



european network against racism

ENAR Shadow Report 2007

ENAR SHADOW REPORT 2007

Racism in Malta

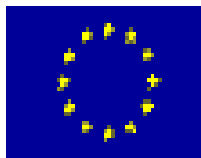
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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it. Even where there is extensive official data, NGOs offer a vital alternative data source that comes directly from experiences of those individuals and communities experiencing racism on a daily basis.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

Published by the European Network against Racism (ENAR) in Brussels, October 2008, supported by a grant from Compagnia di San Paolo, from the European Commission and from Foundation Open Society Institute.

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1. Executive summary

Inward migration has brought new realities to Malta bringing the debate on racism and integration to the fore. This report demonstrates that racism exists in Malta but that there is a will to combat such racism both in the public sphere and in the legislative sphere. The report focuses on manifestations of racism as well as policy and legislative developments for the period of January to December 2007 and complements previous shadow reports issued by ENAR¹.

The communities most vulnerable to racism and religious discrimination included “irregular migrants”, Muslims, as well as organizations working with Asylum Seekers. The arrival of irregular migrants continued over the course of 2007 leading the Maltese government to call on the European Union to take measures towards a European Burden Sharing system. This proposal was generally supported by civil society groups in Malta although support on EU level was not always forthcoming.

In employment, manifestations included difficulty in finding regular and stable employment and poorer working terms and conditions. In housing, conditions in detention and open centres often left a lot to be desired whilst many private owners refused to lease property to people belonging to ethnic minorities. A number of positive initiatives took place within the education system but the particular needs of specific groups were in some cases not met. Access to healthcare, whilst a right in principle, was often hindered by lack of awareness by service providers and language barriers. No major incidents of racist crime occurred in 2007 whilst the media was marked with mixed reporting as different angles on the issues were taken.

2007 was marked with remarkable legislative developments in the field of anti-discrimination, migration and integration. The non-employment aspects of the race equality directive were transposed through a number of legal notices enhancing the protection against racism in law. The National Commission for the Promotion of Equality was appointed race equality body (for the non employment aspects) whilst the shift of the burden of proof was further strengthened. The Broadcasting Authority enacted requirements as to the standards and practice on the promotion of racial equality imposing a duty on broadcasters to be proactive in promoting racial equality in their programming.

The Organization for the Integration and Welfare of Asylum Seekers was set up in 2007 hinting towards a greater commitment to a strategy of integration by design. Food distribution was replaced by cash grants allowing greater empowerment whilst substantial improvements were made within the office of the Refugee Commissioner. A Visitors’ Board for detained persons was set up through legal notice 266 of 2007. Regulations transposing the Family

¹ Available at: www.enar-eu.org/malta

Reunification directive and Council Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking of human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

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3. Introduction

The year of equal opportunities for all was a positive year in the fight against discrimination in Malta. A number of initiatives were undertaken to promote diversity whilst a number of laws were enacted that further enhanced the Maltese anti-discrimination law. However Research conducted by the Eurobarometer indicates that almost half of the Maltese population are not aware of their rights in the eventuality that they had to be victims of discrimination. Anecdotal evidence indicates that those most vulnerable to racial discrimination including asylum seekers remain largely unaware of the protections to which they are entitled.

The same research found that perceptions as to the extent of discrimination vary in Malta depending on the type of discrimination under consideration. 69% of the Maltese population perceives discrimination on the ground of ethnic origin to be either very or fairly widespread whilst 39% feel the same about discrimination on the basis of religion. 42% of Maltese feel that not enough effort is being done in Malta to fight all forms of discrimination.

2007 saw the arrival of a relatively large number of irregular migrants into Malta. This posed a number of challenges for the country due to its limited space and resources. A number of resettlement opportunities were offered but these were generally in small numbers except for the United States Resettlement Programme which would take around 200 persons. The Maltese government continuously called for the European Union to adopt a “burden sharing” structure whose proposal was supported by Civil Society Groups in Malta.

This report will delve into the manifestations and developments in the field of anti-discriminations specifically on the basis of race. It will highlight specific areas of concern and elaborate on the extensive legislative progress done in 2007 improving Malta’s anti-racism framework. It is important that the enacted laws are implemented and enforced. The relevant organs of the state need to be on the alert to ensure that cases of racism are dealt with according to law as legal provisions alone will not suffice to rid Malta of racism.

The ENAR Shadow Report 2007 covers the period between January and December 2007. Developments occurring in 2008 will not be considered although mention will be made to such developments where relevant.

The various sections of this report will seek to give a clear picture of the situation in Malta. The communities most vulnerable to racism are identified. These include asylum seekers, Muslims, and people of a different ethnic background who are Maltese citizens or legal long term residents. Manifestations of racism and religious discrimination are then outlined, focusing on key problems in the areas of employment, housing, education, health, policing and racial profiling, racist violence and crime, access to goods and services and the media.

An overview is then provided of the key legislative and political developments in Malta in the course of 2007. Special focus is given to anti-discrimination, migration and integration, racism as a crime and social inclusion. In most of these areas a substantial amount of developments took place during 2007 including the transposition of European Union Directives.

Finally the report makes a number of recommendation drawn from the analysis of the key features and works written and/produced in 2007. These recommendations include:

1. The drawing up of a national action plan against racism
2. The drawing up of a national integration strategy
3. Raising awareness about the new legal protections and of the race Equality body
4. Ensure that Refugee and Immigration legislation and practices are underpinned by values of equality, human rights and respect for human dignity

4. Communities vulnerable to racism

The community that remained most vulnerable to racism were the so called “**irregular immigrants**”, a term popularly used to refer to migrants arriving in rickety boats from Africa and reaching Maltese shores. The category therefore includes refugees², persons enjoying temporary humanitarian protection³, asylum seekers⁴ as well as people who, having been through the asylum system are found not to be deserving of protection (a.k.a rejected asylum seekers). Negative perceptions of migrants hinder their prospects in almost every aspect of life from employment to housing, from education to access to goods and services. In many instances, especially in public discourse, the distinction between the various groups is unclear. This is not the case with laws and policies, which in most cases define the entitlements of each particular category. The fact that this group is made up of first generation migrants makes them more vulnerable to discrimination and less likely to pursue legal action when they fall victim of discrimination.

There are three types of irregular immigrants: those who enter the country legally but remain beyond their authorised stay, those who arrive in Malta without the necessary documentation and those who arrive through irregular channels, most often by boat (leaving) from North Africa.

The widespread prejudice and xenophobia linked to such “irregular migrants” also affects **other members of ethnic minorities** who are Maltese citizens or long term residents here. These include adopted children or persons who have lived in Malta for a very long time and have established themselves and their families in Malta. Whilst this category is relatively small they are often assumed to belong to other categories and suffer the same prejudice, and in some cases verbal abuse on the basis of their skin colour. Many have expressed concern about the repercussions of racism towards “irregular migrants” with regard to such people.

Even if discrimination on the basis of religion is not so widespread in Malta, **Muslims** are the religious group which face the greatest problems as a group. Islam is often linked to stereotypes linked to the 9/11 terrorist acts whilst some push forward the idea that the arrivals of migrants in Malta (and in Europe more widely) is a concerted effort by “Muslims” to convert people and take over. Such mentality makes the work of the local mosque and Muslim community more difficult. In fact, over 2007 they were involved in a number of initiatives aimed at combating some of the negative perceptions whilst maintaining their low profile.

² The Maltese Refugee Act (Chapter 420 of the Laws of Malta) adopts the Geneva Convention definition of “Refugee”

³ According to article 2 of the Refugee Act “humanitarian protection” means special leave to remain in Malta until such time when the person concerned can return safely to his country of origin or otherwise resettle safely in a third country.

⁴ The term asylum seeker is defined under the act as meaning a person who has made an application for a declaration that he/she is a refugee.

Whilst Malta is a predominantly Roman Catholic Country, which is also stated in the Maltese Constitution other religions and denominations enjoy freedom to practice their religion. In fact, many other such religions and denominations have a presence in Malta. Another group which often faces discrimination and which is shadowed by stereotypes are "arabs". Stereotypes linked to criminality affect this particular group extensively.

