



European Network Against Racism
Réseau européen contre le racisme

ENAR Shadow Report 2012-2013

ENAR SHADOW REPORT

**Racism and related discriminatory practices in
employment 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.

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 in 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 racism. 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, March 2014, with the support of the European Union Programme for Employment and Social Solidarity - PROGRESS (2007-2013), the Open Society Foundations, and the ENAR Foundation.

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Executive summary

Malta has a strong equality law framework that prohibits direct and indirect discrimination, as well as harassment and victimisation. Yet migrant workers continue to face discrimination both in accessing employment and within employment. Difficulties in accessing employment relate to the stereotyping of migrant workers, difficulties in acquiring the employment licences, the nature of the labour market and lack of recognition of foreign qualifications. Within employment, discrimination includes failure to pay wages and benefits, failure to abide by health and safety regulations, as well as a concentration of migrant workers in the informal economy. There is no evidence that the situation has improved over the reporting period. On the contrary it appears that many of the problems and concerns raised in previous reports remain pertinent.

Recommendations

The Maltese Authorities should, in collaboration with all relevant stakeholders:

- Update, adopt and implement, without delay, the National Action Plan Against Racism and Xenophobia commissioned by NCPE. This will help ensure that issues of discrimination and racism are dealt with holistically and strategically rather than in isolated clusters and/or sectors. Equality should be mainstreamed into all areas of policy.
- Commission a review of the work of the National Commission for the Promotion of Equality, including a comparative assessment with the work conducted by similar equality bodies in other European Countries, with a view of enhancing and strengthening the NCPE's role. In particular, efforts should be made to ensure that NCPE is, and appears to be, independent and impartial and that cases of racial discrimination are efficiently and effectively addressed.
- Develop initiatives to measure equality as part of the positive duty to combat racial discrimination, and to promote equality and social inclusion of ethnic and religious minorities. Data collection and processing of equality data should be conducted in full compliance with data protection safeguards and in consultation with groups most at risk of discrimination.
- Develop a clearer understanding of discrimination as experienced by ethnic and religious minorities with a view of informing policy developments and awareness raising.
- Develop an education and employment strategy for migrants, with a view to facilitating migrants' entry into the Maltese labour market through, amongst others, recognition of previous qualifications as well as previous work experience and the development of new skills. Such a strategy could be part of a broader integration policy for Malta.
- Support ongoing research, and promote further research, in the area of migrant labour and entrepreneurship in order to identify trends and issues with a view of developing effective strategies to address concerns and promote developments.

- Extend and improve efforts to raise awareness amongst ethnic and religious minorities, rights and remedies available under national law and the role of the NCPE in supporting victims of discrimination.
- Extend the Equality Mark initiative to cover other areas of equality including on grounds of racial or ethnic origin and religion.

Trade Unions and Civil Society Organizations should:

- Work together to develop effective strategies for the inclusion of minorities (particularly migrants) in the labor market, including enhancing employers', employees' and other stakeholders' understanding of rights and responsibilities under national and European legislation.
- Engage more effectively with issues of discrimination in employment, including by raising awareness with members and populations at risk, supporting the reporting of discrimination and follow up thereon, and through the representation of migrant workers' interests
- Raise awareness that equality at work is not just a matter of preventing discrimination from happening but about ensuring the workplace caters for the needs of an increasingly diverse workforce. Accommodating diversity at work will result in developing workers' potential, employee retention, a safe working environment and a better work-life balance.

Table of contents

Executive summary	2
1. Introduction	5
1.1 Definitions	5
1.2 Statistical overview	6
2. The context: labour market and legal framework	8
2.1 Outlook of the labour market	8
2.2 Legal framework	11
3. Manifestations of racism and structural discrimination in employment	16
3.1 Perceptions of discrimination in employment.....	16
3.2 Incidence of discrimination in employment	17
3.3 Patterns of inequality over the course of time	18
3.4 Discrimination in access to employment	19
3.5 Discrimination in the workplace	23
3.6 Economic sectors	24
3.7 Geographical areas and relevant actors	24
4. Tackling the challenges	25
4.1 Public policies.....	25
4.2 Access to effective remedies	25
4.3 Civil society initiatives	30
5. Conclusions and recommendations	32
5.1 Political and societal developments related to racism and discrimination	32
5.2 Conclusions and recommendations.....	33
6. Bibliography.....	35

1. Introduction

The experience of racism and inequality is an ongoing feature of the lives of minority groups in Malta. Despite legislation and policies protecting individuals from racism and discrimination, the experience of individuals and groups in social life as well as in the sphere of employment remains largely unaccounted for. Data is based on reported cases, rather than sweeping studies that adequately cover the population in a coherent and comprehensive manner. This Report provides an opportunity to engage with existing data, as well as to identify lacunae in legislation, policy and research.

This Report is based on a number of methods, primarily that of drawing upon existing resources (in terms of data and reports written in the area), as well as the experience of a network of researchers who have worked on the ground in this field. Consultations with researchers and other NGO representatives, interviews with representatives of communities vulnerable to discrimination as well as migrants were carried out.

1.1 Definitions

Issues of race and ethnicity are not defined under Maltese law. However Malta is party to the International Convention on the Elimination of all forms of Racial Discrimination which defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The Equal Treatment of Persons Order¹ discrimination is defined as including both direct and indirect discrimination. Direct discrimination is taken to occur where a person is treated less favourably than another person is, has been, or would be, treated in a comparable situation. Indirect discrimination refers to situation where an apparently neutral provision, criterion or practice would put a person at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Harassment is deemed to take place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.²

The Immigration Act sets out the definition of prohibited immigrants, those who land on, or are in, Malta “without leave from the Principal Immigration Officer”.³ The notion of ‘citizenship’ is prevalent in Maltese legislation, yet is not defined in any way, which renders it a notion of provenance rather than status or rights. The National Statistics Office defines citizens as individuals who have a particular legal bond between themselves and their State.⁴

The term ‘nationality’ is not used in Maltese legislation, although the notion of national origin is indeed utilized, such as in the criminalization of the trivialization of genocide and

¹ Legal Notice 85 of 2007.

