through the development of an integration handbook for asylum seekers; provide training in anti-discrimination and multiculturalism for all officials; carry out human rights educational campaigns; and conduct research addressing public perceptions towards race and ethnicity. It would appear, however, that no measures have been taken as a follow-up to the report and that thus far it has served as a set of guidelines.

140. ECRI reiterates its recommendation to the Maltese authorities to devise a long-term integration strategy targeting refugees, asylum seekers, beneficiaries of "local" forms of protection and other migrants so as to ensure their integration into Maltese society in all areas of life.

## VI. Conduct of Law Enforcement Officials

141. In its third report, ECRI urged the Maltese authorities to ensure that any allegations of racially motivated misconduct by law enforcement and army personnel are investigated effectively and that the outcomes of such investigations are given publicity. To this end, it drew the attention of the Maltese authorities to its GPR No. 11 on combating racism and racial discrimination in policing, which provides detailed guidance on this aspect.

142. Allegations of inhuman and degrading treatment of migrants by detention personnel have been described in other sections of this report (see paragraphs 644, 933 and 94) and recommendations have accordingly been made. It is also worthwhile to note that the report Becoming Vulnerable in Detention of the Jesuit Refugee Service - Europe reveals that 32% of the detained migrants who had been interviewed claimed to have been assaulted by detention personnel. Moreover, 18% of the detained migrants reported to have filed a complaint on these grounds to no avail, as investigations had not been launched. Furthermore, 40% of the respondents claimed to have been verbally abused and 58% of these claimed to have been mocked by staff, including with racist slurs.

143. As regards complaints for behaviour of law enforcement officials amounting to racial discrimination, the authorities have informed ECRI that three such complaints have been formally lodged since 2008. Two of these complaints were lodged in 2008 and in both cases the internal proceedings led to the acquittal of

the police officer concerned, because the complainant failed to turn up to testify[65]. The third complaint concerned the alleged racist behaviour of a police officer at a police station. No charges were issued because there was insufficient evidence. The press has also reported about another incident, whereby in March 2011 a police officer insulted and made racist remarks to two Black Jesuit priests. The authorities have informed ECRI that internal proceedings were opened and that the officer was sanctioned with the loss of one day's salary (25 Euros).

144. ECRI recommends that the authorities ensure that effective, proportionate and dissuasive sanctions are imposed in disciplinary cases involving proved racist conduct of law enforcement officials.

145. ECRI has been informed that the institution which is responsible for receiving complaints related to the police is the Police Board, an independent external mechanism provided for by Articles 48 to 60 of the Police Act. The Board is composed of up to five persons, entirely from outside the police corps. It is appointed by the President of Malta acting on the advice of the Minister responsible for the police. ECRI is pleased to note that an independent mechanism responsible for receiving complaints concerning police conduct exists. However, although the authorities have stated that information, leaflets and other documentation on how to file a complaint are available to the public in every police station in Malta, ECRI is concerned that the existence of this body and the modalities to submit a complaint to it are not sufficiently publicised. For instance, although ECRI has received numerous and consistent reports by a large number of sources, indicating that police officers often refuse to open an investigation when migrants report a crime, none of these sources seemed to be aware of the possibility to file a complaint before the Police Board.

146. ECRI recommends that the authorities publicise, including by putting up information at police stations, the existence of the Police Board, its functions and the modalities to file complaints before it.

147. In its third report ECRI recommended that the Maltese authorities pursue and intensify their efforts to provide law enforcement and army personnel with specific training on their obligation to respect the right to be free from racism and racial discrimination and recommended that this be done for all new recruits and as in-service training to all officers.

148. ECRI has been informed by the authorities that the police force receive training on racist crime. In particular, a one-hour training session on racial equality is provided for as part of the training organised at the Police Academy as well as in-service professional development courses which include lectures on the criminal law provisions against racism and racial discrimination. ECRI is not aware whether military personnel receive specific training on the right to be free from racism and racial discrimination. Paragraph 933 of this report deals with training provided to detention personnel.

149. ECRI strongly recommends the authorities to intensify the training provided to law enforcement officials on the fight against racial discrimination and to sensitise them further on the sanctions for racist conduct.

## VII. Monitoring Racism and Racial Discrimination

150. In its third report, ECRI recommended that the Maltese authorities collect relevant information broken down according to categories such as ethnic or national origin, religion, nationality and language, with due respect to the principles of

[65] One of the two concerned racist remarks allegedly made by a police officer working at the detention centre in Hal Far.

confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. It recommended that the collection of such information should be elaborated in close co-operation with all the relevant actors, including civil society organisations and take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

151. ECRI notes that there has been no relevant development in this field since ECRI's third report. Data is not generated and broken down in order to monitor the situation of vulnerable groups across a number of areas. No further information has been provided by the authorities in this respect.

152. ECRI also recommended that the Maltese authorities generate data concerning manifestations of racism and racial discrimination based on perceptions of potential victims of these phenomena and drew the attention of the Maltese authorities to its GPR No. 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, providing detailed guidance on how to carry out these surveys.

153. ECRI is pleased to note that a qualitative study on racial discrimination in Malta was published by the NCPE in 2011 (see the subsection on anti-discrimination bodies and other institutions). The latter collected and compiled qualitative data on: the discrimination experienced by "minority ethnic groups"; the persons who allegedly discriminate; and the possible deficiencies of the measures of redress available and of the policies in place. Its methodology included the selection and interview of 25 respondents of different ages, ethnic origin and gender. The results of the study showed that "vulnerable ethnic groups" experience discrimination and harassment in Malta to various degrees, in all areas of life. Furthermore, it showed that those who discriminate are not punished, partly due to the non-reporting of incidents. ECRI welcomes the commissioning of such studies and encourages the authorities to continue and reinforce their efforts in this respect.

154. ECRI reiterates its recommendation to the Maltese authorities to collect relevant information broken down according to categories such as ethnic/national origin, religion, citizenship and language, with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. It further recommends that the collection of such information should take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

## VIII. Education and Awareness Raising

155. In its third report on Malta, ECRI recommended that the Maltese authorities strengthen their efforts to provide students with education that promotes an appreciation of diversity and an understanding of other cultures and backgrounds, including immigration and refugee issues. ECRI drew the attention of the authorities to its GPR No. 10 on combating racism and racial discrimination in and through school education, which provides guidance on the provision of this type of education. It further recommended that the authorities strengthen their efforts to educate students in human rights and to reinforce their co-operation with the non-governmental sector, as concerns both teacher training and actual provision of education to children. Lastly, ECRI recommended that the authorities consider making human rights a compulsory subject at both primary and secondary level.

156. The Maltese authorities have informed ECRI that a new national minimum curriculum is in the process of being drafted. One of its stated objectives is to address intercultural education horizontally and train teachers on how to include

this perspective in the various subjects. According to the new national minimum curriculum, social studies taught to 11 year olds will cover rights and responsibilities, including human rights. Furthermore, according to the authorities, teachers have been trained on diversity and, under the INDIE project which has been implemented in two schools, children have been trained on how to promote diversity in their school. Certain secondary schools cooperate and implement projects with schools in Cyprus, Ukraine and Wales, with a view to learning the similarities and differences between the respective countries' cultures. Furthermore, in the past two years, a post of a support teacher for unaccompanied minors who are asylum seekers/refugees has been created. The support teacher plans these pupils' academic programme to ensure their smooth integration into the school.