Issues of **multiple discrimination** also surfaced during the year which highlighted the need for a more integrated approach to anti-discrimination. The need for a multi-ground directive (such as proposed as part of the Revised Social Agenda)⁵ extending the protections listed in the Race Equality Directive to the grounds listed in the Employment Equality Directive⁶ was highlighted in a number of seminars and discussions in which NGOs and other activists participated. It is not rare that one comes across a victim of discrimination who is not only a member of an ethnic minority but is also gay, female or disabled. Determining the ground on which the person is being discriminated is sometimes complex and the distinction is even more blurred when speaking for instance of discrimination on the ground of ethnic origin and of religion.

It is interesting to note that for instance, the aggravations under the Maltese criminal code also mention religious motivation as an aggravating circumstance. The article 3 exclusion of nationality was often also quoted as an obstacle to the effective enjoyment of equality by members of ethnic minorities especially since most such members in Malta are first generation migrants.

Organizations working with "Irregular Migrants", as well as journalists and columnists who were sympathetic to the plight of refugees, were sometimes also targeted especially by exponents of the far right ideologies. Attempts at intimidation of such persons could be noted on several occasions.

Since data collection is limited, it is difficult to identify the particular categories that render a person more likely to be discriminated. This section is therefore based mainly on anecdotal evidence collected by the author through a number of interviews with interested parties as well as from experience within the area. Moreover, research into cultural diversity in Malta remains largely limited to census data and citizenship statistics on the Maltese and non-Maltese population. The population of non-maltese is composed of citizens from diverse countries, with a large presence of citizens from the UK, Italy, France, Germany, Serbia and Libya. Information about second and third generation migrants is currently not available. The Indian-Maltese French, German, Maltese-Australian

⁵ The Revised Social Agenda was launched on 2nd July 2008 and is available here: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=376&furtherNews=yes>

⁶ Directive 2000/78/EC available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_78_en.pdf

and Italian communities are well established here⁷ and do not generally face serious cases of discrimination.

The Migrant Integration Policy Index⁸ highlights that Malta is one of just four countries where only a minority thinks that ethnic diversity enriches the national culture (31.7%). The Maltese are consistently the least supportive of migrants' rights in the EU-27, whether polled about equal social rights, family reunification rights or facilitated naturalisation. Moreover, the Maltese are the most supportive of the EU-25 of deporting all legally established third country nationals (35%) especially if they are unemployed (63.6%).

⁷ www.culturalpolicies.net

⁸ <http://www.integrationindex.eu/>

5. Manifestations of racism and religious discrimination

5.1 Employment

Ethnic minority groups, most notably “irregular migrants”⁹ experienced discrimination both in accessing employment and while employed. Manifestations over the reporting period included difficulty in finding regular and stable employment (constraining many migrants to work in the informal economy) and poorer working terms and conditions (for instance being paid less than their Maltese counterparts for the same work or work of equal value). Service Providers participating in a research initiative, IntegraRef¹⁰, comments “that refugees are treated in a different way, working longer hours, and with no regular contract; they are faced with a problem with having to accept working conditions and jobs that are most of the time not accepted by the local population”.

It is virtually impossible to calculate how many migrants are working in Malta as the available data only takes cognizance of those working with a valid work permit. In July 2007 there were 6610 foreigners with a valid work permit with 2947 coming from within the European Union and 3663 coming from outside. Of the latter group, the largest numbers were from Serbia and Montenegro (560), China (315) and India (232)¹¹. Figures by the Employment and Training Corporation¹² indicate that of the “Irregular migrant” population towards the end of the period under review a mere 879 held a valid work permit, with less than half actually holding active engagement from an employer. Only 8 refugees were registering for work.

It is important to note that both Refugees and those enjoying Temporary Humanitarian Protection (THP) get a work permit in their own name. This was an important development occurring in 2007 as before people with temporary humanitarian protection required their prospective employer to apply for their permits creating further space for abuse by some employers. This mechanism still applies for asylum seekers.

Anecdotal evidence strongly indicates that many migrants are currently working in the informal market although the extent of such work remains largely unknown. Undeclared work is a major factor in enabling exploitation and “tends to be

⁹ Used as a general term to incorporate refugees, asylum seekers, persons enjoying humanitarian protection and rejected asylum seekers.

¹⁰ The IntegraREF project was a fifteen month research study of the International Organisation for Migration (IOM) in Rome, the University of Malta, the Berlin Institute of Social Comparative Research in Germany and Queen Margaret University of Edinburgh for the United Kingdom. The Full Report <http://psychosocial.iom.int/maltaNationalReport.pdf>

¹¹ Parliamentary Question 27196 Sitting 552 July 17th 2007:

<http://www.pq.gov.mt/PQWeb.nsf/10491c99ee75af51c12568730034d5ee/c1256e7b003e1c2dc125731a00238a17?OpenDocument> including Paper 7087

¹² As reported in Massa A. “Negative Perceptions hindering work Prospects for Immigrants, Times of Malta, 6th December 2007

associated with poor working conditions for individuals and subsequent risks to workers' health, low prospects of career progress and insufficient social protection coverage"¹³. Moreover, the informal character of the employment relationship often makes it very difficult for these workers to prove their story, placing them at a disadvantage in seeking redress of injustices carried out in their regard. Moreover, many migrants undertake temporary/ casual work engagements which add to the sense of instability.

A reluctance by employers to engage migrants for certain jobs could be noted and in fact migrants often acquired low-skilled jobs which the Maltese did not want to do. For instance from the 182 asylum seekers holding a work permit, 57 held cleaning jobs, 55 worked as laborers, 20 had construction related jobs whilst 18 were in catering. Anecdotal evidence further indicates the construction industry to be the number one employer of migrants. Other issues which hampered migrant integration into the labour market included lack of recognition of qualifications and language barriers. Employers were often unaware of the particular situations involved as to who was entitled to work and who wasn't whilst other employers preferred to take on migrants without an engagement form (to avoid paying National Insurance Contributions and giving sick leave).

Red Cross Malta offered basic English Language Courses aimed at assisting migrants seeking employment.

A number of individual cases of alleged discrimination in employment came to the attention of NGOs and persons working in open centres as well as the media; but no complaints were filed with the Industrial Tribunal which has the competence to decide cases of this kind under the Equal Treatment in Employment Regulations¹⁴. Reports included cases of migrants not being paid for the work they have performed, migrants being paid much less than a counterpart and others being refused particular jobs on the basis of stereotypes linked to time keeping and lack of hygiene¹⁵. Some cases were also reported of necessary health and safety equipment not being distributed.

Statistics from the Health and Safety Authority¹⁶ indicate that out of 5 fatal accidents within the construction industry 2 involved migrant workers. It is to be clarified that The Health and Safety Authority investigates cases of violations of Health and Safety Rules¹⁷ at work irrespective of who is involved and whether or not the employment is legal or otherwise.

NGOs often supported the particular individual directly especially by intervening with the relevant employer and whilst the relevant legal mechanisms were

¹³ European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "Stepping up the fight against undeclared work", COM(2007) 628 final, 24.10.2007, p.3.

¹⁴ Legal Notice 461 of 2004

¹⁵ H. Grech "Immigrants claim skin colour barred them from jobs", in the Times 25th June 2007

¹⁶ <http://www.ohsa.org.mt/>

¹⁷ Chapter 424 of the Laws of Malta

explained these were generally not used. This goes some way to explain the lack of complaints with the official competent authority.

The General Retailers and Traders Union (GRTU) has called for the development of a structure which would serve the needs of both employers and migrant workers and avoid the scenes outside the main open centers with migrants waiting outside in the hope of being picked up for a day's work. In 2007, the University of Malta's Centre for Labour Studies¹⁸ issued a memorandum urging local political parties to regularise the position of immigrant workers, among other measures aimed at improving competitiveness and addressing social injustice. They observed that immigrant workers "are filling a gap in the supply side of labour" by taking the jobs Maltese people do not want. The Centre went on to warn that the current situation "may eventually create an underclass or a ghettoisation of relatively deprived persons". Their conclusion was that "The best solution may be to regularise their position by issuing temporary work permits to immigrants from third countries, or by letting them register as guest workers"¹⁹.