² Ibid, Article 2

³ Art. 5(1), Chapter 217 of the Laws of Malta. This legislation may be viewed [here](#).

⁴ National Statistics Office Malta, Census of Population and Housing 2011, Preliminary Report, 2012

war crimes against a group defined by, inter alia, ethnicity, national or ethnic origin (this when such trivialization is likely to incite violence against such a group).⁵

The only legal and policy distinction in terms of rights and duties of individuals is that which is made between those who are citizens of Malta and those who are not. The Citizenship Act establishes the criteria for the acquisition, deprivation and renunciation of citizenship; however, there is no distinction made between non-nationals who are of an ethnic minority background and those who are not; or between nationals of a minority background and those who are not. There are therefore no legal or policy definitions or references to national minorities and ethnic minorities, and the notion of generations of migrants is only applicable insofar as the acquisition of Maltese citizenship by second generation Maltese emigrants is concerned.

1.2 Statistical overview

Malta is the smallest, yet most densely populated country in the European Union. The population on December 31st 2012 stood at 421,230, which represented a 0.9% increase over the previous year.⁶ The two key sources of data on the composition of the population in Malta are the National Census which is held every ten years (with the most recent census being held in 2011), and the annually collected and published Demographic Review. Both of these datasets are collected and analyzed by the National Statistics Office.

Unfortunately, there are no statistics on the ethnicity of individuals on the islands, although citizenship is indeed recorded in official statistics. This means that whilst 95% of the population was recorded in the 2012 demographic review as being Maltese citizens, there is no indication or means of addressing the question of how many pertain to, or identify with, minority group status for either ethnic or religious reasons. The number of non-Maltese nationals in Malta has been rising slowly, to 4.8% of the total population in 2012 from 3% in 2005.⁷ The largest group of non-Maltese citizens are British citizens.⁸

On a demographic level, the largest proportion of non-Maltese nationals are males (52.9 %) and are slightly younger, with an average age of 39.5 years. In addition, a higher proportion of non-Maltese nationals are observed in the younger age groups when compared to Maltese nationals. In particular, nearly a fourth of them are between 25 and 34 years, compared to 14.1 % of Maltese nationals.⁹

On a regional basis, a higher proportion of non-Maltese nationals reside in the Northern Harbour, South Eastern and Northern Districts. In particular, the majority of non-Maltese residents (37.6%) reside in the Northern Harbour District as their Maltese counterparts (28.4%), but a smaller percentage of non-Maltese residents reside in the Southern Harbour District (8% compared to 19.6% for Maltese nationals).¹⁰

Statistics are also collected on the gainfully occupied population, which, as at December

⁵ Article 82B, Chapter 9 of the Laws of Malta. This legislation may be viewed [here](#).

⁶ National Statistics Office Malta : News Release 134/2013 (11th July 2013) *World Population Day 2013*.

⁷ National Statistics Office Malta, *Census of Population and Housing 2011 : Preliminary Report 2012*

⁸ National Statistics Office Malta, *Census of Population and Housing 2011, Volume 1: Population 2014*

⁹ National Statistics Office Malta, *Census of Population and Housing 2011 : Preliminary Report 2012*

¹⁰ Ibid.

2012¹¹, stated that 159,775 individuals in Malta were gainfully employed (in both full and part time work), although such statistics are segregated by economic sector and not by employee characteristics (gender, ethnicity, nationality, etc.).

In 2013, Malta recorded the third largest number of immigrants (13) per 1000 persons in the EU¹² and the fourth highest naturalization rate in the EU.¹³ The highest numbers of asylum applications per million inhabitants (4542) were observed in Malta, whilst Malta also had the fifth highest rate of residence permits issued per 1000 inhabitants in the EU.¹⁴ The job vacancy rate in Malta rose in the third quarter of 2012 to 3.7%.¹⁵

The Constitution of Malta states that the “religion of Malta is the Roman Catholic Apostolic Religion”, and that this same church has “the duty and the right to teach” right and wrong principles, as well as that religious teaching of such religion shall be a part of compulsory education in all State schools.¹⁶ However, the Constitution also provides that every person has “full freedom of conscience”¹⁷, which includes freedom of religious worship, and that no person “shall be required to receive instruction in religion or to show knowledge or proficiency in religion”.¹⁸

There are few data sources on religion in Malta. The National Census does not regularly collect data on religion or religious affiliation. The Malta 2012 International Religious Freedom Report¹⁹ states that 91% of the population is Roman Catholic (on the basis of 2006 statistics), and also states that less than 5% of the population identifies with other religions. The report estimates that there are 6,000 Muslims in Malta and 100 Jews. The same report states that there were no reports of abuse of religious freedom in 2011-2012.

Ethnicity in Malta is a somewhat controversial yet largely un-researched area. Some demographic summaries list ethnicity in Malta as pertaining to the Mediterranean group, linking this to the Carthaginian and Phoenician origins of the Maltese²⁰. Yet no reference is made to other ethnic influences and/or groups, some of which are owed to Malta’s colonial history or to more recent trends; indeed, little is quantitatively known about the Arab, Indian, and British (amongst others) communities – second, third, fourth generations – who have resided in Malta and who are Maltese citizens.

¹¹ National Statistics Office Malta, NSO News Release 088/2013 (7th May 2013) Gainfully Occupied Population: December 2012

¹² Eurostat (2013) *European Social Statistics 2013 Edition*, European Commission. The publication may be viewed [here](#).