157. In addition to the above, schools celebrate Human Rights Day, the Day of Tolerance and Non-Violence, World Refugee Day and Holocaust Memorial Day. Furthermore, one Council of Europe workshop was held in 2008 focusing on how to create opportunities for developing intercultural dialogue. The workshop targeted teachers, heads of department, heads of schools, education policymakers, educational psychologists, education officers and university students and focused on "minorities" and migrants, inter-religious dialogue, cultural dialogue and human rights. It aimed, *inter alia*, to raise awareness of the need to engage in intercultural dialogue, promote intercultural education and share good practices. The Jesuit Refugee Service continues to carry out a project in collaboration with the Curriculum Management and eLearning Department of the Ministry of Education in schools on Strength in Diversity, Bridging Cultures and All Equal. It includes talks by refugees, workshops about human rights and visits to the local mosque. The project aims to give students the opportunity to interact with people from different ethnic backgrounds and to recognise such differences as strengths.

158. Notwithstanding these positive initiatives, several of ECRI's interlocutors have highlighted that initiatives on intercultural dialogue and diversity are very much left to the initiatives of the single schools, whereas there would be the need to make such approach systematic.

159. ECRI recommends that the new minimum curriculum include the subject of human rights for pupils of all ages and that diversity and intercultural education be mainstreamed therein.

160. In its third report ECRI strongly recommended that the Maltese authorities carry out a wide campaign to raise the awareness of racism and racial discrimination among as broad a range of civil society sectors as possible.

161. A number of awareness raising initiatives have been discussed in other sections of this report (see paragraphs 17, 38 and 577) and a number of recommendations have accordingly been made on this issue. In addition to the above, in 2010, the NCPE carried out the Strengthening Equality Beyond Legislation project (which has been mentioned above) in the context of the PROGRESS 2007 – 2013, an EC co-funded project. The project has research, training and awareness raising components. One of the research studies which were carried out focused on the underreporting of discrimination in Malta. The report on the study found that such underreporting was mainly due to unawareness of the possibility to report discrimination, embarrassment or fear of further persecution, lack of faith in the authorities and the feeling of powerlessness. The report also found that the most effective means to encourage people to report discrimination is through improved education, the involvement of the media and the retraining of staff in several "entities". As concerns the training component of the project, it aimed to create synergies

between NCPE and various stakeholders and focused on how the application of anti-discrimination legislation can be improved and how to develop a national policy to combat discrimination and to promote equality beyond legislation. The training sessions, *inter alia*, discussed statistics and research on discrimination and the EU and national anti-discrimination legislative framework. The awareness raising element of the PROGRESS project was mainly based on an online awareness campaign and a newspaper article campaign.

162. The NCPE also launched the Equality in Schools Competition aimed at promoting and rewarding initiatives on equality in the education field. More specifically, it invited all secondary schools in Malta to highlight any initiatives taken with the aim of increasing equal opportunities, creating a more inclusive environment, promoting diversity and enhancing dialogue. ECRI commends the NCPE's work in the field of awareness raising on issues related to diversity and the fight against racial discrimination.

# INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Malta, are the following:

- ECRI recommends that the Maltese authorities amend the Citizenship Act so as to: introduce clear, objective and measurable requirements in connection with the acquisition of citizenship through naturalisation; ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality are open to review ; and, as far as cases of loss of citizenship are concerned, remove any less favourable treatment afforded to persons who have acquired their citizenship through naturalisation or registration – particularly where fundamental rights are concerned.

- ECRI strongly recommends that the Maltese authorities provide non-custodial alternatives to detention and refrain from resorting to the detention of migrants and asylum seekers unless it is strictly necessary in the particular circumstances of an individual case.

- ECRI strongly recommends that the Maltese authorities amend the asylum procedure so as to ensure: free legal aid as from the outset of the asylum procedure, in particular at the time when the preliminary questionnaire is filled in; the asylum seeker's access to his/her case file; and a right in all cases to appear before the Refugee Appeals Board at the appeals stage.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

## Bibliography

This bibliography lists the main published sources used during the examination of the situation in Malta: it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

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# APPENDIX: GOVERNMENT'S VIEWPOINT

**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Malta**

ECRI, in accordance with its country-by-country procedure, engaged in a confidential dialogue with the authorities of Malta on a first draft of the report. In the course of this dialogue ECRI did not receive from the authorities any indications as to factual errors that the report may have contained.

The authorities have requested that the following viewpoint be reproduced as an appendix to the report.

# Response

# of the Maltese authorities

# to ECRI's Draft Report on Malta

*(fourth monitoring cycle)*

**20 March 2013**

**INTRODUCTION**

The following pages contain the detailed response of the Maltese authorities to ECRI's fourth report. We regret that ECRI's report, like its predecessors, relies heavily on anonymous sources. We have identified more than 20 instances of such phrases as "ECRI has been informed", "ECRI has received information", "ECRI's sources have confirmed", "representatives of civil society have informed ECRI", "ECRI's interlocutors" and "civil society has stated" (see e.g. paragraphs 6, 16, 17, 24, 37, 44, 47, 52, 57 etc). Maltese NGOs are well known, operate freely in public and have access to public funds. ECRI's efforts to hide the identity of its sources are, therefore, regretted and out of place.

It is also regretted that non-facts and factual errors have found their way in ECRI's report (e.g. in paragraphs 66, 84, 104, 106, 107, 108, 122, 126, 129, 137, 144 and 147) and that the report reveals inadequate knowledge of Maltese law and its interpretation (see e.g. paragraphs 14, 23, 24, 29, 45, 48, 84, 89, 90, 91, 108, 110, 116 and 131).

ECRI's report makes many recommendations (e.g. in paragraphs 18, 21, 35, 45, 99, 104, 126, 131, 137, 140, 142, 145 and 159), but does not proceed to cost them, let alone to provide the necessary funds for their implementation. The report also fails to make any economic, social or environmental impact assessment of the challenges of irregular migration in Malta.

ECRI has once more lost an opportunity to highlight Malta's need for support in the areas of irregular migration and asylum, including in particular the need for relocation opportunities for persons granted international protection in Malta. This is above all to the detriment of the beneficiaries of international protection themselves. Surely, the ECRI delegation could see that Malta cannot possibly integrate, in the long term, all the persons whom it recognises as in need of international protection. This is due to the limits imposed by Malta's geo-physical realities, including a small labour market prone to saturation.

Instead, ECRI's report underestimates Malta's considerable contribution in the asylum sphere, particularly given the disproportionately large number of asylum applications being received year after year, as well as the country's high asylum recognition rate. Moreover, in the years since the influx began in 2002 the personnel of the Armed Forces of Malta have saved the lives of thousands of irregular immigrants - a fact not given due recognition by the ECRI report. The efforts of Detention Service officials and AWAS personnel have also been underestimated or left unmentioned. These officials have striven to provide appropriate reception conditions and services to irregular migrants and asylum seekers, even in circumstances of exceptional pressure.

We understand that ECRI does not agree with all the policies followed by Malta in the area of irregular immigration. However, ECRI could have acknowledged that Malta is fully committed to the principle of asylum and has fully abided by the principle of non-refoulement. ECRI could also have recognised that Malta has safeguarded the rights of all immigrants despite very difficult circumstances.