Sweeping statements about employers being abusive should be avoided as there have been numerous cases of successful integration of migrants in the workplace. However those employers that are exploiting migrant workers should be reprimanded and legal action taken in their regard. This is very difficult if the victims of such discrimination do not feel empowered enough to push such cases forward through the established legal channels. NGOs have an important role to play in this regard.

Employment is one of the main routes to integration and thus crucial for social cohesion. Yet some groups continued to flame fears about ethnic minorities based, amongst other things on employment. Suggestions of "they are coming to take our jobs" and "today a cleaner, tomorrow in your post" continued to be used by some groups to fuel xenophobia and anti-migrant feelings.

As part of the MOSAIC Project²⁰ coordinated by the National Commission for the Promotion of Equality (within the context of the Year of Equal Opportunities) ENAR Malta offered a training session to employers (mainly human resources managers) about discrimination in employment in which employers were informed about the European and Maltese legislation and had the opportunity to discuss best practices as well as challenges faced.

5.2 Housing

¹⁸ <http://home.um.edu.mt/cls/>

¹⁹ As reported in IntegraREF Country Report for Malta

²⁰ www.mosaic.gov.mt

Accommodation continued to be a problematic area for ethnic minority groups during the period under review. Problems arise in relation to discrimination in accessing private rented accommodation and the conditions of the centers created to house “asylum seekers”.

Detention in Malta is considered a matter of national policy, considered as an “administrative requirement in the interest of national security and public order”. Detention Centres are run by Detention Services, a department²¹ falling under the responsibility of the Ministry for Justice and Home Affairs made up of personnel seconded from the Police Force and the Armed Forces under one command.

In August 2007 the Maltese government published the report of the Council of Europe (COE) Committee for the Prevention of Torture (CPT) on its 2005 visit. The report noted how “at the time of the visit a very large majority of detained foreign nationals were still housed in poor, sometimes unacceptable conditions”. The report was most critical of the medical services being rendered and the quality of the food and dietary customs of the various nationalities. The Government’s response to the report highlighted a number of improvements made upon CPT recommendations including the fact that the medical services has been outsourced to a private contractor²². It also highlighted the fact that the detention centre rules and standing instructions had been drawn up and a publication entitled “Your entitlements, responsibilities and obligations whilst in detention” was printed in English, French and Arabic explaining the standard of behaviour that is expected as well as the obligations that the authorities owe towards them.

A working document adopted by the PACE Committee of the Council of Europe²³ following a visit by one of their representatives to Malta in October 2007 highlighted some of the major concerns about detention in Malta²⁴. The rapporteur expressed himself as being “particularly concerned by the length and systematic use of detention in Malta for irregular migrants and asylum seekers”. Malta has a policy of detaining irregular migrants²⁵ for up to 18 months and asylum seekers for up to a year²⁶. The report goes on to state that “the problem of lengthy detention is further exacerbated by the conditions in detention” which he describes as falling short of acceptable European standards and being “totally inappropriate for long term detention”. Some of the concerns mentioned in the report include; overcrowdedness, inadequate sanitary facilities (in particular for women) and the “lack of clear guidelines on discipline and punishment in the centres.”

²¹ Established on 18th August 2005

²² Refer to Section Viv

²³ Europe’s “boat-people”: mixed migration flows by sea into southern Europe; Doc. 11688 11 July 2008

²⁴ Since the author did not access detention centres himself in 2007, he is relying on alternative sources from people who have been inside the centers.

²⁵ Including those asylum seekers whose request has been rejected both by the Refugee Commissioner and by the Refugee Appeals Board. This group amounts to approximately half of the asylum seekers arriving in Malta.

²⁶ This policy replaced the previous system of indefinite detention

These concerns were re-iterated by many organizations who regularly visit detention. In a report published in 2007 the Jesuit Refugee Service²⁷ stated that “in practice discipline is usually administered by the officer in charge of the detention centre, who decides what punishment will be inflicted in the particular case”. The same report mentions how “there have been allegations that, on occasion, staff have beaten detainees accused of misbehaving²⁸, particularly while they were in seclusion or when they were caught escaping”.

In a change of policy, access to detention for media personnel was allowed in July 2008. Media reports printed after the change in policy noted substantial improvements²⁹. Moreover, a visitors’ board for detention was set up by Legal Notice 266 of 2007³⁰ to oversee the management of these detention centres.

2007 saw the creation of the Organization for the Integration and Welfare of Asylum Seekers³¹. The organization, which during the period under review fell under the direct responsibility of the Ministry for the Family and Social Solidarity³² had, as one of its core responsibilities the coordination and management of the Open Centres for “Asylum Seekers”. At the end of the year³³ the centres under the responsibility of OIWAS housed over 2000 people. These included 2 large centres each housing around 800 people and a number of smaller centres many of which catered specifically for vulnerable groups. The latter houses were generally kept in good condition but concerns were raised about the big centres and especially Hal Far Tent Village which came into operation at the end of 2006. Various improvements were made to the centre in 2007 so that, for instance, the tents were placed on concrete platforms. Nevertheless, the tents were overcrowded, cold in winter and hot in summer making life therein very difficult. Moreover, the weather conditions of 2007 caused extensive damage to some of the tents. A study commissioned by the European Parliament Committee on Civil Liberties, Justice and Home Affairs stated that the Hal Far tent city cannot remain in its current state but should be converted into a centre with proper buildings³⁴.

The one complaint lodged with the National Commission for the Promotion of Equality related to housing. Many landowners refused to rent their houses and apartments to foreigners especially Africans and Arabs. Whilst cases of refusal to rent were rampant and affected many sectors of society, the situation was accentuated with regards to people from particular groups. Various cases came

²⁷ Detention-in-europe.org | A Civil Society Report on Administrative Detention of Asylum Seekers and Illegally Staying Third Country Nationals in the 10 New Member States of the European Union. The National Report was written by JRS Malta.

²⁸ Similar incidents led to an inquiry in 2008 which made a number of pertinent and important recommendations.

²⁹ See for Instance A. Massa, Crying for Freedom – inside a detention centre, Times of Malta 13th July 2008, available at: <http://www.timesofmalta.com/articles/view/20080713/local/crying-for-freedom-inside-a-detention-centre>

³⁰ Further details are provided in section VII of this report

³¹ Further details are provided in section VII of this report.

³² Following the 2008 election and distribution of Ministerial Responsibilities OIWAS was placed under the responsibility of the Ministry for Justice and Home affairs.

³³ According to Statistics Prepared by Mr. Phil Gale of OIWAS on 13th February 2008

³⁴ As reported in H. Grech, Malta’s Repressive measures “dehumanising” and “ineffective”, Times of Malta 13th January 2008, available at: <http://www.timesofmalta.com/articles/view/20080113/local/maltas-repressive-measures-dehumanising-and-ineffective>

to the attention of NGOs in this regard and these often intervened for and on behalf of the clients. The prohibition of racial discrimination in housing was part of the improvements to the Maltese anti-racism laws introduced in 2007³⁵.

5.3 Education

It is accepted that education is key to successful integration and to breaking the cycle of dependence on the state.

Under the Refugee Act asylum seekers have a right to state education free of charge. Children are automatically entitled to receive free schooling but must first master the Maltese language in order to be able to successfully integrate in the school environment. Post Secondary education is not free for "asylum seekers" but in practice University and College fees have been waived as a means of encouraging further education. There is no financial assistance during the studies³⁶ which often means that such students have to work whilst studying which can sometimes be challenging. At tertiary level the medium of teaching is English.

Asylum Seeker Children are automatically assigned to a school when they are released from detention³⁷. A number of asylum seekers have also participated in courses offered by the Malta College of Arts, Science and Technology, the Malta Institute of Computer Science and the University of Malta amongst others.

The particular needs of these students were addressed in different ways by different teachers and Heads of Schools and it was noted that further training of such teachers is required to deal with the new realities brought about by the recent immigration into Malta. Recognition and respect for diversity needs to be mainstreamed in all the subjects taught at school and these issues should not be mentioned only within the Personal and Social Development sessions. Some schools went out of their way to promote integration whilst others did not take any concrete measures to take the specific needs of asylum seeker children into account.