¹³ Eurostat (2013) *European Social Statistics 2013 Edition*, European Commission. The publication may be viewed [here](#).

¹⁴ Eurostat (2013) *European Social Statistics 2013 Edition*, European Commission. The publication may be viewed [here](#).

¹⁵ Eurostat (2013) *European Social Statistics 2013 Edition*, European Commission. The publication may be viewed [here](#).

¹⁶ The Constitution of Malta, Chapter 1, Article 2.

¹⁷ The Constitution of Malta, Chapter 4, Article 32(b)

¹⁸ The Constitution of Malta, Chapter 4, Article 40(2).

¹⁹ United States Department of State (2012), *Malta 2012 International Religious Freedom Report*

²⁰ See CIA World Factbook [here](#).

2. The context: labour market and legal framework

2.1 Outlook of the labour market

The Maltese economy had, until the end of the Second World War, depended largely on the islands' strategic geographic position in both trade and military terms. After independence in 1964, the economy shifted towards manufacturing and service provision, particularly in the area of tourism. Malta became a member of the European Union in 2004 and joined the Eurozone in 2008, developments which have been paralleled by processes of privatization and economic liberalization. The past few years have also seen a shift in honing the knowledge economy, with a focus on the development of the IT sector.

In the first quarter of 2013, Malta had an unemployment rate of 6.1%, whereby the rate for males (6.3%) was higher than that of females (5.7%). Whilst the overall rate of unemployment has remained the same compared to the same period of time in the previous year, the female unemployment rate has fallen by over 1%, whilst that for men has risen by less than 1%.

Labour Status	Sex				Total	
	Males		Females			
	No	%	No	%	No	%
January-March 2013						
Employed	109,103	93.7	65,071	94.3	174,174	93.9
Unemployed	7,381	6.3	3,904	5.7	11,285	6.1
Total	116,484	100.0	68,975	100.0	185,459	100.0
January-March (revised) 2012						
Employed	108,934	94.4	62,336	93.2	171,270	93.9
Unemployed	6,491	5.6	4,549	6.8	11,040	6.1
Total	115,425	100.0	66,885	100.0	182,310	100.0

Figure 1 - Labour Force Distribution by Gender (Source: NSO Labour Force Survey Q1 2013)

Malta's leading economic sector (in terms of economic activity) is the services sector, followed closely by the public sector. The manufacturing industry also plays an active role. What is evident in these types of activity is the gender bias in these key industries. Men outnumber women 3:1 in the manufacturing industry; whilst in public administration, women outnumber men 2:1²¹.

²¹ It must be noted that this set of statistics, whilst being highly informative, holds a key drawback of being based on a household-sample data collection method. Hence, for example, whilst there are no numbers for economic activity in the real estate sector, this is only an indication of the fact that the sample included no households that are active in the sector. It should therefore not be taken as an indication that there is no economic activity in this sector whatsoever (particularly given that this sector in fact comprises 5.2% of GDP).

Economic Activity	Sex				Total	
	Males		Females			
	No	%	No	%	No	%
Agriculture, forestry and fishing	1,534*	1.4*	:	:	1,678*	1.0*
Manufacturing, mining and quarrying and other industry	19,759	18.1	6,437	9.9	26,196	15.0
Construction	10,710	9.8	:	:	11,681	6.7
Wholesale and retail trade, transportation and storage, accommodation and food service activities	34,526	31.6	15,459	23.8	49,985	28.7
Information and communication	5,594	5.1	2,379	3.7	7,973	4.6
Financial and insurance activities	3,706	3.4	5,057	7.8	8,763	5.0
Real estate activities	:	:	:	:	:	:
Professional, scientific, technical, administration and support service activities	6,941	6.4	4,293	6.6	11,234	6.4
Public administration, defence, education, human health and social work activities	21,286	19.5	26,053	40.0	47,339	27.2
Other services	4,567	4.2	4,046	6.2	8,613	4.9
Total	109,103	100.0	65,071	100.0	174,174	100.0

Figure 2 - Labour Force Distribution by Economic Activity (Source: NSO Labour Force Survey Q1 2013)

Schneider (2011) estimated Malta's shadow economy as comprising about a fourth (25.8%) of the national GDP.²² Debono notes how 'immigrants from Sub-Saharan Africa have over the past years fuelled Malta's shadow economy by being used as a cheap and easily disposable type of labour.'²³ Many migrants, and specifically beneficiaries of international protection, tend to find employment that is short term in industries notorious for their reliance on informal workers. These include the construction and the hospitality industry. The ENAR Shadow Report found that "whilst asylum seekers continue to register with the Employment Training Centre (ETC) and manage to obtain a work permit, they have still found that the most effective way of finding work is either through connections - tapping into social capital – or by waiting by the side of a roundabout in the hope of being picked up for a 'one off' job."²⁴ This dynamic of recruitment through friends or from the roundabout is conducive to greater representation of migrant workers within the informal economy. The situation has not changed significantly over the reporting period.

It is pertinent to note that in 2011 the Maltese authorities transposed into Maltese law the provisions of the Employer Sanctions Directive.²⁵ The regulations, entitled "Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations, 2011" provide for penalties for employers found guilty of the offence of employing undocumented migrants.²⁶ The penalties include fines, disqualification from public funds and public contracts, and even the possible revocation of their trade licence or the closure of their commercial activity.

²² Schneider, F. (2011), *The Shadow Economy in Europe 2011*, Johannes Kepler Universitat Linz

²³ Debono, M. (2012), *Undeclared Work Malta : Update 2012*, European Employment Observatory, (p.8)

²⁴ Gauci, J.P. & Pisani. M. (2013), 'ENAR Shadow Report 2011-2012 : Racism and Related Discriminatory Practices in Malta', European Network Against Racism, (p.17-18)

²⁵ Directive 2009/52/EC of the European Parliament and of the Council of 18th June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals', 18 June 2009.