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| **International legal instruments** | |
| 4. ECRI reiterates its recommendation that Malta sign and/or ratify the following international instruments: Protocol No. 12 to the European Convention on Human Rights ; the European Convention on Nationality; the Convention on the Participation of Foreigners in Public Life at Local Level; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. | As of the time of writing, none of the EU's 27 Member States had signed or ratified the International Convention on the Protection of the Rights of Migrant Workers and their Families. The Maltese authorities have already informed ECRI that they have no intention of signing or ratifying the said Convention. Malta has signed the European Convention on Nationality, the Convention on Cybercrime and its additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.<br><br>Only 17 of the Council of Europe's 47 Member States have signed and ratified Protocol No 12 to the ECHR, while 20 other Member States have signed, but stopped short of ratifying, it. |
| **Citizenship legislation** | |
| 6. …. In addition, civil society has stated that even when the above-mentioned requirements are satisfied, in practice, it may take up 15 to 20 years to obtain naturalisation. | ECRI gives no indication whatsoever of the source of the statement, or who it means by "civil society". |
| 9. ECRI recommends that the Maltese authorities amend the Citizenship Act so as to: introduce clear, objective and measurable requirements in connection with the acquisition of citizenship through naturalisation; ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality are open to review ; and, as far as cases of loss of citizenship are concerned, remove any less favourable treatment afforded to persons who have acquired their citizenship through naturalisation or registration – particularly where fundamental rights are concerned. | The Maltese authorities have taken note of ECRI's recommendation. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| **Criminal law provisions** | |
| 14. ECRI recommends that the Maltese authorities complement the existing criminal law provisions against racism by expressly prohibiting: the creation or leadership of a group which promotes racism; and racial discrimination in the exercise of one's public office as per ECRI's GPR No. 7 paragraph 18 (g) and (h). Furthermore, ECRI strongly recommends that the Maltese authorities maintain national origin and citizenship as grounds under which racist conduct and racial discrimination are prohibited. | The Maltese Criminal Code provides for an increase in the punishment if the intention behind the particular offence is racially motivated. To this effect, article 83B of the Maltese Criminal Code (Cap 9 of the Laws of Malta) provides for an aggravation of punishment by one to two degrees in respect of all offences which are racially motivated.<br><br>With regard to racial discrimination in the exercise of one's public office, such conduct would definitely fall under the articles of the Criminal Code carrying also the aggravation of punishment. Moreover, other disciplinary and administrative measures may also be applied under the Public Administration Act (Cap 497 of the Laws of Malta) as well as under the Public Service Management Code. |
| 16. …many of ECRI's interlocutors have highlighted that most racist comments made online, particularly comments to news articles, go unpunished.<br><br>Moreover, ECRI expresses its concern that the investigations opened in 2005 and 2006, in connection with the arson attacks committed against anti-racist organisations and persons who had spoken out against racism (see paragraph 114 of ECRI's third report), have not identified any culprits. The authorities have explained that the investigations were hampered by the refusal of the telephone company concerned by the investigation to provide location data for certain mobile phones. Notably, according to the telephone company, because the data requested did not concern a specific subject, granting access to such data would breach the privacy of an undetermined number of persons. | ECRI is citing anonymous "interlocutors" who complain that online comments to news articles go "unpunished". The news articles are public and published and so are the allegedly "racist comments". This notwithstanding, the ECRI report does not give a single example of "most racist comments made online" that should be punished. In any case the Maltese Constitution protects freedom of speech, as does the European Convention on Human Rights.<br><br>The record of the Maltese Police Force in solving crimes compares well with that of any police force in any European country. In carrying out its investigations the Maltese Police Force abides by the rule of law. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 17. ECRI has been informed by legal practitioners that neither lawyers nor judges are provided with specific training on criminal law provisions in force against racism.<br><br>However, ECRI was informed by representatives of vulnerable groups and NGOs that police frequently do not follow up on complaints lodged by migrants on grounds of racism or racial discrimination (see the subsection of this report on access to public places and services) and that, for this reason, few report them.<br><br>Such state of underreporting and the underlying reasons are confirmed by the 2009 EU-MIDIS Minorities and Discrimination Survey…. | As is the case throughout the report, ECRI does not identify its anonymous informants. The 2009 EU-MIDIS survey is based on very dubious methodology. |
| 18. ECRI reiterates its recommendation to the Maltese authorities to provide regular training to all those involved in the criminal justice system on criminal law provisions in force against racism and racial discrimination and sensitise the same on the importance of: countering manifestations of racist expression and racially motivated conduct; as well of acknowledging racist bias, if and when it is present. | The Judicial Studies Committee, catering for training for members of the Judiciary, had organized a seminar on 'Asylum Seekers in Malta: Key Legal Issues'.<br><br>Issues relating to racism were discussed during these sessions. Speakers included an official from the Ministry for Home Affairs, two legal officers from the UNHCR Office in Geneva, a representative of the local UNHCR office, a Magistrate and a speaker from the Agency for Welfare Asylum Seekers (AWAS).<br><br>Moreover, two members of the Judiciary participated in a conference on Anti-Discrimination in Trier. The topics covered in this seminar treated a wide area of discrimination such as sexual orientation, age, disability, as well as the treatment of minority groups.<br><br>With regard to the Police, ongoing lectures take place at the Police Academy for all new recruits as well as in-service professional development courses for all serving members of the Police Force, including lectures on criminal law vis-à-vis racism and racial discrimination. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 21. ECRI recommends that the Maltese authorities collect data on the application of criminal law provisions against racism in a systematic way so that their effectiveness can be assessed, notably by breaking down the information, per reference year, by the: number of opened investigations, number of cases referred to court, number of discontinued pre-trial investigations and the outcome of the trials. | Human and financial resources put a limit on the amount of data and statistics that can and should be collected. The Maltese authorities collect data on serious criminal offences, including racism. The collection of additional data depends on the competing demands on limited resources. |
| **Administration of justice** | |
| 23. ECRI strongly recommends that the Maltese authorities abrogate the provisions of the law which provide that the only victims of crime who may apply for compensation before a criminal court are Maltese, EU nationals or habitual residents of Malta. | In the view of the Maltese authorities, current legislation does not amount to differential treatment. |
| 24. In addition, ECRI has received information indicating that the rules of release on bail are not applied equally to Maltese nationals and non-nationals and that, for the latter, bail is set extremely high. In this connection, ECRI refers to its considerations on the importance of training all those involved in the criminal justice system | The Maltese authorities cannot take cognizance of this anonymous and gratuitous information. |
| **Civil and administrative law provisions** | |
| 29. ECRI recommends that the Maltese authorities include citizenship, language and religion as prohibited grounds of discrimination under the anti-discrimination legal framework in place. | This is already regulated by the Maltese Constitution which provides that no law shall make any provision that is discriminatory on the basis of race, place of origin, political opinions, colour, creed or sex, either of itself or in its effect. |
| 31. ECRI recommends that the authorities collect systematically and make available to the public information on the application of anti-discrimination legislation, including the number and nature of the civil and administrative complaints/actions filed per reference year, the decisions rendered and the redress or compensation awarded, so that the effectiveness of these provisions can be assessed. | The National Commission for the Promotion of Equality already collects and publishes statistics in relation to the complaints it receives and this is done on a yearly basis in NCPE's annual report. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 35. ECRI recommends that the Maltese authorities continue to raise awareness on the provisions in force against racial discrimination and the existing remedies to seek redress among the general public and, in particular, among potential victims of racial discrimination. The information sessions organised by the National Commission for the Promotion of Equality should be replicated and extended to all groups of concern to ECRI. | NCPE confirms that such information sessions have already taken place and since the writing of the report, further sessions have been held for the African Community on how to advocate for their rights, through a project entitled '*I'm not racist, but…'* |
| **Anti-discrimination bodies and other institutions** | |