Amnesty International Malta Group, in collaboration with the Ministry for Education, Youth and Sport carried out 2 sets of 3 day in-service trainings for teachers of personal social development. The training gave a broad overview of human rights and issues particularly relevant to Malta (namely migration) as well as tips on teaching Human Rights to Students. Various resources were also distributed.

³⁵ Further details are provided in Section VI.i of this report.

³⁶ Maltese students receive a stipend of approx. 125 Euros per month as well as an allowance for education related purchases of around 450 Euros.

³⁷ This is generally done within a couple of weeks on arrival

A number of NGOs including Amnesty International Malta Group, the Jesuit Refugee Service and Kopin held projects in schools focusing on human rights and diversity. Various informal teaching methods were used in order to start a debate in schools. These projects received the backing on the Ministry of Education which encouraged schools to participate therein. Whilst there were some cases of complaints by parents about these projects, the lessons were generally well received and most of the projects continued also into 2008.

As part of its 8th Campaign Against Racism, the Malta Football Association took its campaign into local schools encouraging youngsters to fight racism at every opportunity. The president of MFA, the Minister responsible for Education and Sport and members of the National Football Team visited a number of schools to promote the message “No to Racism – One Community One Sport”

There are no baseline figures that exist to assess the outcomes for ethnic minority groups from the Maltese educational system. Virtually no data is available in this regard.

NGOs agreed that education is critical for the effective integration of “asylum seekers” and to break the cycle of dependence and exclusion to which some were connected. Key to this is language training and such barriers affect prospects in all spheres of life. Efforts in this regard were made by The Malta Red Cross amongst others. Recognition of qualifications would also help the proper integration of asylum seekers into the Maltese labor market and Maltese society as a whole.

MOSAIC: One in Diversity, sought to raise awareness of discrimination and diversity issues through the organization of training sessions for employers and through a publicity campaign involving the creation of billboards, posters and information leaflets.³⁸

Further efforts need to be made with regards to effectively and most specifically to raise awareness of the extended remit of NCPE to cover racial discrimination. Quoting a 2006 Eurobarometer, the Migrant Integration Policy Index noted that “just 18.7% knew about a law punishing ethnic discrimination in the labour market”³⁹.

5.4 Health

Problems persisted in the course of 2007 with regards to access to healthcare for asylum seekers. Over the year, two pieces of research were carried out in this

³⁸ For more information visit: <http://www.mosaic.gov.mt/home?l=1>

³⁹ IBID

regard, one by the Ministry of Health (in collaboration with the International Organization for Migration(IOM)) and another by the French Charity Medecines du Monde (MDM). The former highlights that “research on the factors that affect health care utilization of migrants is scarce and little is known about their needs, health behavior and the possible barriers they experience in their use of health care services”⁴⁰. The report acknowledges that migrants often have specific health needs linked to their particular situation and require a special approach and treatment (for instance an “interpreting service”). The latter, the report complains, is not taken into account. Differing attitudes towards this particular group and their specific needs were noted during the year. IntegraREF⁴¹ found that “besides lack of specialised care, refugees have problems in accessing health services due to cultural differences and language barriers”.

All irregular migrants are subject to an initial medical examination conducted by the port health services immediately after their apprehension (i.e. before being assigned to a detention centre), and those identified as needing particular medical attention are taken to Mater Dei Hospital. All the immigrants are examined and they cannot opt out. Some concerns were raised about the thoroughness of these checks. Shortly after arrival in detention, arrangements are made for a Chest X Ray to be carried out to screen for tuberculosis.

After severe criticism from various parties, including the CPT, the provision of medical services in detention was outsourced in the course of 2007 with a private company (Medicare Ltd.) being given a contract to provide the services of a doctor and a nurse in each of the big detention centres between 8am and 1pm from Monday to Friday. This was a welcome decision which improved access to medical care for detained persons considerably. Some concerns were however raised as to the promptness of delivery of prescribed treatment⁴² and the fact that due to shortages of accompanying staff, migrants needing to go to hospital often faced problems and arrived late missing their appointments.

Upon release from detention, “asylum seekers” are expected to make use of mainstream services. All “asylum seekers” irrespective of their status should be able to access free medical care and medications however a number of barriers have been identified. The General Hospital is used in case of emergency “but feedback seems to show that the local public health centres are not frequented, although they are theoretically accessible⁴³”.

The Medecines du Monde (MdM) research entitled “everybody just wants to get rid of us” quoted problems in accessing specialist care or additional exams, problems in accessing free medical treatment, problems of communication and

⁴⁰ M. Vella; Country Report Malta; EU Partnerships to Reduce HIV & Public Health Vulnerabilities associated with population mobility

⁴¹ IBID

⁴² As reported in Section 4.1.2 of the MdM report: Drugs are generally not kept at the detention centre and therefore after the consultation and prescription it is up to the soldiers to pick up the medications from a government pharmacy. This sometimes took between two to three days.

⁴³ As reported in Section 5.4.5.1 of IntegraREF.

problems of transport as some of the issues raised. The rights of people and standards for access to care remained unclear. Many service providers remain unaware of the entitlements of various groups of people and in some cases people who were entitled for some services were refused such service because service providers were not aware of the relevant entitlements. Part of the MdM mission in Malta over the course of 2007 included the setting up of clinics in the main open centres and carrying out consultations there. Whilst the service was well received it was discontinued at the end of the MdM mission. At time of writing no similar services were being offered however in July 2008 a memorandum of understanding was signed between the government and Medecines sans Frontieres which included provisions for medical care in open centres.

The Ministry of Health/IOM report highlighted the “need to develop linguistically and culturally appropriate information directed specifically to meet the needs of migrants, in particular information about social entitlements, immigration matters, and health and labor rights”. “There is (also) a need to train healthcare providers to be more sensitive to the needs and backgrounds of migrants. Healthcare workers need more background information about cultural differences and how to deal with them”. Moreover, “as language is considered a barrier there is the need of the development of a health care interpreter service pool and multilingual health promotional resources and multilingual signs and symbols. Health care interpreters are to be used in all health care situations where communication is essential including: admission, consent, assessment, counseling, discharge, explanation of treatment, associated risks and side-effects and health education”.

The general public was sometimes fed with false information and unfounded fears of migrants bringing into Malta communicable diseases leading some people to, for instance, refuse to sit in the same seat previously used by a migrant. This was generally done by proponents of far right ideologies.

5.5 Policing and racial profiling

NGOs were not in a position to assess whether and the extent to which law enforcement officials resort to racial profiling. Some anecdotal evidence indicated such profiling having taken place in some individual cases however these were not conclusive enough. A number of cases of mistreatment in detention were also reported⁴⁴. Such allegations also came to the fore in 2008 with official inquiries also being launched. No official statistics are available in this regard.

The Code of Ethics of the Maltese Police force⁴⁵ highlights the need to foster relationships of trust and reciprocal respect with the community and with individual citizens irrespective of, inter alia, nationality, race, colour or religion. It

⁴⁴ Refer to Section V.II of this report

⁴⁵ Available here: <http://police.gov.mt/download/KodiciEtika.pdf>

goes on to state that any form of harassment, words or gestures which are demeaning and racial are unacceptable. Anyone going against any principle established in the code of ethics may be subjected to disciplinary proceedings.

The Police Force receives a one hour training session on racial equality as part of the training provided at the Police Academy. This is deemed inadequate and more training on these issues needs to be organized. On a positive note, the Police attended, in the course of 2007, a training session organized by the International Organization for Migration on dealing with victims of trafficking. Speaking in an interview with a leading newspaper days after allegations of a migrant being beaten by police officers the New Minister for Justice made it clear that "Training is not what I want it to be, I want it to get better"⁴⁶.

5.6 Racist violence and crime

Racist Crime is primarily dealt with through the Criminal Code⁴⁷. The code makes racial and religious motivation an aggravating circumstance⁴⁸ to a range of crimes against the person whilst incitement to racial hatred is a criminal offence under article 82A of the code.

At time of writing, the author is unaware of the racial motivation clause being used in any case.

In 2007 however, the case against one of the prominent far right leaders on charges of incitement to racial hatred continued. In its judgment delivered in April 2008 the Court of Magistrates as a Court of Criminal Judicature found him guilty of the charges proffered against him awarding him a sentence of two years imprisonment suspended for four years. At time of writing the judgment was pending appeal and any further comment is therefore inappropriate.