²⁶ Ibid.

The general debate around immigration indicates that persons who have been through the asylum process are in the most unfavourable position with regards to employment. They tend to suffer the most discrimination, both in accessing employment and within employment itself. Statistical evidence for these impressions does not, however, exist. Given that a large number of persons who have been through the asylum process are heavily represented in the informal economy, accurate statistics with regards to their employment remain out of reach. The Migrant Integration Policy Index (MIPEX) states that the unemployment rate for Third Country Nationals in Malta is not available (as at 2009). Unemployment statistics available through the National Statistics Office are largely dependent on the Employment and Training Corporation (ETC) and the corresponding number of individuals on the unemployment register (which in itself is not necessarily reflective of actual unemployment statistics). Furthermore, existing statistics make no distinction between those who are foreign-born, and those who are refugees or who have been granted some form of international protection. These limitations must necessarily be taken into consideration, particularly when attempting to gauge the current scenario of migrant unemployment. Furthermore, statistics on unemployment and type of employment are not disaggregated by ethnic or religious background, and it is therefore difficult to determine whether particular ethnic or religious groups are faring better or worse than others. Available statistics relate to the number of people having the permits to work, rather than to the number of people actually working. As noted above, persons who have been through the asylum process are far more likely to work in industries where unfavourable conditions are prevalent. There is no data available on economic changes and/or advantages to those who acquire citizenship insofar as economic activity is concerned.

Malta appears to be resilient in the face of the financial crisis, particularly due to the service and maritime sectors' ongoing strength, as well as the banking sector's robust and traditional structure, which have proven to be relatively unaffected by the crisis.²⁷ Malta has continued to see a conservative rate of growth throughout the crisis, with a real growth of 0.8% in 2012, although this is a slow-down from a growth of 1.7% in 2011.²⁸ In Q1 of 2013, the Maltese economy grew by 1.6%, making it the best performer in the EU.²⁹ Gross debt keeps increasing, and was at 72.1% of GDP in 2012.³⁰ Throughout the crisis, it has been noted that women have not been particularly adversely affected; in fact, women's participation has slowly been increasing and is expected to continue to do so in the coming months and years.

Nonetheless, Malta still has the largest employment gap in the European Union, with a gender gap of 30.2% in 2012,³¹ and the lowest rate of female full time employment (43%).³²

²⁷ 'Maltese economy's 'resilience' in financial crisis underscored'. The Malta Independent, Wednesday 29th May 2013. The article may be viewed [here](#). See also Press Release announcing 'IMF Executive Board Concludes 2013 Article IV Consultation with Malta.' Press Release No. 13/254. July 12, 2013. The article may be viewed [here](#).

²⁸ European Commission Spring Forecast (2013), *Malta: Subdued investment holds back growth*, European Commission. The report may be viewed [here](#).

²⁹ NSO News Release 110/2013, Gross Domestic Product Q1/2013, 6th June 2013. The news release may be viewed [here](#).

³⁰ NSO News Release 135/2013, *Structure of General Government Debt: 2012*, 12th July 2013. The news release may be viewed [here](#).

³¹ European Commission Eurostat (2013) *People Outside the Labour Market*. Main statistical findings may be viewed [here](#).

³² European Commission, Europe 2020 (2013), *Female Labour Market Participation* (Key areas: Comparing Member State's performances). This report may be viewed [here](#).

Family responsibility is the main cause of inactivity for 41.6% of women aged 25-54, although Malta also proved to have the highest percentage of inactive women in the 55-64 age group (83.2%).³³ A number of measures have been taken to increase the participation of women in the labour market, including an increase to the rate of children allowance for parents, and an improvement in child care facilities.³⁴

There is no data that segregates female migrant or ethnic minority participation in the labour market, and no data available that allows extrapolations and/or estimates of migrant or ethnic minority women's participation in the labour market. Anecdotal information and data from interviews indicates that whereas male immigrants are visible in seeking employment through practices such as waiting outside Open Centres for potential casual labour, this is not a practice shared by female migrants, who seek employment through far less visible and informal channels, and is more closely linked to domestic jobs and roles.

There is a deficiency in the collection and provision of data in the area. The Labour Force Survey, which is collected annually by the National Statistics Office, is a private household based survey, and therefore excludes asylum seekers residing in open centres (the number of which was 1,194 in 2013).³⁵ UNHCR also estimates that approximately 30% of all asylum seekers who have arrived in Malta since 2002 (a total of 18,116) remain in Malta, hence an estimate of 5,434 individuals; yet little is known of their residential arrangements, and hence how many such migrants are covered in these forms of data collection.

Data disaggregated by race is missing across the board, and whilst some statistics are provided in terms of legal status, these fall short of providing an adequate and nuanced understanding of the situation of ethnic and religious minorities in Malta.

2.2 Legal framework

Maltese legislation currently makes the following provisions with regards to the legal prohibition of various forms of discrimination. A number of the provisions outlined below are specific to the field of employment, and provide legal definitions of what is meant by 'discrimination,' and how these definitions are applicable within the current legal framework.

Chapter	Title	Type	Year	Key Points
Constitution	Maltese Constitution	National Constitution	1964	Article 45(3) prohibits discrimination on the grounds of, inter alia, sex, place of origin, race, colour or creed

³³ European Commission Eurostat (2013) *People Outside the Labour Market*. Main statistical findings may be viewed [here](#).

³⁴ European Union: European Platform for Investing in Children (2014) *Malta: Empowering Children and Investing in their Well-Being*. The website may be viewed [here](#).

³⁵ UNHCR Asylum Trends 2013, which may be viewed [here](#).