| 37. As already observed in the subsection on civil and administrative law provisions of this report, some discrimination complaints on grounds of racial and ethnic origin have been lodged before the NCPE since 2008. The limited number of complaints received has been ascribed by civil society to the limited powers attributed to this body.<br><br>A study carried out by the NCPE on racial discrimination in Malta also shows that 70% of the interviewees belonging to a minority ethnic group had no knowledge of the NCPE's existence and role. ECRI therefore recommends that greater resources be spent in raising vulnerable groups' awareness of the NCPE and other authorities competent to receive discrimination complaints. | The ECRI report refers to an anonymous "civil society" and then ascribes to it arguments that it supports.<br><br>The way resources are spent is decided by the House of Representatives. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 39. ECRI recommends that the Maltese authorities ensure that the national specialised body for combating racism and racial discrimination is entirely independent and is responsible, inter alia, for: hearing and considering complaints in all fields of life (both private and public) on grounds of "race", colour, language, religion, citizenship or national/ethnic origin; providing assistance to victims; initiating and participating in court proceedings; monitoring legislation and providing advice to legislative and executive authorities; raising awareness on issues of racism and racial discrimination among society and promoting policies and practices to ensure equal treatment, as per ECRI's GPR No. 2. | The Maltese authorities take note of ECRI's recommendation. The NCPE already functions independently. |
| 42. ECRI recommends that the Maltese authorities use the National Action Plan against Racism and Xenophobia designed by the National Commission for the Promotion of Equality in order to devise an anti-discrimination policy. | The Maltese authorities take note of ECRI's recommendation. |
| **Employment** | |
| 44. Moreover, ECRI has been informed by representatives of migrants and of civil society that, in practice, the allowance is not always granted even though the applicant satisfies the requirements. | Again, the ECRI report cites anonymous sources. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 45. ECRI recommends that the Maltese authorities provide, by law, that persons who have been granted subsidiary protection be entitled to receive social assistance, when specific requirements are met. | The rights pertaining to beneficiaries of subsidiary protection are already set out in Subsidiary Legislation 420.07, on Procedural Standards in Examining Applications for Refugee Status Regulations. The legislation in question provides that a beneficiary of subsidiary protection shall be entitled:<br><br>*(i) to remain in Malta with freedom of movement and to be granted personal documents, including a residence permit for a period of one year, which shall be renewable,*<br><br>*(ii) to be provided with documents which enable him to travel especially when serious humanitarian reasons arise that require his presence in another State, unless compelling reasons of national security or public order otherwise require; and,*<br><br>*(iii) to have access to employment, subject to labour market considerations, core social welfare benefits, appropriate accommodation, integration programmes, State education and training, and to receive core State medical care, especially in the case of vulnerable groups of persons.*<br><br>It is therefore considered that this recommendation is already being implemented. |
| 47. ECRI's attention has been drawn in particular to cases of persons residing in the open reception centres (mostly Africans with varying types of statuses) who loiter in the streets and in the roundabouts, waiting to be offered work. In one case for example, representatives of civil society informed ECRI that after a day of hard labour, several of these workers were paid 25 cents, instead of 25 Euros as they had been promised. | Again, the ECRI report cites anonymous sources. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 48. ECRI reiterates its recommendation to the Maltese authorities to take steps to counter the labour exploitation of refugees, persons granted humanitarian protection and immigrants by addressing their over-representation in undeclared employment. It urges the authorities to monitor and ensure the application of Legal Notice 432 of 2011. | The Immigration Police carry out checks in places of employment in order to verify that all Third Country nationals found working, are properly documented and are in possession of all the required permits.<br><br>Moreover, places of employment are being monitored in accordance with Legal Notice 432 of 2011 on Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations, 2011. In case of an infringement, proper action is taken in line with Legal Notice 432 of 2011. |
| **Access to public places and services** | |
| 52. Despite the fact that the Equal Treatment of Persons Order prohibits discrimination on grounds of racial or ethnic origin in the provision of goods and services, 35% of Africans who participated in the 2009 EU-MIDIS survey claimed they had faced discrimination in cafés, restaurants, nightclubs or shops in the 12 months prior to the research.<br><br>ECRI's sources have confirmed, in fact, that it is not uncommon for drivers of public transportation to refuse persons considered to be migrants to board the bus or to refrain from stopping at bus stops located in areas in which refugees, asylum seekers and migrants live. | The 2009 EU-MIDI survey is based on a dubious methodology.<br><br>Again, the ECRI report cites anonymous sources. |
| 54. ECRI strongly recommends that the Maltese authorities extend the initiatives launched by the National Commission for the Promotion of Equality in the field of housing (notably the commissioning of studies and the awareness raising campaigns on racial discrimination), to access to public places and services in general and, more specifically, to the entertainment and public transportation sectors. | The initiatives launched by NCPE in the field of housing are constantly being extended by NCPE. NCPE has just closed a project entitled 'I'm not racist, but'. This project looked into discriminatory issues with regard to the housing sector. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| **Health** | |
| 55. ECRI is pleased to note that in August 2008, a Migrant Health Unit was set up within the Department of Primary Health in order to address and respond to the specific needs of migrants (lack of knowledge about the health care system of the host country; language barriers etc.), in light in particular of the heavy influx of migrants registered in recent years. The objectives of this unit are to: provide community based health education to migrants in their mother tongue (addressing issues such as access to the Maltese health care system, nutrition, food and kitchen safety, H1N1 - Swine flu, sexual & reproductive health); help migrants access health care services; provide translated material; train health care professionals and students on culture and diversity issues in health care; and train cultural mediators. The services provided are free of charge. | Whilst the Maltese authorities provide these services free of charge to the clients, their cost is very significant. Services provided include treatment for disease that had previously been eradicated from Malta.<br><br>In addition the NGO Health Consumer Powerhouse has written. See:<br><br>http://www.healthpowerhouse.com/files/EHIVI%202009%20Press%20release%20Malta.pdf<br><br>"The care and conditions for people living with HIV/AIDS in Malta are very good … The total number of HIV/AIDS cases is still small compared to other countries, but growing fast… in recent years the number of people on the island infected with HIV has quadrupled; half of the cases being treated in Malta involve African immigrants." In another extract it adds: "Most of the increase in HIV diagnoses among heterosexuals is among persons originating from infected high-prevalence countries outside Europe, primarily in sub-Saharan Africa. Data from several countries suggest that the majority of these persons have been infected in their country of origin, although transmission within the host EU country does occur." |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| **Racist Violence** | |
| 57. According to the 2009 EU-MIDIS survey, 29% of the respondents of the survey (immigrants from Africa) claimed that they had been victims of racially motivated assault, threat or serious harassment. The report further shows that over 50% of the racially motivated assaults had not been reported to the police, on the most part, for lack of confidence in the authorities. ECRI has received some reports of violent attacks on migrants, particularly of African origin, which were allegedly ignored by the police. Furthermore, it has been informed of violent offences having been committed against migrants near the Hal Far and Marsa open reception centres for asylum seekers and refugees, such as, for instance, the throwing of bags of urine and pepper spraying. | Again, the ECRI report cites the 2009 EU-MIDI survey, which relies on dubious methodology, and on anonymous sources. |
| **Climate of opinion and racism in public discourse** | |
| 61. ECRI reiterates its recommendation to the Maltese authorities to promote a public debate and raise awareness on the issues of immigration and asylum that reflects the human rights dimension of these phenomena, providing more information on the circumstances from which immigrants and asylum seekers are fleeing and clearly explaining the difference between persons with a protection status and irregular migrants. | In their interventions relating to migration and asylum, Government officials already raise awareness in relation to the human rights dimension. Moreover, information is provided on the circumstances leading to the arrival of asylum seekers in Malta and other countries. |
| 63. …ECRI regrets that no specific debate has been held by Parliament… on immigration and asylum that reflect the human rights dimension of these phenomena…. | The House of Representatives determines its programme and procedure without interference from outside bodes. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 64. ECRI furthermore urges the authorities to introduce legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist acts, as well as provisions within the Parliament's Code of Ethics which sanction racist speech or conduct. | The House of Representatives determines its programme and procedure without interference from outside bodies. |
| **The media** | |