No major incidents of racist crime were reported in 2007 unlike 2006 where Malta saw a number of arson attacks on people working with asylum seekers. At the end of the period under review investigations into these arson attacks had not yet resulted in charges. Minor incidents such as the distribution of threatening messages at the various open centres were noted but no formal reports were lodged.

IntegraRef quotes one refugee recounting "we were finding during some days, letters on the streets of threatening, saying that, illegal immigrants if you dont leave our country we will kill you and the people who take care of you".

⁴⁶ Mallia S, "Police Violence will not be Tolerated – Minister" Sunday Times, 6th July 2008.

⁴⁷ Chapter 9 of the Laws of Malta

⁴⁸ As reported in the ENAR Shadow Report 2006

5.7 Access to goods and services in the public and private sector

New legal provisions introduced in 2007⁴⁹ prohibited discrimination in the access to goods and services. Like 2006, 2007 saw widespread and frequent reports of ethnic minorities being denied entry into bars and other places of entertainment. These incidents sometimes led to violent clashes between patrons and bouncers, who are often the people administering this sort of profiling whereby a person who is black or Arab is automatically assumed to be a trouble maker. Other reported cases included bus drivers refusing to allow people from Ethnic Minorities to board their buses.

An interesting development was, as noted in the introduction, the reaction of “Maltese” people to these incidents. Many individuals stood up for the rights of people who were being discriminated against, stating that these things are unacceptable and pressing the service providers to change their stand. Some went as far as to push formal complaints with the competent authorities⁵⁰.

Most incidents of racism in accessing goods and services are small incidents which cumulatively have the effect of making people feel unwelcome. They often go unreported as victims tend to be put off by long procedures for reporting which often, they feel, do not lead anywhere. This explains the virtually inexistent statistics in this regard.

Providers of goods and services (in all spheres of life) need to be aware of the new legal requirements and educational campaigns should target such people to eliminate aspects of racism.

5.8 Media, including the internet

The media, being a source of information for many people plays an important role in the fight against racism. Media Coverage of asylum seekers and of ethnic minorities more broadly during the period under review remained mixed with “the position of a significant number of Maltese journalists tending to reflect that of their parent organization”. Grouping journalists into pro or anti-immigrant groupings has been described by a researcher in the field as “a somewhat misleading oversimplification⁵¹”.

Coverage was generally mixed with some papers focusing on stories of home-made weapons done by detained persons and migrant prostitutes whilst other opting for stories reflecting the human tragedy of the situation. Civil Society groups hailed the manner in which their concerns were covered by the local

⁴⁹ As detailed in Section...

⁵⁰ For example an individual filed a complaint with the Public Transport Authority regarding an African looking woman not being allowed to board the bus.

⁵¹ Sammut, 2007; The Ambiguous Borderline between Human Rights and National Security: The Journalist's Dilemma in the Reporting of Irregular Immigrants in Malta

press which also gave extensive coverage to the government's efforts in the field especially at the level of the European Union. Items on migration and diversity were high on the media agenda throughout the year but most notably in the period between June and October.

One case was brought before the Broadcasting Authority in which Smash TV was charged with breaching the Broadcasting Authority Requirements as to Standards and Practice on the Promotion of Racial Equality⁵². Since the station admitted the charges proffered against it, the authority did not take any further cognizance of the case.

"The two journalistic bodies (the institute of Maltese Journalists and the Journalists Committee) are both involved in the debate on migration and this could open the way to better self regulatory frameworks"⁵³. The Broadcasting Authority has issued regulations on the duty of the media to promote racial equality. In 2008, the three bodies are collaborating with The People for Change Foundation on a project aiming at analyzing and enhancing media coverage of asylum issues.

The internet was used extensively by both pro and anti-migrant organizations as a cost effective means of making their voice heard. Various anti-migrant clips were placed on the Video Sharing site YouTube⁵⁴ whilst the online forum of far right supporters vivamalta.org seems to have received a blow to its activity especially after comments thereon linked to the 2006 arson attacks. Norman Lowell, a self proclaimed "racialist" is using the Imperium Europa website to spread his message by streaming his controversial speeches online. "Online, Lowell mobilizes his disciples and names individuals opposing him whilst attacks on journalists are frequent⁵⁵". Moreover, pro-migrant NGOs used their websites to push an alternative view of the issues.

In the period under review, the ban on the media from entering detention continued as did efforts by NGOs and the Journalists' Organizations to have the ban lifted. The ban was finally lifted in June 2008 and the first reports from behind the fences were published on the 13th of July. The ban had come under severe criticism by a number of stakeholders including NGOs and IGOs and its lifting was a very welcome development.

The role of a journalist is to inform and educate and therefore information about the general context is important. This was not always given in various media clips reflecting tight schedules under which journalists work.

⁵² Refer to Section VI.i

⁵³ IBID

⁵⁴ www.youtube.com

⁵⁵ IBID

6. Political and legal context

2007 saw a number of important legal and political developments which impacted the fight against racism. Steps were taken to complete the implementation of the Race Equality Directive including the setting up of a Race Equality Body. The Broadcasting Authority issued requirements as to the standards and practice on the promotion of Racial Equality, the family reunification directive was transposed into Maltese law as was the Directive on the Residence Permit for Victims of Trafficking who collaborate with the police.

No elections were held in Malta in 2007 (except for local council elections however issues of racism did not feature in these). A new political group, "Azzjoni Nazzjonali" (National Action; AN) was created which expressed itself against "irregular immigrants". The party made a number of proposals which, as one activist described them "could not be taken seriously". One included that "if the European Union continues to evade taking decisions, illegal immigrants would be placed on a plane and sent to Brussels for the EU to, instead of continuously criticising Malta, show us how to solve the problems we are facing⁵⁶". Other proposals included the changing of open centres to detention centres to host migrants until they can be deported and that migrants should work and the money goes directly to the government entity responsible for them to cover at least part of the cost of holding them, and so that they can be helped to save enough money to make their way back home. Many expressed concern about the racist undertones of their messages highlighting that such messages were likely to be received better than messages by less tactful members of the far right. In the 2008 general election AN contesting in all the 13 districts got 1461 votes (equivalent to 0.5% of the votes cast). The party's continued existence after this defeat was doubtful. The Pressure Group Alleanza Nazionale Republicanana on the other hand seemed to disappear⁵⁷ with some of the members joining Azzjoni Nazzjonali.

As a general rule, the main political parties (the Nationalist Party currently in government and the Malta Labour Party) agree on the general direction with regards to racism and migration. As a general stand, they think detention is needed in the national interest and the interest of Public Order. They also speak of being open to the deserving and strict with those who try to abuse the system whilst combating racism and xenophobia. Alternativa Demokratika issued its position on irregular immigration in 2007 suggesting the reduction of the detention period to a maximum of six months and placing more emphasis on integration. All three call on the European Union to revise the Dublin II regulations and create a system of responsibility sharing (often referred to as Burden Sharing). This proposal is generally supported by NGOs and migrants.

⁵⁶ Point 10.06 of the Azzjoni Nazzjonali Electoral Manifesto available here: <http://www.azzioninazzjonali.org/manifest.pdf>

⁵⁷ Their website was also offline at the time of writing

2007 also saw a number of changes in the field of Integration. In February 2007, the Organization for the Integration and Welfare of Asylum Seekers was set up, bringing together the various government entities that had been responsible for housing “asylum seekers”. Over the year, the organization grew considerably and by the end of the year it employed over 75 people including social workers and centre managers.

6.1 Anti discrimination

2007 was an important year with regards to the implementation of the European Union’s Equality directives⁵⁸ with the enactment of Legal Notice 185 as well as other instruments which amended or extended the existing regulatory framework. The Race Equality Directive was not implemented through a single piece of legislation. The first part was in fact transposed in 2004 whilst the second came into effect in 2007. In fact, the “Equal Treatment in Employment Regulations”⁵⁹ of 2004 introduced the provisions relating to employment, access to all types and to all levels of vocational guidance, employment and conditions of employment (including remuneration and dismissals), membership of and involvement in, any organization of employees or employers. These regulations cover both the ground of race and the ground of religion or religious belief⁶⁰.