Chapter 9	Criminal Code	Legislative Act	1954	Article 82A criminalizes racial hatred; Article 82B criminalizes the trivialization of genocide, crimes against humanity and war crimes if these are carried out in a way likely to incite violence against groups of a particular race, colour, religion, descent or national or ethnic origin; Article 83B renders racial aggravation or xenophobic motives as an aggravation by two degrees of any punishable offence under the same Code
Legal Notice 85 of 2007	Equal Treatment of Persons Order	Subsidiary Legislation	2007	Implements Council Directive 2000/43/EC
Chapter 452	Employment and Industrial Relations Act	Legislative Act	2002	Enforces the principle of equal work - equal pay; Implements Council Directives 2000/78/EC and 2000/43/EC
Chapter 319	European Convention Act	Legislative Act	1987	Renders Article 14 of the European Convention invocable and enforceable by Maltese Courts
Legal Notice 461 of 2004	Equal Treatment in Employment Regulations	Subsidiary Legislation	2004	Puts into effect equal treatment and the minimum requirements to combat discrimination on the grounds of, inter alia, religion or religious belief and racial or ethnic origin; Defines discriminatory treatment as distinction, exclusion, restriction or difference in treatment; Refers to discrimination that is both direct and indirect

Legal Notice 54 of 2007	Extension of Applicability to Service with Government Regulations (2007)	Subsidiary Legislation	2007	Extends the applicability of the Equal Treatment in Employment Regulations to service with the Government
Chapter 456	Equality for Men and Women Act	Legislative Act	2003	Article 2(1) - Deals with discrimination based on sex or because of family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, or gender identity; Defines discrimination as the giving of less favourable treatment

Article 45 of the Maltese Constitution (1964) provides for the principle of equal treatment on the ground of race, place of origin, political opinions, colour, creed or sex. It further provides that no legislation in Malta shall promulgate discriminatory provisions, whether of itself or in its effect. Through the European Convention Act (1987), Article 14 of the European Convention on Human Rights became justiciable before the Maltese Courts. At law, everyone has access to the courts to enforce these rights.

The Equality between Men and Women Act, first enacted in 2003 and subsequently amended on a number of occasions until 2012, provides for the implementation of the principle of equal treatment and the setting up of the equality body, namely the National Commission for the Promotion of Equality, to which we return later in this report. The Act was originally intended to cover gender discrimination, and has since been amended to cover discrimination on the basis of sex, family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, and gender identity. It defines discrimination broadly as the giving of less favourable treatment, directly or indirectly. This includes the treatment of a person in a less favourable manner than another person is, has been, or would be treated on these grounds. The Act also holds that:

“2. (3) Any treatment based on a provision, criterion or practice which would put persons at a particular disadvantage compared with persons of the other sex or of the same sex or sexual orientation, age, religion or belief, racial or ethnic origin, or gender identity, unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex.”³⁶

Specifically on discrimination in the labour market, the Act provides that:

“4. (1) It shall be unlawful for employers to discriminate, directly or indirectly, against a person in the arrangements made to determine or in determining who

³⁶ Art. 2(3), Chapter 456 of the Laws of Malta.

should be offered employment³⁷ or in the terms and conditions on which the employment is offered or in the determination of who should be dismissed from employment.”³⁸

It is interesting to note that the equality provision of the Employment and Industrial relations Act is limited to discrimination on the basis of sex, however this is supplemented by Legal Notice 461 of 2004 (Equal Treatment in Employment Regulations) which sought to bridge this lacuna with regards to the other grounds of discrimination. The stated purpose of these regulations was to:

“Put into effect the principle of equal treatment in relation to employment by laying down minimum requirements to combat discriminatory treatment on the grounds of religion or religious belief, disability, age, sex, sexual orientation, and racial or ethnic origin.”³⁹

The scope of the regulations is also broader, with the regulations being applicable to all persons in relation to:⁴⁰

- (a) Conditions for access to employment, including the advertising of opportunities for employment, selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotions;*
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;*
- (c) employment and conditions of employment, including remuneration and dismissals;*
- (d) membership of, and involvement in, any organization of employees and employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations.*

The general principle is set out in Article 3:

*“It shall be unlawful for a person to subject another person to discriminatory treatment, whether directly or indirectly,⁴¹ on the grounds of a particular **religion or religious belief**, disability, age, sex, including discriminatory treatment related to*

³⁷ For the purposes of the Act, the term "employment" means any gainful activity including self-employment and includes promotion and transfer to another post, as well as access to vocational or professional training, the duration of the employment or its extension or termination;

³⁸ Article 4(1), Chapter 456 of the Laws of Malta

³⁹ Article 1(3), Legal Notice 461 of 2004

⁴⁰ Article 1(4), Legal Notice 461 of 2004

⁴¹ Article 3(2), Legal Notice 461 of 2004 provides that “For the purposes of these regulations, (a) direct discriminatory treatment shall be taken to occur where one person is treated less favourably than another is, has been, or would be, treated in a comparable situation on any of the grounds referred to in sub-regulation (1); (b) indirect discriminatory treatment shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular race or ethnic origin or having a particular religion or religious belief, disability, age, sex, or sexual orientation at a disadvantage when compared with other persons unless -

- (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary; or
- (ii) with regards to persons with a particular disability, the employer or any person or organization to whom these regulations apply, is obliged, under any law, to take appropriate measures in line with the principles contained in regulation 4A so as to eliminate disadvantages entailed by such provision, criterion or practice.”