| 66. At the same time, ECRI has been informed that certain media, most notably the Times of Malta, have started to reverse this trend and are increasingly careful in using the correct terminology.<br><br>At the same time, there have also been examples of more balanced reporting and cases in which migrants have been cast in a positive light. For example, an Eritrean refugee who lost his life while trying to rescue a tourist who was drowning was portrayed by the media as a national hero. | Again, the ECRI report cites anonymous sources.<br><br>Pending the publication of the report by the enquiring magistrate, the facts of this case have not been authoritatively established. |
| 67. ECRI recommends that the authorities, through the National Commission for the Promotion of Equality or the Broadcasting Authority, launch initiatives aimed at offering journalists training in issues concerning the fight against racism and racial discrimination and on ways in which the latter can contribute to promoting acceptance of different vulnerable groups. | Training in relation to racism and racial discrimination has already taken place. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 69. As concerns the prosecution of cases of incitement to hatred, including when committed through the Internet…. Furthermore, ECRI notes that in the present day there is no authority which monitors comments on newspaper websites made in reaction to their articles. In this connection, as confirmed by representatives of civil society, it is not infrequent that comments to articles reporting on migrants, asylum seekers and refugees express racist views or use racist discourse. | Again, the ECRI report cites anonymous sources. |
| 70. ECRI recommends that the Maltese authorities set up a law-enforcement unit tasked with monitoring continuously the Internet for instances of racism or racial discrimination and empowered to act ex officio in case of breach of the anti-discrimination legislation or the provisions against incitement to hatred. | The Maltese authorities are not in agreement with this recommendation insofar as it involves the setting up of a unit tasked specifically with monitoring the Internet for instances of racism or racial discrimination. Whilst monitoring of the internet is carried out by the Police authorities as required, be it in the case of racism or other crimes, the setting up of a monitoring unit specifically for cases of racism or racial discrimination is not necessary. The Police authorities may already act *ex officio* in cases of breach of anti-discrimination legislation or incitement to hatred. |
| 72. In addition, representatives of civil society have informed ECRI that this Commission is not well known by migrants, refugees and asylum seekers. | Again, the ECRI report cites anonymous sources. |
| 73. ECRI recommends that the Maltese authorities ensure that an independent body be mandated to receive complaints (or to raise cases ex officio) for breach of the Press Act and that it be empowered to inflict sanctions. This body's mandate should then be publicised as widely as possible. | The Maltese authorities consider that current arrangements relating to the enforcement of the Press Act are adequate. They do not intend to introduce press censorship. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| **Migrants** | |
| 84. ECRI recommends that the Maltese authorities amend their legislation in order to ensure that all persons held in the detention centres are provided with a speedy and effective judicial remedy to challenge the lawfulness of their detention. | The procedure for detention is prescribed by Article 5 of the Immigration Act (Cap. 217, Laws of Malta). Once a removal order is served, the person is detained pending his/her removal. A person who has been detained is given a pamphlet informing him/her of his/her rights. The person is also informed that he/she has a right to appeal from the removal order and from his/her detention and that he/she is entitled to apply for international protection.<br><br>Article 25A (9) of the Immigration Act (Cap. 217 of the Laws of Malta) stipulates that: "The [Immigration Appeals] Board shall also have jurisdiction to hear and determine applications made by persons in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation…."<br><br>The Immigration Appeals Board is a judicial body. The Board members enjoy security of tenure. They are appointed for a period of 3 years and are eligible for reappointment. They may only be removed from office by the President acting on the advice of the Prime Minister, on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Board.<br><br>Furthermore, the same disqualifications and reasons for removal from office that are applicable to the Judiciary also apply to the members of the Immigration Appeals Board. In practice, sittings before the Board are conducted in a similar manner to those before the Courts. Individuals may be assisted by a legal representative, evidence is heard by the Board and submissions are made by the parties.<br><br>Article 11(10) of the Common Standards and Procedures for Returning Illegally-Staying Third-Country Nationals Regulations stipulates that:<br><br>"The third-country national subject to the provisions of subregulation (8) [detained for the purpose of removal] shall be entitled to institute proceedings before the [Immigration Appeals] Board to contest the lawfulness of detention and such proceedings shall be subject to a speedy judicial review."<br><br>The provisions of Article 11 of the aforementioned Regulations do not apply to third country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by sea or air of the external border of Malta and who have not subsequently obtained an authorisation or a right to stay in Malta.<br><br>In view of the above considerations the Maltese authorities consider that Malta is already in compliance with ECRI's recommendation. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 89. ECRI strongly recommends that the Maltese authorities provide non-custodial alternatives to detention and refrain from resorting to the detention of migrants and asylum seekers unless it is strictly necessary in the particular circumstances of an individual case. | Detention as practised in Malta is fully compliant with Council of Europe recommendations (Recommendation 2003(5)) on the detention of asylum seekers. In fact, the Recommendation outlines that detention is justified:<br>*- when their identity, including nationality, has in case of doubt to be verified, in particular when asylum seekers have destroyed their travel or identity documents or used fraudulent documents in order to mislead the authorities of the host state;*<br>*- when elements on which the asylum claim is based have to be determined which, in the absence of detention, could not be obtained;*<br>*- when a decision needs to be taken on their right to enter the territory of the state concerned; or*<br>-when protection of national security and public order so requires.<br>Malta's detention policy is also in line with the first limb of Article 5 (1)(f) of the European Convention on Human Rights (ECHR), that is, detention for the purposes of preventing unauthorised entry into the country, as well as the second limb, that is detention for the purposes of removal.<br>In Malta the detention requirement is not applied indiscriminately. In fact, vulnerable persons are not subject to the detention requirement. Hence, not all migrants and asylum seekers are detained.<br>Also, detention as prescribed in the context of the Common Standards and Procedures for Returning Illegally-Staying Third-Country Nationals Regulations is to be applied "*unless other sufficient and less coercive measures are applicable*". |
| 90. ECRI also recommends that third-country nationals who are detained with a view to deportation should be freed when it is clear that it is no longer possible to effect the deportation. | The authorities pursue efforts to make the necessary arrangements to remove irregular migrants throughout the entire period of detention; provided that return is not pursued whilst asylum applications are pending.<br>Contacts are maintained with countries of origin to acquire any necessary documentation in order to effect removal.<br>Moreover, the persons concerned are given the opportunity to return to their respective countries voluntarily.<br>In addition, Article 11(8) of the Common Standards and Procedures for Returning Illegally-Staying Third-Country Nationals Regulations provides, in the case of detention for the purpose of removal, that detention shall be for a short period and shall subsist as long as the removal procedure is in progress and is executed with due diligence. It is therefore considered that this recommendation is already being implemented. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 91. It further recommends that the Maltese authorities provide under Maltese law a limit to the duration of the detention of migrants in an irregular situation, in line with Directive 2008/115/EC on common standards and procedures in member States for returning illegally staying third-country nationals. | Such limit has been transposed in Article 11(14) of the Common Standards and Procedures for Returning Illegally-Staying Third-Country Nationals Regulations. |
| 93. ECRI acknowledges the fact that the European Committee for the Prevention of Torture (the CPT) is the monitoring body of the Council of Europe which is best placed for assessing the material conditions of places of detention, including the detention centres for migrants, as well as the treatment of persons detained therein[67]. ECRI, nevertheless, takes note of the information it has received by the authorities that on 31 March 2012, two out of the three detention centres were in use (Safi Barracks and Lyster Barracks) and held 543 migrants and asylum seekers. The authorities have also informed ECRI that they have successfully replaced many army and police staff with civilian personnel in the detention centres. Whereas in 2005 there were, respectively, 122 and 54 army and police personnel, in 2012 the staff included 40 army, one police and 140 civilian officers. ECRI commends the authorities' efforts and encourages them to complete the transition to staffing composed solely of civilian personnel. | The report of the CPT's visit to Malta of 26-30th September 2011 is unpublished and it is therefore not clear how ECRI, in footnote 53 of its report (reproduced in this document as footnote 1), states what the CPT did during that visit. |
| 94. Nonetheless, many representatives of civil society have pointed out that there is an extremely limited array of meaningful activities available to detained migrants and that in many cases their mental health deteriorates. | Again, the ECRI report cites anonymous sources. |