Legal Notice 53 of 2007, amending these regulations added a reference to indirect discrimination and further strengthened the provisions relating to the shift of the burden of proof. Prior to the amendment regulation 10 imposed on the person alleging discrimination the burden of proving “that he or she has suffered discriminatory treatment” before it became “incumbent on the defendant⁶¹ to prove that such treatment was justified in accordance with the regulations, in the absence of which, the tribunal or court shall uphold the complaint of the plaintiff”. The regulations as amended stipulate that plaintiff merely needs to “establish before the court or tribunal, facts from which it may be presumed that there has been direct or indirect discrimination”. If this is done the burden is shifted onto the defendant. This amendment gives the alleged victim of discrimination a stronger position to ensure that the equality provisions are abided by.

The applicability of The Equal Treatment in Employment regulations was extended to employees of the public service and in the public sector (through Legal Notice 54 of 2007⁶²) and to conditions for access to self-employment or to occupation (through Legal Notice 86 of 2007⁶³). In the latter case the possibility

⁵⁸ Council Directive 2000/43/EC and Council Directive 2000/78/EC

⁵⁹ Legal Notice 461 of 2004 available at:

<http://docs.justice.gov.mt/lom%5Clegislation%5Cenglish%5Csubleg%5C452%5C95.pdf>

⁶⁰ Whilst the directive refers generally to “religion or belief” the Maltese regulations are restricted to religious beliefs.

⁶¹ The alleged perpetrator of the discrimination

⁶² Extension of Applicability to Service with Government (Equal Treatment in Employment) Regulation 2007 available at: <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/452/100.pdf>

⁶³ Equal Treatment in Self-Employment and Occupation Order, 2007 available at: <http://www.doi.gov.mt/EN/legalnotices/2007/04/LN%2086.pdf>

of redress before the Industrial Tribunal⁶⁴ is however excluded⁶⁵ but this without prejudice to the right of action before the competent court.

The Equal Treatment of Persons order 2007 transposed the non-employment elements of the Race Equality Directive. In particular it prohibits discrimination⁶⁶ by any person, establishment or entity, whether in the private or public sectors, and including public bodies⁶⁷, against any other persons in relation to:

1. social protection, including social security and healthcare,
2. social advantages,
3. education,
4. access to and supply of goods and services which are available to the public, including housing and
5. access to any other service as may be designated by law for the purposes of this regulation.

Moreover, the failure by any person responsible for any establishment and, or entity to fulfill his obligation to suppress harassment shall also amount to discrimination. The Legal Notice includes a clarification with regards to discrimination by banks, financial institutions and insurance companies.

It is interesting to note that the order extended additional protection than the basic requirements of the Race Directive in the area of discriminatory advertising in stating that it is not lawful for persons to publish or display, or cause to be published or displayed, any advertisement which promotes discrimination or which is discriminatory or which might reasonably be understood as indicating an intention to discriminate. Victimisation⁶⁸ and harassment⁶⁹ are also prohibited.

The Equal Treatment of Persons Order vested the National Commission for the Promotion of Equality (NCPE)⁷⁰ with the power to keep under review the working of the provisions of the order and extended the functions of the commission as stated in the act establishing it to apply mutatis mutandis to issues of discrimination on the grounds of race or ethnic origin making it the race equality body required by article 13 of the directive. NCPE can only act upon a complaint made in writing and for this purpose they have developed a complaint form which is accessible on the NCPE website in English and Maltese⁷¹. Assistance in filing the complaint is provided for those persons who are unable to do so themselves. By the end of the period under review only one complaint was lodged with the Commission highlighting the need for more awareness raising on the legislation and available remedies.

⁶⁴ Further information about the tribunal is available here: <http://www.doi.gov.mt/EN/bodies/tribunals/industrial.asp>

⁶⁵ Refer to Article 4(2) of the Relevant Order

⁶⁶ Discrimination is defined as being direct or indirect discrimination based on racial or ethnic origin

⁶⁷ This is very important since the government is the sole or main service provider in many of these areas.

⁶⁸ Refer to Article 7

⁶⁹ Refer to Article 2©

⁷⁰ The National Commission for the Promotion of Equality between men and women set up under article 11 of the Equality for Men and Women Act; Chapter 456 of the Laws of Malt available at: http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_14/Chapt456.pdf

⁷¹ http://www.equality.gov.mt/filebank/Complaint%20form%20_Race%20or%20Ethnic%20Origin.pdf

The order retains the exclusion of differences in treatment based on nationality in line with Article 3(2) of the directive.

The National Commission for the Promotion of Equality (NCPE) does not cover discrimination in employment and any complaints in this regard should be addressed to the Industrial Tribunal. Proceedings before this tribunal are free of charge and the expenses involved are those of representation (which is optional but advised).

A Racial and Ethnic Origin Equality Manual Toolkit⁷² was produced by NCPE over the course of 2007 with the intention to raise awareness on the legislation highlighted above and to shed light on the correct implementation and application thereof. The document is also intended to provide tools to be used to counter discrimination and to assist organizations improve their practices by mainstreaming equality. The manual is mainly intended for employers, human resource managers and providers of goods and services.

Legal Notice 85 was a very welcome and long awaited improvement on the Maltese legislative framework. However more needs to be done to ensure that the legal rights are actually accessible to and accessed by potential victims of discrimination. Efforts done to raise awareness of the extended remit of NCPE were deemed insufficient.

Government Notice 413 of 2007 (Subsidiary Legislation 350.26)⁷³ enacted the requirement as to the standards and practice on the promotion of Racial Equality in the Broadcast media. The notice builds on the provisions of the Press Act and of the Broadcasting Act which already contain prohibitions in this regard. Article 6 of the Press Act⁷⁴ creates the Press Offence of “Racism and Similar offences” by stating that whosoever, through the publication or distribution in Malta of printed matter⁷⁵, or by means of any broadcast shall threaten insult or expose to hatred, persecution or contempt, a person or group of persons because of, inter alia, their race, creed, colour, nationality or national or ethnic origin, shall, on conviction, be liable to imprisonment for a term not exceeding three months and to a fine. Article 13(2) of the Broadcasting Act⁷⁶ further states that it shall be the duty of the Broadcasting Authority⁷⁷ to satisfy itself that, so far as possible, the programmes broadcast by persons providing sound or television broadcasting services in Malta comply with, amongst other, the requirement that nothing is included in the programmes which offends against religious sentiment, good

⁷² More information available at:

http://www.equality.gov.mt/filebank/AC2008_Racial%20and%20Ethnic%20Origin%20Equality%20Manual%20Toolkit.pdf

⁷³ Available at: www.ba-malta.org/file.aspx?f=597

⁷⁴ Chapter 248 of the Laws of Malta available at:

http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt248.pdf

⁷⁵ Irrespective of the place where such matter may originate,

⁷⁶ Chapter 350 of the Laws of Malta available at:

http://docs.justice.gov.mt/lom/legislation/english/leg/vol_9/chapt350.pdf

⁷⁷ A constitutional organ established under article 118 of the Constitution of Malta

taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling. The logical interpretation of this article is that it refers also to, for instance, incitement to racial hatred.

The requirements are therefore founded on these and other provisions of Maltese, international and European law and are intended “to assist local producers and broadcasters in their civic obligation to promote racial equality as well as when dealing with matters which might relate to racial hatred”.

An important feature of these requirements is that not only do they prohibit racism but they also impose a duty on broadcasters to be proactive by promoting racial equality in their programming and to foster a multicultural society. Furthermore all broadcasters must clearly state their position against racial discrimination. The Government Notice reaffirms the prohibition of illegal content whilst upholding the respect for human dignity. It clearly states that “programmes that are likely to stir up racial hatred should not be transmitted” and that “Programme schedules must give a fair reflection of the contribution of all races to society”. A further requirement is that the presentation or portrayal of people in a way which is likely to encourage denigration of or discrimination against any person or section of the Community on account of race, ethnicity, nationality or colour must be avoided. This requirement goes on to set its own limit by stating that “this requirement is not intended to prevent the broadcast of material which is factual, or the expression of genuinely held opinions in a news or current affairs programme, or in the legitimate context of a humorous, satirical or dramatic work. In line with an often quoted concern the requirements state that “reference to a person’s ethnic group, nationality, race or colour, must be made only when directly relevant to the event being reported.