*pregnancy or maternity leave as referred to in the Protection of Maternity (Employment) Regulations, sexual orientation, or **racial or ethnic origin** in any situation referred to in regulation 1(4)."*⁴²

The same regulations also prohibit harassment on the same grounds listed above. Article 3(3) provides that:

"No person shall harass another person by subjecting him to unwanted conduct or requests relating to any of the grounds in sub-regulation (1), when such conduct or request takes place with the purpose, or which has the effect of -

- a) violating the dignity of the person who is so subjected, and*
- b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected."*⁴³

The Equal Treatment of Persons Order⁴⁴ provides that discrimination is also deemed to occur in situations of instructions to discriminate,⁴⁵ or when those to whom the regulations apply neglect their obligation to suppress any form of harassment at their workplace or within their organization. In 2007, Legal Notice 54 was adopted which extended the anti-discrimination provisions to employees in the public sector. Maltese law is therefore formally in line with the requirements of the Race Equality Directive⁴⁶ and the Employment Directive.⁴⁷

The legal framework implementing the Employment Directive appears to be in line with the standards set out in the Directive, at least in so far as the text of the law is concerned. Whilst the European Commission had opened enforcement proceedings against Malta in the past with regards to the transposition of the directives, these have since been resolved, and the discrepancies addressed.

Beyond the legislation prohibiting discrimination it is pertinent to consider issues relevant to the right to work for migrant workers. This is an area where practice in Malta goes beyond the strict legal requirements.

Individuals with Maltese citizenship (despite ethnic or religious affiliation or status) have an automatic right to work, which on an administrative level provides for a wider ranging ability to access the labour market. Individuals granted refugee status may also avail themselves of this right. Asylum seekers and rejected asylum seekers may receive a work permit upon the application of their prospective employer whilst in practice, refugees and persons with complementary forms of protection have a work permit, meaning that their employer does not need to apply for their permit. In practice, the labour market test is not applied to any of these groups.

⁴² Article 3(1), Legal Notice 461 of 2004

⁴³ Article 3(3), Legal Notice 461 of 2004

⁴⁴ Legal Notice 85 of 2007.

⁴⁵ For instance, in the case of employment or housing, had an employee been directed to discriminate against a client or another employee who is a member of a particular group. See [Legal Notice 85 of 2007](#).

⁴⁶ Race Equality Directive 2000/43/EC, which may be viewed [here](#).

⁴⁷ Employment Directive 2000/78/EC, which may be viewed [here](#).

By virtue of Legal Notice 291 of 2001⁴⁸, the provisions of the Social Security Act⁴⁹ also apply to persons who are accepted as refugees under the provisions of the Refugees Act⁵⁰. Individuals who have been granted subsidiary protection are given a permit to work, and as of very recently, they are also given Social Assistance in the form of a non-contributory benefit. This means that, under certain circumstances, they are entitled to receive some monetary assistance without necessarily having paid National Insurance.

Rejected asylum seekers are not eligible for social benefits (despite paying National Insurance when they are gainfully employed in the formal economy).

3. Manifestations of racism and structural discrimination in employment

3.1 Perceptions of discrimination in employment

As highlighted below, there is a widespread acknowledgement of the existence of racial discrimination generally, and in the Maltese labour market in particular. A variety of actors, including NGOs, governmental organizations and regional and international bodies, have raised concerns about widespread discrimination in the labour market.

There is very little direct research on this issue however the EU MIDIS Research⁵¹ published in 2009 found that:

- 42% of African immigrants in Malta reported that they had experienced discrimination whilst looking for a job in the 12 months immediately preceding the research, precisely due to their ethnic/immigrant background.
- 27% of respondents reported unfair treatment at their workplace on the basis of their ethnicity or ethnic background. This occurred in the 12 months immediately preceding the research. There is no evidence that the situation has improved since the EU Midis Research was carried out.

The 2012 Euro-barometer on Discrimination found that 53% of the Maltese respondents thought that discrimination on the basis of ethnic origin was widespread. This compares to 54% for LGBT, 23% for gender and 51% for gender identity.⁵² 43% noted that given equivalent qualifications, one's ethnic origin would place an individual at a disadvantage whilst 50% associated a rise in discrimination with the economic crisis. On a positive note, 83% of respondents support monitoring the composition of the work-force to evaluate the representation of groups at risk of discrimination, whilst 82% support the monitoring of recruitment procedures.

⁴⁸ Legal Notice 291 of 2001

⁴⁹ Chapter 318, Laws of Malta

⁵⁰ Chapter 420, Laws of Malta

⁵¹ European Union Agency for Fundamental Rights (2009), EU-MIDIS : European Union Minorities and Discrimination Survey, Main Results report This report may be viewed [here](#).

⁵² Special Eurobarometer 393 (2012), Discrimination in the EU in 2012 Report. The report may be viewed [here](#).

There have been no notable developments in labour market discrimination over the reporting period.

3.2 Incidence of discrimination in employment

I used to work in a hotel and I realized that, unlike the other employees, I was not getting paid for sick-leave and public holidays. When I inquired about this, they fired me. Another case happened when I started working with a Maltese plumber as 'labourer' (even if the work i was doing was much more complicated than one a 'labourer' would do). First, it took him months to register my employment. When he did it and I asked about sick-leave and public-holidays, he went to cancel the registration the following day. He fired me.

- 33 year old male from Ivory Coast

Discrimination in the labour market takes on a number of forms. Due to discrimination in accessing employment, persons who have been through the asylum process are, as noted earlier in this report, over-represented in the informal economy where exploitation and discrimination are rampant. Exploitation within this sphere takes on a number of forms, including the payment of salaries well below the minimum wage, and failure to abide by

health and safety standards. Whilst both of these are illegal practices, as is discrimination itself, the combination of a desperation for work and subsistence along with the non-registered status of employment make it very difficult for persons suffering such exploitation to report these incidents and thus receive compensation.

Moreover, as non-registered employees, these workers are not able to avail themselves of other basic rights including paid leave and sick leave. These concerns have similarly been reiterated within the European Commission Against Racism and Intolerance (ECRI)'s report on Malta⁵³, in the context of its fourth monitoring cycle. The report states, for example, that "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"⁵⁴. In this respect, ECRI went on to state that it "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"⁵⁵.