[67] In its visit to Malta of 26 to 30 September 2011, the CPT reviewed the conditions in the detention centres for immigrants at Lyster and Safi Barracks.

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 98. ECRI recommends that the Maltese authorities conclude as soon as possible all the inquiries and the criminal investigations opened further to the deaths of a Nigerian and a Malian national in 2011 and 2012, while in the custody of detention personnel and give the public full access to the results. | Efforts are being made by the authorities concerned to finalise such investigations as soon as possible. |
| 99. ECRI strongly recommends the Maltese authorities to provide detention personnel with training on human rights, including provisions against racial discrimination. ECRI further recommends that the authorities raise the detention personnel's awareness of the fact that abuse of power and the use of excessive force will be severely punished. | Since 2008 the Detention Service embarked on a tailor-made yearly training programme for detention officers and other personnel involved in giving a service in the Closed Centres. The training is organized by UNHCR and is supported by Detention Service and other organizations. The programme sees the participation of NGOs as partners as well as persons directly involved in providing services to irregular immigrants. The programme is aimed at providing job specific training for all Detention Service personnel.<br><br>The recommendation is therefore being implemented. |
| 104. ECRI strongly recommends that the Maltese authorities ensure that all unaccompanied minors and persons suffering from serious physical or mental conditions are promptly identified and transferred to an appropriate, non custodial setting, suitable for their vulnerable condition. | The detention requirement does not apply across the board, as vulnerable persons, including unaccompanied minors, women with children, families and disabled persons are not subject to detention. Vulnerable persons are not kept in detention and transferred to apposite centres to cater for their specific needs.<br><br>In the case of the more dubious cases the freedom of such persons is restricted only until such time as the necessary medical clearances are obtained.<br><br>These situations may be rendered more difficult because of the unavailability of documents certifying a person's age and dubious and sometimes shifting statements regarding age. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 106. ECRI acknowledges Malta's merit in carrying out rescue operations in its search and rescue zone (SAR zone). Nonetheless, there have been reports according to which some migrants at sea were not rescued, even though they had been spotted by a Maltese military patrol or had been located in Malta's SAR zone. According to the Council of Europe Commissioner of Human Rights, in one incident in 2009, a boat from Libya was adrift in the Mediterranean sea for twenty days. The persons aboard were reportedly not rescued by the Maltese military patrol which had approached the boat and had offered food, water and fuel. As a result, only 5 out of more than 70 people (mainly Eritreans) survived. The UNHCR has also expressed concern about a rescue operation in June 2010. It noted that Malta had relied on Libyan vessels to conduct the rescue operation inside Malta's SAR zone. The migrants (including three women and an eight year old child), almost all Eritreans, were taken to Libya. According to the Council of Europe Commissioner of Human Rights, a similar incident happened in July 2010, whereby 55 Somali nationals travelling from Libya were intercepted at sea by a Maltese military vessel in its SAR zone. 28 were allowed on board and were taken to Malta; the remaining 27 boarded another ship and were returned to Libya, where they were reportedly beaten and tortured. Although the authorities have stated that the 27 migrants returned to Libya voluntarily, this has been contested. In this connection, ECRI reminds the Maltese authorities that the prohibition of torture and inhuman or degrading treatment is a human right which admits no derogation and that Parties to the ECHR must ensure that their actions do not expose people to such treatment. Furthermore, Libya is not a party to the 1951 Convention on the Status of Refugees and does not have asylum legislation or procedures in place to allow asylum seekers to lodge asylum requests. Therefore, relinquishing responsibility for rescue operations to Libya implies accepting the possibility that persons will be subject to ill-treatment or torture, or will be sent back to a country where they are at risk of persecution on account of their race, religion, nationality, membership of a particular social group or political opinion. | In the last 10 years, the Armed Forces of Malta (AFM) have saved thousands of lives, often risking the lives of Maltese personnel. The AFM never failed to respond to a potential distress situation within the Malta SRR and have often intervened in cases within the SRR of a third country. In addition Malta cooperates closely with Italy to ensure that lives are not lost at sea.<br><br>As regards an incident referred to, the migrant craft in question had only five persons on board when approached by Maltese units; they all refused assistance and insisted on proceeding to Lampedusa. The Maltese unit remained in the vicinity of the migrant craft to provide assistance, should it be required. The information or allegation that originally there had been up to 70 persons on board was transmitted by the migrants following disembarkation in Lampedusa.<br><br>ECRI also refers to a rescue operation in June 2010, in which Malta had relied on Libyan vessels to conduct the rescue operation inside Malta's SRR. The AFM has no knowledge of any such case. However, there was a particular case where four migrants (including three women and an eight year old child), almost all Eritreans, were taken to Libya.<br><br>A similar incident happened in July 2010, when 55 Somali nationals travelling from Libya were intercepted at sea by a Maltese military vessel in its SRR. 28 were allowed on board and were taken to Malta; the remaining 27 boarded another ship and were returned to Libya, where they were reportedly beaten and tortured. In this particular case, a Maltese unit was already engaged in conducting the rescue at which point a Libyan unit appeared on scene and began to undertake rescue operations simultaneously. No coercion of any sort was exercised by the Maltese Unit. In addition, Malta could not forbid the Libyan unit from providing assistance, in accordance with its international obligations. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 107. ECRI has also been informed that there are regular disputes between Italy and Malta concerning search and rescue operations, particularly in cases of boats located in Malta's SAR region which are physically closer to the Italian island of Lampedusa. Malta, on the one hand, claims that disembarkation should occur at the nearest port of call regardless of the SAR zone in which the boat is located. Italy, on the other hand, claims that responsibility over the SAR zone takes precedence. ECRI considers that it is unacceptable that legal disputes of this nature result in failure to rescue persons in distress, or worse in loss of lives. | The different interpretation of the law by Italy and Malta has never resulted in the failure to rescue persons or to any loss of life. Both the Maltese and Italian authorities have always conducted rescues first and only then addressed the issues regarding disembarkation. |
| 108. ECRI recommends that the Maltese authorities fully respect the principles laid down by international law with respect to rescue at sea. | Malta already fully respects its obligations under international legal instruments. This was confirmed by IMO auditors in 2011. The disembarkation regime applicable within the Malta SRR is that of disembarkation in the nearest place of safety in accordance with the principles of international law. |
| 109. ECRI's attention has also been drawn to the refusal of the Public Registry to allow migrants who have not qualified for refugee status or subsidiary protection to get married. | Again, the ECRI report cites anonymous sources. |
| 110. ECRI recommends that the Maltese authorities ensure that the right to marry is enjoyed by all persons present in Malta. | The grounds for a marriage to be registered at the Public Registry in Malta are :<br>• if the said marriage is celebrated in Malta in terms of the Marriage Act (Cap 255 of the Laws of Malta); and<br>• if a citizen of Malta marries abroad and at the request of any person interested, the act of marriage of the said citizen of Malta drawn up or registered in a foreign country by a competent authority in that country, is registered in Malta in terms of Article 244 of the Civil Code ( Cap 16 of the Laws of Malta).<br><br>Third Country Nationals would not qualify for the latter as they are not Maltese citizens but do qualify for the former if the celebration of the marriage is preceded by a request for the publication of banns of matrimony according to the abovementioned law. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| **Refugees and asylum seekers** | |
| 112. ECRI has been informed that in the past, these had not been clearly defined by the law and that, in practice, persons with subsidiary protection did not receive them. However, in 2011, the authorities issued a policy clarification specifying that beneficiaries of subsidiary protection can receive certain forms of social assistance from the Department of Social Security, if for instance they cannot work. | Again, the ECRI report cites anonymous sources. |
| 115. ECRI was informed by civil society that persons benefiting from THPN sign an informal agreement with the Refugee Commissioner that they will make efforts to integrate into society. | Again, the ECRI report cites anonymous sources. |
| 116. ECRI recommends that the Maltese authorities ensure that the rights attached to temporary humanitarian protection and temporary humanitarian protection for former applicants for international protection, are laid down by statute. | The Maltese authorities consider that the policy currently in place, which has been adopted on Malta's own initiative, provides sufficient guarantees to the persons concerned. |
| 117. ECRI recommends that the Maltese authorities provide persons who have been granted temporary humanitarian protection for former applicants for international protection and have lived in the country for a number of years, a permit to stay which offers a longer-term perspective, particularly when their level of integration in Maltese society has already been positively assessed. | The current provisions are considered adequate, particularly as the permit to stay may be renewed. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 122. ECRI encourages the Maltese authorities in their efforts to ensure that all persons entitled to refugee status actually secure this status. | The Office of the Refugee Commissioner notes that all asylum claims are considered on their individual merit. All the asylum-seekers are given an opportunity for a personal interview during which they are given ample time to explain in detail the reasons for seeking asylum. The evidence presented by the asylum-seeker, including verbal as well as other documentary evidence is examined thoroughly.<br><br>When assessing an asylum claim, the Office of the Refugee Commissioner starts by examining whether the applicant satisfies the criteria to be recognised as a refugee in terms of Article 1A of the 1951 Geneva Convention. Failing this, the Office proceeds to examine whether the asylum seeker risks facing serious harm as defined in Article 15 of the Council Directive 2005/85/EC, if s/he had to be returned to his/her home country.<br><br>The Office of the Refugee Commissioner has introduced a number of measures to ensure efficiency and to retain a high level of quality in the decisions issued. In fact, it is to be noted that the recognition rate in Malta at the end of December 2012 stood at 86 per cent. The European average is 25 per cent. To this effect, Malta has the highest recognition rate in Europe. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 126. ECRI recommends that the Maltese authorities provide at the earliest stages of the asylum procedure, during the information sessions and in the information booklet, a definition and an explanation of the concept of refugee; the persecution grounds should figure therein. | The Office of the Refugee Commissioner continued with its commitment to improve the services offered to asylum-seekers. In fact in 2009, through an ERF co-funded Project, the Office started providing information with respect to rights and obligations, to asylum seekers, applying for asylum in Malta.<br><br>Through this ERF Project 2009-2011 *'Post Application client preparation and asylum determination interviewing centre for asylum seekers which aims to adequately prepare TCNs for their asylum determination process'*, this Office has invested in a new system for the delivery of information sessions to asylum seekers.<br><br>Within one or two working days of the arrival of irregular migrants to Malta, staff from the Office of the Refugee Commissioner visit the closed centres (in the case of people arriving irregularly by boat/air and then detained) and deliver information about the asylum procedure in Malta. This Office makes sure that it caters for all levels of educational and cultural backgrounds of asylum applicants. The same procedure of information sessions is also adopted in case of persons who apply for asylum directly at this Office.<br><br>Information is delivered using different means (a) by personnel of this Office explaining the purpose of the session with the help of an interpreter; (b) an audio visual presentation available in the most common (eleven) languages for our asylum population; and a booklet that contains a transcript of the audio-visual presentation also available in eleven different languages. The Office of the Refugee Commissioner further notes that those third country nationals that apply for protection are assigned an interpreter who helps them fill in a registration form known as a preliminary questionnaire.<br><br>This good practice, to provide information to potential asylum-seekers, adopted by the Office of the Refugee Commissioner is in line with European as well as International legislation. |