The reason behind these requirements seems to be caught in article 5.2 when stating that “the broadcasting media must at all times be aware of the danger that arises when media, deliberately or by inadvertence encourages discrimination or intolerance”. With regard to racial hatred article 6.1 clearly stipulates that broadcasters must not air programmes which sanction, promote or glamorize violence based on race, nation or ethnic origin or colour. With regards to reporting of refugees the notice stipulates that “broadcasters must always consider whether mentioning names or visual images could lead to the identification and persecution of the persons concerned. Such identification, the requirement goes on to state might endanger the families and friends left behind.

6.2 Migration and integration

2007 saw the creation of the Organization for the Integration of Asylum Seekers within the Ministry for the Family and Social Solidarity “in order to maintain the professional and cohesive provision of services” which had so far taken place through various smaller entities within the same ministry. Among the main

responsibilities of OIWAS one finds, the coordination, management and care of the open centre network (including both residential homes and open centres), caring for vulnerable groups, helping to facilitate integration, liaising with NGOs, UNHCR and IOM, assisting and networking with other ministries, entities, and foreign bodies including ENARO. It is interesting to note that addressing racism and xenophobia is also listed as one of the tasks of the organization. Since this was the first year of operation the focus was on the management of open centres and NGOs are looking forward to more emphasis being placed on integration policy over the coming months and years.

Throughout the year, OIWAS recruited extensively and it now employs over 75 people including social workers and centre managers. Staff have also been given training by more experienced members of the organization. An important service run by OIWAS in 2007 was Customer Care, an office in the organization's headquarters where asylum seekers could ask questions about their situation and rights and entitlements. This service has now been discontinued in favour of delivery of adequate information at the various open centres.

Moreover, since the beginning of 2007, the policy changed and instead of providing free food supplies, the residents receive limited daily financial support ranging from approximately 3 Euros to 4.60 depending on their status. Considering the quality of the food distributed before this was a welcome improvement although concerns were raised about particular groups falling through the gaps of the new system (such as asylum seekers who are not boat people). People who move out of the open centres lose their entitlement to the grant as do people who start working. There are different arguments about the structure although the new system was, at least in principle, positively received.

2007 also saw substantial improvements within the Office of the Refugee Commission. In July 2007 a new commissioner was appointed who immediately introduced some welcome changes to the mechanisms of the office. The resources of the office of the Refugee Commission were increased which allowed for the employment of a cohort of 13 case workers (besides a core group of interpreters proficient in twelve languages) which in turn meant a reduction in the time spent waiting (often in detention) for the decision of the office. Case workers are now allocated cases from a particular country for a number of months which facilitates research and expertise in the particular situation of the country making for better decisions and better time management. The Preliminary Questionnaire which has so far only been available in English has been translated into eight languages making it easier for many asylum seekers to follow and understand⁷⁸. Furthermore, offices were set up in the detention centres where interviews can now be carried out whilst letter boxes have been installed in the centres where asylum seekers can place their application and which are collected (only) by office workers allowing for the deserved confidentiality. At the time of writing improvements had already left a mark on the

⁷⁸ Unpublished e-mail exchange dated 10th July 2008.

number of pending cases⁷⁹. In May 2008 the government proposed amendments to the Refugee Act which, at time of writing was still subject to parliamentary debate.

Legal Notice 266 of 2007 (Subsidiary Legislation 217.08⁸⁰) established the Board of Visitors for detained persons to be appointed annually by the Minister responsible for immigration. Article 3 of the same legal notice states that the board shall have, inter alia, the function of satisfying itself as to the treatment of the detainees, the state of the premises used as detention centre and the administration of the same centers. The board is also empowered to monitor the administration of the detention centers' disciplinary system, to advise the minister on any matter relating to the care of detainees, as well as to the organization and improvement of the detention centres and the detention service⁸¹. Another function of the board is to advise the minister on matters relating to work and activity to be performed by the detainees. More broadly, the board is to inquire into and report upon any matter which it deems proper, or the minister requests it, to enquire into.

The legal notice further implements Article 3 of the Optional Protocol to the United Nations Convention Against Torture by making the board the body of persons responsible for a National Preventive mechanism for the prevention of torture.

The board shall, furthermore, inform the Minister immediately of any abuse which comes to its knowledge and shall have the power to recommend to the appropriate authority the taking of disciplinary action against any officer. Furthermore, the board shall inspect the food of the detainees at regular intervals and shall also inquire into any information coming to its knowledge that a detainee's health (mental and physical) has been or is likely to be injuriously affected by any conditions of his detention. Whilst the setting up of the board was widely welcomed by NGOs working in the field, at the end of the period under review the Board was still commencing its work and therefore the effectiveness of the board can't be commented in the present report. The law stipulates that the board has to draft an annual report to the minister at the end of each year concerning the state of the detention centers and their administration and more generally about the performance of its functions as highlighted above and detailed in the legal notice.

⁷⁹ Home and Away; Interview with Mario Friggieri, Commissioner for Refugees published on Malta Today; Sunday 8th June 2008 available at: <http://www.maltatoday.com.mt/2008/06/08/interview.html> (accessed: 10th June 2008)

⁸⁰ Available at: <http://docs.justice.gov.mt/lom/Legislation/ENGLISH/SubLeg/217/08.pdf>

⁸¹ The Detention Service (DS) is a department that falls under the responsibility of the Ministry for Justice and Home Affairs made up of personnel seconded from the Police Force and the Armed forces of Malta under one command. The DS mission statement is to keep in custody in as humane a way as possible those persons declared to be irregular immigrants on arrival until such time as they are granted freedom of movement or are repatriated.

The “Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations”⁸² were also enacted in 2007 implementing Council Directive 2004/81/EC. These regulations give the Principal Immigration Officer⁸³ the power to “recommend to the Director”⁸⁴ the issuing of a residence permit for a third country national when it is clear that the permission to remain in Malta of the third country national may present an opportunity for the investigations or judicial proceedings, that the TCN intends to co-operate with the Principal Immigration Officer and that the third country national has severed all relations with the persons suspected of committing the offences of trafficking of persons or facilitating illegal immigration. A definition of cooperation is also given as being “the giving of information by the third country national to the immigration authorities related, inter alia, to his arrival in Malta as a victim of trafficking or related to his illegal arrival in Malta and includes, in particular, the names or persons of traffickers and their accomplices or details related to points of departure, which information leads to, or contributes significantly to, the tracing or prosecution of the trafficker”⁸⁵.

Besides the requirements for the applicability of the rights under the regulations the law stipulates a number of situations where the permit can be revoked and sets a reflection period for the person to decide whether or not he would like to cooperate. Special provisions relating to minors are also included in the notice acknowledging the particular situation of children victims of trafficking.

Furthermore, the International Organization for Migration organized a training session on trafficking for interested parties including the police force and NGOs. Moreover, The Trafficking in Persons report issued by the US Department of State reports that Malta’s Police Force and the Ministry for Social Policy formalized a Memorandum of Understanding expanding cooperation on identifying potential victims of trafficking and referring them to available services in March 2008. The Legal Notice was a welcome improvement on the existing framework and NGOs are now looking forward to the creation or rather clarification of the procedures and mechanisms for dealing with victims of trafficking, who are a particularly vulnerable group in need of extra assistance. The United Nations’ Refugee Agency (UNHCR) has complained that the refugee specific provisions elements of the directive were omitted making the regulations close to impossible for refugees to fulfil. Family reunification is considered another key element to a sense of stability and integration.

In line with The Common Basic Principles of Integration (CBPI) changes were effected in the field of employment whereby people with Temporary Humanitarian Protection now receive the work permit in their own name (and not in the name of their employer) which lessens the risk of abuse by employers. Provision of introductory information (as required by CBPI) was lacking although a project on

⁸² Legal Notice 175 of 2007 transposing Council Directive 2004/81/EC

⁸³ The Commissioner of Police

⁸⁴ Being the director for Citizenship and Expatriate Affairs

⁸⁵ Regulation 2 of Legal Notice 175 of 2007

these lines was in the pipeline at time of writing. Interaction between immigrants and citizens remained largely coincidental, happening on the workplace or in the local grocery store. Few efforts were made to have more formal interactions aimed at bringing down the barriers of “us and them”. A number of NGOs organized events in open centres such as ethnic meals or concerns with the aim of allowing a different perspective of migrants. Moreover, the practice of diverse religions and cultures is protected by the Maltese constitution and was enjoyed freely by migrants in Malta.