⁵³ *ECRI Report on Malta* (fourth monitoring cycle), CRI(2013)37, October 2013, European Commission Against Racism and Intolerance. The report may be viewed [here](#).

⁵⁴ *ECRI Report on Malta* (fourth monitoring cycle), CRI(2013)37, October 2013, European Commission Against Racism and Intolerance. (p.20) The report may be viewed [here](#).

⁵⁵ Ibid. p.20-21

As noted in previous ENAR Shadow Reports, particularly that of the previous year, there are a number of differences between particular communities in terms of how discrimination in employment is experienced. For instance, within the sub Saharan African community, the participation of females in the labour market remains low when compared to their male counterparts as a result of “gendered obstacles”.⁵⁶

The previous ENAR report went on to indicate that generally speaking, women found it harder to find work, and it also found that “religious, ethnic and gendered (among other) constructions continue to have real material effects, shaping employment patterns and relationships.”⁵⁷ Furthermore, the report indicated that Muslim women who choose to wear the hijab continue to have problems accessing employment in Malta. The Integra Foundation has also indicated that women with children - particularly single mothers - do not have the support network that many (by no means all) women are able to tap in to for childcare, and often childcare facilities are not financially (or geographically) accessible.⁵⁸

3.3 Patterns of inequality over the course of time

Patterns of discrimination over the last ten years have largely remained the same. Malta predominantly continues to apply the same policies, whilst the groups vulnerable to racial and religious discrimination have remained the same. A key difference has been the growing number of irregular migrants (who later become asylum seekers and beneficiaries of international protection) that have arrived. Whilst 520 boat arrivals reached Malta in 2003, a total of 2,008 persons arrived in 2013⁵⁹. This has been met by a number of measures and realities. First, the public reaction to the arrival of migrants has been increasingly negative, with xenophobic discourse all too often taking the mainstream stage.⁶⁰ Secondly, there has been an even greater realisation of the irrefutable relationship between employment and integration, and a broader will to ensure that asylum seekers and persons who have been through the asylum system are given the opportunity to work legally in Malta. This has been primarily signalled by the institutional facilitation of access to work permits to all those who have been through the asylum process. Third, a number of initiatives were put in place in order to support integration into the labour market. Many of these were financed by the European Union funds, and particularly the European Refugee Fund. Fourth, the creation of the so called ‘new humanitarian protection’ status provides rejected asylum seekers with an incentive to work legally and to integrate into the Maltese community, whilst officially recognizing the difficulties that Malta faces in terms of the deportation and removal of rejected asylum seekers.

⁵⁶ Gauci, J.P. & Pisani, M. (2013) *ENAR Shadow Report: Racism and related discriminatory practices in Malta*, European Network Against Racism (p.19)

⁵⁷ Ibid.

⁵⁸ Email with authors

⁵⁹ Source: UNHCR Malta. See statistics [here](#).

⁶⁰ *The Times of Malta Online*, ‘Journalist warns of Migration Challenge’, 27th November 2013. The article may be viewed [here](#). ; *The Times of Malta Online*, ‘Government not to blame for anti-migrant feelings’, 7th January 2014. The article may be viewed [here](#). ; Malta Today, ‘Invasion? No, a constructed crisis,’ 13th August 2013. The article may be viewed [here](#).

[My wage] is a bit lower than the wage of Maltese working with me, and often I have to work more than the others.

-32 year old male migrant from Sudan

I was waiting for a job in Marsa. One man (my boss) picked me up and I continued working with him till this day. It's almost four years now that I have been doing this job.

-29 year old male migrant from Chad

Malta's membership of the European Union in 2004 has also had considerable impact on trends in anti-discrimination. In

particular, as a result of this membership, Malta has enacted legislation prohibiting discrimination in employment, as well as in the provisions of goods and services in line with the Employment Directive⁶¹ and the Race Equality Directive⁶². Moreover, Malta's legal framework on immigration and asylum are also based on their EU equivalents.

In recent months, the issue of precarious labour has been high on the agenda of the National Government. Regulations were issued

and discussions were held with the key stakeholders. Whilst not focused specifically on migrants, migrant workers are believed to benefit from these regulations.

3.4 Discrimination in access to employment

Research by Suban⁶³, published during the reporting period, noted how employers' attitudes often reflected the general public aversion to migrants. It noted for instance that "employers, sensing this aversion to irregular migrants, did not want to attract any eventual bad publicity and would refrain from employing irregular migrants, especially when the jobs involved direct contact with clients (such as working as a waiter)".⁶⁴ This partly explains why persons who have been through the asylum system often find themselves working in jobs which have been described as the 3 Ds – dirty, dangerous and degrading. Suban notes that this category of migrants is often limited (by means of discrimination in various guises) to working in jobs that "the Maltese don't want to do"⁶⁵. This often includes working in industries such as construction, waste removal, and cleaning. Anecdotal evidence also indicates, however, that rather than the Maltese not wishing to undertake certain jobs, the

⁶¹ Employment Directive 2000/78/EC, which may be viewed [here](#).

⁶² Race Equality Directive 2000/43/EC, which may be viewed [here](#).

⁶³ Suban, R. (2012) 'Irregular Immigrants in the Maltese Labour Market: Current Situation and Problems' in Xuereb, P.G (ed), *Migration and Asylum in Malta and the European Union: Rights and Realities 2002 to 2011*. Malta: Malta University Press

⁶⁴ Ibid p. 163

⁶⁵ Ibid p. 180

working class poor might be unwilling to equate themselves with migrants and accept low-skilled jobs which may on occasion be offered to them at the same exploitative wage as that put forward to migrants (this in itself fuelling their annoyance at migrants, rather than at their potential employer in the informal economy).