| 129. ECRI has also received information indicating that, particularly when detained, asylum seekers have experienced difficulties in accessing their case files. | This is one of the many instances in the ECRI report of information attributed to anonymous sources. In fact, after the interview a copy of the application form is provided to the applicant and a copy of the decision is made available to the applicant as soon as the case is closed. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 130. ECRI notes that under Article 23 of the Refugee Act, decisions made concerning applications which have been examined under an accelerated procedure are not subject to appeal or judicial review. In this connection, ECRI notes that the above provision is at a variance with Directive 2005/85/EC, which provides for the right of asylum seekers to an effective remedy before a court or a tribunal against a decision taken on their application for asylum. Finally, as concerns the appeals phase of the asylum procedure, ECRI has been informed by the authorities that asylum seekers may be refused an oral hearing before the Refugee Appeals Board. | According to Article 23(2) and (3) of the Refugees Act, the Commissioner shall examine applications under the accelerated procedure within three working days. The recommendation shall immediately be referred to the Chairperson of the Refugee Appeals Board, who shall examine and review the recommendation of the Commissioner within three working days. |
| 131. ECRI strongly recommends that the Maltese authorities amend the asylum procedure so as to ensure: free legal aid as from the outset of the asylum procedure, in particular at the time when the preliminary questionnaire is filled in; the asylum seeker's access to his/her case file; and a right to appear before the Refugee Appeals Board at the appeals stage. | Asylum seekers, whose application is being processed at first instance at the Office of the Refugee Commissioner, have the right to access legal assistance throughout the whole procedure. In this regard, reference is made to Article 15(1) of the EU Council Directive 2005/84/EC on the 'right to legal assistance and representation' which states that "*Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.*" This has been implemented by Maltese law through Legal Notice 243 of 2008. Paragraph 7(1) states that "*An applicant shall be allowed to consult, at his own expense, in an effective manner, a legal adviser in relation to his asylum application: Provided that in the event of a negative decision, free legal aid shall be granted under the same conditions applicable to Maltese nationals"*.<br><br>At appeals stage, applicants are provided with free legal aid.<br><br>With regard to having access to the information in the file of the applicant, it should be noted that prior to the personal interview, the applicant is given a copy of his/her formal application form. Moreover, the applicant is also given a copy of his/her interview notes (verbatim transcript of the interview) as well as a copy of the decision.<br><br>In addition, the legal adviser representing the applicant at appeals stage is given access to the applicant's file, upon request.<br><br>Finally, it is already possible for the applicant to appear before the Immigration Appeals Board. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 132. ECRI recommends that asylum seekers be granted an effective remedy before a court or a tribunal against a decision taken on their application for asylum, including when such decision has been taken further to the accelerated procedure. | All asylum applications are processed according to the normal asylum procedure. Accelerated procedures that process asylum applications at a significantly faster rate have never been used by the Office of the Refugee Commissioner.<br><br>First instance decisions can be appealed from at the Refugee Appeals Board, which has the power to hear and determine appeals against the decisions taken by the Office of the Refugee Commissioner. The Board has the status of a judicial authority and therefore it is considered that this recommendation is already being implemented. |
| 137. ECRI recommends that the Maltese authorities ensure that families with children who seek asylum, are recognised refugees or are otherwise entitled to be lodged in a reception centre, be accommodated in a family centre with appropriate living conditions. | This recommendation is already being met, as families are housed at apposite centres. |
| 139. As regards the women's centre, representatives of civil society have informed ECRI that there had been problems related to hygiene and to the bathroom getting flooded. When ECRI visited the establishment, only few women were accommodated there. The conditions appeared to be adequate… | Again, the ECRI report cites anonymous sources. |
| 140. ECRI encourages the authorities to proceed with the refurbishment of the women's open reception centre in Hal Far and to remove, in the process, bars or any other element which evokes a custodial setting. | As regards the women's open reception centre in Hal Far, extensive refurbishment took place and the bars were removed in the summer of 2012. AWAS has obtained ERF funds for refurbishment at this centre. |
| 141. ECRI shares the view expressed by various representatives of civil society that most open reception centres are not fit for long-term stay, *inter alia*, for the reasons outlined in the paragraphs above. | Again, the ECRI report cites anonymous sources. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 142. ECRI recommends that the Maltese authorities provide accommodation to refugees and asylum seekers in open reception centres which meet adequate standards of living. In particular the authorities should address the problems relating to excessive heat, inclement weather and lack of privacy. It further encourages the authorities to ensure that persons with subsidiary protection and with other forms of "local" protection be granted social assistance so as to provide them with an incentive to find alternative accommodation suitable for long-term stay. | AWAS is making every effort possible to provide dignified reception conditions, within the constraints imposed by the available resources. In 2012, all tents were removed from Hal Far. Moreover, other works to improve the standard of living were undertaken in almost all Open Centres. |
| 144. ECRI notes that Malta does not have a formal integration policy. | This statement is untrue. In 2005 the then Ministry for Justice and Home Affairs and the then Ministry for the Family and Social Solidarity published "Irregular Immigrants, Refugees and Integration: Policy Document."<br><br>In practice Malta finds considerable difficulties integrating all those whom it recognises as in need of international protection. For this reason Malta has promoted intra-EU relocation and resettlement, which offers better prospects for the beneficiaries. This would also indirectly assist those migrants who remain in Malta, as they would have better employment prospects.<br><br>Some of the migrants who arrive in Malta irregularly and who are subsequently recognised as in need of international protection are not interested in long-term integration in Malta, as their aim remains to reach mainland Europe. |
| 145. ECRI reiterates its recommendation to the Maltese authorities to devise a long-term integration strategy targeting refugees, asylum seekers, beneficiaries of "local" forms of protection and other migrants so as to ensure their integration into Maltese society in all areas of life. | It is a well-known fact that most irregular migrants arrive in Malta either as a result of a navigation error or because they rescued at sea by the Armed Forces of Malta. None of them have Malta as their intended destination. Once in Malta they regard the island as a point of transit to their desired destination in mainland Europe. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| **Conduct of Law Enforcement Officials** | |
| 147. Allegations of inhuman and degrading treatment of migrants by detention personnel have been described in other sections of this report and recommendations have accordingly been made. It is also worthwhile to note that the report Becoming Vulnerable in Detention of the Jesuit Refugee Service - Europe reveals that 32% of the detained migrants who had been interviewed claimed to have been assaulted by detention personnel. Moreover, 18% of the detained migrants reported to have filed a complaint on these grounds to no avail, as investigations had not been launched. Furthermore, 40% of the respondents claimed to have been verbally abused and 58% of these claimed to have been mocked by staff, including with racist slurs. | This paragraph is a witness to its own unreliability. It speaks of "allegations" and repeats "claimed", "reported", "claimed" and "claimed". The ECRI report is expected to be reporting facts, not claims and allegations. |
| 149. ECRI recommends that the authorities ensure that effective, proportionate and dissuasive sanctions are imposed in disciplinary cases involving proved racist conduct of law enforcement officials. | The Maltese authorities already adhere to this recommendation, as disciplinary action is taken as necessary in respect of such cases. |
| 150. ECRI has been informed that the institution which is responsible for receiving complaints related to the police is the Police Board, an independent external mechanism provided for by Articles 48 to 60 of the Police Act.<br><br>For instance, although ECRI has received numerous and consistent reports by a large number of sources, indicating that police officers often refuse to open an investigation when migrants report a crime, none of these sources seemed to be aware of the possibility to file a complaint before the Police Board. | Again, the ECRI report cites anonymous sources. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 151. ECRI recommends that the authorities publicise, including by putting up information at police stations, the existence of the Police Board, its functions and the modalities to file complaints before it. | The Maltese Authorities take note of ECRI's recommendation and are evaluating this recommendation on the ways how to publicise the existence and functions of the Police Board.<br><br>Information, leaflets and other documentation with a view to file complaints are accessible to the public in every police station in Malta. |
| 154. ECRI strongly recommends the authorities to intensify the training provided to law enforcement officials on the fight against racial discrimination and to sensitise them further on the sanctions for racist conduct. | In this regard, ongoing lectures are already taking place at the Police Academy for all new recruits as well as in-service professional development courses for all serving members of the Police Force which include lectures on criminal law provisions vis-à-vis racism and racial discrimination. |
| **Monitoring Racism and Racial Discrimination** | |
| 159. ECRI reiterates its recommendation to the Maltese authorities to collect relevant information broken down according to categories such as ethnic/national origin, religion, citizenship and language, with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. It further recommends that the collection of such information should take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination. | The Maltese authorities take note of ECRI's recommendation in relation to this matter and point out that statistics with respect to complaints in relation to racism and racial discrimination brought before NCPE are already being collected and published on a yearly basis.<br><br>The collection of data and statistics requires human and financial resources and these are allocated in accordance with the needs of Maltese society. |
| **Education and Awareness Raising** | |
| 163. Notwithstanding these positive initiatives, several of ECRI's interlocutors have highlighted that initiatives on intercultural dialogue and diversity are very much left to the initiatives of the single schools, whereas there would be the need to make such approach systematic. | Again, the ECRI report cites anonymous sources. |