In a welcome decision by the Ministry for Justice and Home Affairs the ban on the media from entering detention centres was lifted allowing for greater scrutiny of the centres.

6.3 Criminal justice

6.3.1 Racism as a crime

No further amendments were introduced in this regard in the period under review although Malta’s legal regime is quite strong as it is. The Criminal Code provides that the incitement to racial hatred is a criminal offence punishable by imprisonment from 6 to 18 months. Article 222A of the same code also establishes racial and religious motivation as an aggravating circumstance for crimes against the person.

Many cases of threats and harassment go unreported as very often members of ethnic minorities and especially “asylum seekers” are unwilling to put forward a complaint for fear of reprisals or because they feel that nothing will come out of it.

6.3.2 Counter terrorism

Whilst the debate on migration is often couched in terms of national security, terrorism is not really an issue on the national agenda. Whilst Malta has incorporated the obligations arising from Security Council Resolution 1373(2001) no further information is available in this regard. The Criminal Law provisions were not used in the period under review and no information or updates are available in this regard.

6.3.3 Racial profiling

The use of racial profiling was not subject of any relevant debate in the course of 2007. No information is available on the subject.

6.4 Social inclusion

Immigration and ethnic minorities are given specific mention in the National Action Plan on Social Inclusion with a number of projects proposed therein to assist the integration of this at risk group into Maltese society. Funding initiatives are generally restricted to European Union Funding Programmes including the European Refugee Fund and the European Fund for the Integration of Third Country Nationals.

Projects include one to be lead by the National Commission for the Promotion of Equality which will develop and promote knowledge and understanding on the six equality grounds recognized in the Amsterdam Treaty ; gender, racial and ethnic origin, religion or belief, sexual orientation, disability and age, through an open air exhibition that will tour various localities around Malta. Research will be conducted to establish the pros and cons of diversity and the practice of equality policies at the workplace. The research will also explore the difficulties faced by disadvantaged groups and make recommendations for their redress. A TV series will also be designed to discuss diversity issues.

Another project mentioned in the National Action Plan on Social Inclusion aims to integrate persons of a socially disadvantaged racial or ethnic origin into the Maltese workforce. It will provide training sessions into the Maltese and English language, Maltese culture and the legal framework with particular emphasis on the employment and Industrial Relations Act. The persons trained will also be financially supported to take additional training opportunities that will be made available by Malta College of Arts Science and Technology (MCAST) and the Employment and Training Corporation (ETC).

In the implementation report which is part of the new plan mention is made of various policy initiatives which have been discussed in this or previous shadow reports.

Access to mainstream services, whilst a right in principle, was often difficult for people from ethnic minorities and in particular “asylum seekers”. As described elsewhere, such mainstream services were rarely prepared for the diversity of their client group and the specific needs of the group in question were sometimes not adequately met.

Eliminating the language barriers and providing information and assistance to asylum seekers is key to eliminate some of the barriers faced by these people.

Furthermore, it is important to start taking the opinions of migrants and community organizations into account in discussing issues linked to integration and migration. Empowerment is key and the proposal by the Organization for the

Integration and Welfare of Asylum Seekers (OIWAS to) set up centre councils⁸⁶ was indeed welcome.

⁸⁶ At time of writing the proposal was still being discussed and had not yet been implemented.

7. National recommendations

7.1 General

- Policies and strategies need to continue to be developed in a consistent manner, underpinned by fundamental values of respect for human rights and human dignity
- Develop consistent data collection mechanisms which identify key problems.
- The legal protections guaranteed in the various legal instruments implemented in 2007 and before need to be made accessible to the potential victims through information provision and accessible services
- Tackle issues of multiple discrimination
- Limit as much as possible the use of exclusion of discrimination based on nationality to ensure that the protection afforded by the Race Equality Directive and the National implementing legislation is effectively enjoyed by the client group.

7.2 Anti discrimination

- Draw up, adopt and implement a National Action Plan Against Racism in line with the Durban Declaration 2001 providing a strategic direction to combat discrimination whilst developing a more inclusive, intercultural society in Malta based on a commitment to inclusion by design, not as an add-on or afterthought and based on policies which promote interaction, equality of opportunity, understanding and respect
- Continue and increase efforts to tackle xenophobia through information and educational campaigns.
- Ensure that the extended remit of the National Commission for the Promotion of Equality is known to potential victims of discrimination. All efforts should be made to make the complaints procedure accessible to the target groups, including the translation of the complaints form into other languages and the provision of training to individuals working directly with migrants⁸⁷ on how the form should be completed in order to provide added assistance to victims.

7.3 Migration and integration

- Develop, in collaboration with all the relevant stakeholders an integration strategy in line with the Common Basic Principles of integration which understands integration as a two way process. All government departments need to be part of the integration

⁸⁷ Both governmental and non governmental

strategy as services are mainstreamed. Such strategy should be concluded and publicised as soon as possible.

- Ensure that the Refugee and Immigration legislation is underpinned by the fundamental values of equality, human rights and human dignity
- Detention should be restricted to the absolute minimum and the time spent therein should be exploited to prepare detainees for integration.
- Promote the integration of “asylum seekers” into the Maltese workforce and put in place measures which protect such workers from discrimination and exploitation
- Strengthen the Organization for the Integration and Welfare of Asylum Seekers to make sure it is in a position to undertake the extensive responsibilities entrusted thereto
- Ensure that information about Malta and rights and responsibilities is given to Asylum Seekers in a language they understand
- Effectively support migrants seeking accommodation, medical attention and education.

7.4 Criminal justice

7.4.1 Racism as a crime

- Ratify the Convention on Cyber-Crime and its additional protocol
- Hate Speech including on the internet should be criminalised

7.4.3 Racial profiling

- Review the present Police Training to ensure that police officers are trained to adhere to their responsibilities without prejudice based on racial or ethnic origin in line with the Code of Ethics.

7.5 Social inclusion

- Ensure that members of ethnic minority and specifically asylum seekers do not become destitute and/or homeless
- Ensure that mainstream services understand and respect the specific needs of migrants and other members of ethnic and religious minorities. A pool of trained translators should be set up to ensure that language barriers do not exclude such minorities from the services to which they are entitled

8. Conclusion

Following extensive pressure by Civil Society, 2007 saw the implementation of the non-employment aspects of the race equality directive and the setting up of a race equality body. This enhanced the legislative framework which thus far lacked an important element giving Malta a strong legislative framework on both a criminal and a civil law level. Efforts are now required to implement the provisions of law and ensure that these legal requirements are known to everyone making Malta a country where racism and discrimination is neither welcome nor tolerated.

2007 also noted a start to a public reaction to racism, where a number of individuals reacted to cases of racism making it clear that to them racism was not acceptable. Clearly, awareness raising by government and NGOs was having the desired effect.

A number of European Directives relating to family reunification and human trafficking were also transposed into Maltese law. Efforts should not be put in place to ensure that these rights are accessible to the people who need them. Efforts should be made to create an integration policy. Efforts should include preparing mainstream services for dealing with foreign clients as well as preparing the Maltese population for the diversity that is now part of our country.

Alternatives to detention should be considered whilst governmental organizations like the Organization for the Integration and Welfare of Asylum Seekers are further strengthened to be in a position to fully vindicate the responsibilities entrusted to them. The Provision of accessible information is crucial to ensure integration.

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The author would like to thank all those who assisted in the writing of the report for their valuable contributions given either in formal or informal interviews. These include people within various government departments, authorities and NGOs. The report would not have been possible were it not for their assistance and expertise.

10. Annex 1: List of abbreviations and terminology

| AI: Amnesty International

| IOM: International Organization for Migration

| MOH: Ministry of Health

| MDM: Medecines du Monde

| UNHCR: United National High Commissioner for Refugees

OIWAS: Organization for the Integration and Welfare of Asylum Seekers.



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