| ECRI RECOMMENDATIONS AND COMMENTS | RESPONSE OF THE MALTESE AUTHORITIES |
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| 164. ECRI recommends that the new minimum curriculum include the subject of human rights for pupils of all ages and that diversity and intercultural education be mainstreamed therein. | The National Curriculum Framework (NCF) aims to promote initial teacher education and further opportunities for training and support in the use of pedagogies that are inclusive in nature and cater for diversity.<br><br>The NCF acknowledges Malta's growing cultural diversity, and values the history and traditions of its people. It recognizes the heterogeneous nature of the community of learners, thereby acknowledging and respecting individual differences of age, gender, beliefs, personal development, socio-cultural background and geographical location. Learners' identities, their language competence, intellectual abilities, aptitudes, interests and talents are recognized and supported accordingly through appropriate learning and teaching approaches. The NCF affirms that all children can learn, grow and experience<br><br>success by:<br><br>• respecting diversity in all its forms;<br>• promoting an inclusive environment; and<br>• recommending policies and practices that address the individual and specific needs of the learners and learning community.<br><br>The NCF aims to develop learners who are engaged citizens in constantly changing local, regional and global realities. They will need to:<br><br>• respect diversity and value difference<br>• respect and promote Maltese culture and heritage<br>• develop intercultural competence and appreciate their heritage within the Mediterranean, European and global contexts<br>• work towards strengthening social cohesion and ensuring social justice<br>• uphold social justice and democratic principles<br><br>The NCF identifies Intercultural education as one of the cross-curricular themes. Principles of diversity and inclusion underpin the NCF, which emphasizes student-centered learning and focuses on teaching methods that show learners how to learn. This approach implies that at all stages, learners of all aptitudes and competences should experience success as well as a level of challenge, and obtain the necessary support to sustain their effort. They need flexible learning programmes providing diverse learning experiences that cater for a wide spectrum of learners and allow for different rates of progression as children and young people work through their school years.<br><br>While the NCF embraces diversity and requires that this can be promoted through an inclusive environment, it acknowledges that these obligations present challenges for the development of an appropriate curriculum and a classroom culture whereby all students are accepted and supported in achieving their full potential.<br><br>The NCF acknowledges that every learner has diverse needs to be understood and addressed. In this context, the curriculum should address the needs of:<br><br>- learners with special educational needs for whom the curriculum should be written in a way that allows the teachers to appreciate how every student can access the same curriculum in every learning area and allows for the assessment of a continuum of ability;<br><br>- learners with severe disabilities for whom the curriculum should offer an education based on a continuum of abilities expressed in terms of developmental phases;<br><br>- learners from disadvantaged social backgrounds for whom the school, in collaboration with key local and institutional stakeholders in the community, needs to up-skill and support families and the local community to provide an environment that is educationally rich and stable;<br><br>- learners from diverse social, cultural and linguistic backgrounds including children of refugees and asylum seekers for whom the curriculum should include access to an educational programme which is embedded within an emotionally and psychologically supportive environment that respects their individual circumstances; and<br>- gifted and talented learners for whom the process of learning needs to be sufficiently challenging to engage and motivate them to develop their talents. |