Once, before I found this job, I worked with a Maltese person for some weeks and he did not pay me for my work. He just gave me 25 Euros for two weeks of work!

-29 year old male migrant from Chad

Suban also notes that some employers had to undergo a learning process in order to overcome the assumption that migrants could not work legally, and that all migrants were unskilled and did not make good

employees. This has been a long process, and one that remains ongoing, however Suban states that “one can see a change in mentality applicable to both employers and overall population whereby the employment of irregular migrants is now more accepted”.⁶⁶

Even so, rhetoric about migrants taking the jobs of the Maltese (often as a way of fostering anti-migration sentiments) remains widespread. Moreover, discrimination in this context often varies depending on the nationality of the specific migrant. Anecdotal evidence indicates that a good number of eastern European nationals have successfully found jobs in the restaurant industry, whilst the same cannot be said for migrants from Africa.

Another issue relating to migrant’s access to employment is the roundabout phenomenon, to which reference has been made earlier in this report as well as in previous ENAR Shadow Reports.⁶⁷ Many migrants have found that the most effective way of finding work is by waiting on the side of a roundabout in the hope of being picked up for one off jobs. Some employers find this to be an easy and quick way of recruiting temporary labour when the

need arises. However, this practice creates an environment which is highly conducive to exploitation, and stories have been recounted of people being refused payment outright, or being given extremely low pay for long hours or

Many people don’t want to employ African persons, or they will only employ you with very bad conditions.

- 26 year old male migrant from Ethiopia

work. The roundabout system in part fills the gap left by the lack of a temporary work agency in Malta.

The recognition of foreign qualifications also remains a critical problem. As noted elsewhere, asylum seekers and other migrants are often forced to undertake employment which they

⁶⁶ Ibid p. 178

⁶⁷ See Gauci, J.P, & Pisani. M, (2013), ‘ENAR Shadow Report 2011-2012 : Racism and Related Discriminatory Practices in Malta’, European Network Against Racism. The report may be viewed [here](#).

are overqualified for. There is an underlying assumption that migrants' capabilities are limited to certain jobs, an attitude which is often coupled with a charity instinct of thinking that "at least they're doing something and earning something". This failure to recognize qualifications must also be considered within the context of a labour market which has been geared to attract higher value added activities.⁶⁸

The lack of social capital often hinders migrants' access to employment in Malta. This is particularly so when considering the nature of the Maltese labour market, which is primarily centred around small companies employing less than 10 persons, and which often recruit informally without going through official channels such as publicity in the media or the ETC (Employment and Training Corporation).

A number of challenges have been identified by Suban⁶⁹ with regard to acquiring employment licences which are required for legal and regulated employment. These include:

When I informally asked about getting my qualifications recognized they told me that it's impossible, and that here one needs a Maltese license to work in the sector related to my studies. So i didn't even try.

- 33 year old male migrant from Ivory Coast

lack of information on the application process, the less accessible location of the ETC employment licensing section, the language of the application form, and the problem of the employment licence application fee. The issue of access to information was partly addressed through a number of initiatives coordinated by the Employment and Training Corporation (ETC), and the Agency for the Welfare of Asylum Seekers (AWAS). However, other issues persist, including the requirement of paying 58 Euros for an employment licence application. This needs to be seen within the context of asylum seekers having recently left detention, and often living on a very low allowance which is provided to them in order to cater for their reception and subsistence needs.

The figure below demonstrates that whilst access to employment for migrants in Malta is slightly higher than the EU average, targeted support, worker's rights, and access to general support is lower than the EU average. As the Maltese labour market continues to shift towards the service sector, a gap is often left in low skilled jobs considered by many as undesirable. These are often jobs in construction and cleaning. Some migrants have filled this gap and found employment in these jobs, even if they are often over-qualified for them.

⁶⁸ Suban, R. (2012) 'Irregular Immigrants in the Maltese Labour Market: Current Situation and Problems' in Xuereb, P.G (ed), *Migration and Asylum in Malta and the European Union: Rights and Realities 2002 to 2011*. Malta: Malta University Press (p.159)

⁶⁹ Suban, R. (2012) 'Irregular Immigrants in the Maltese Labour Market: Current Situation and Problems' in Xuereb, P.G (ed), *Migration and Asylum in Malta and the European Union: Rights and Realities 2002 to 2011*. Malta: Malta University Press (p. 173)

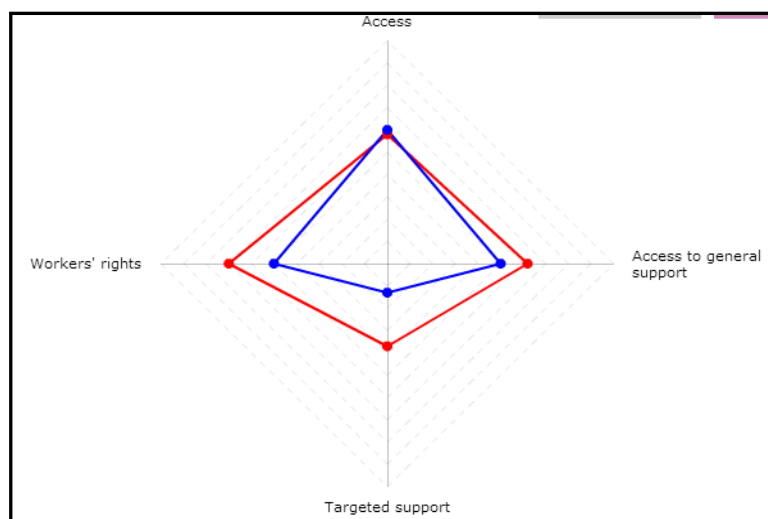


Figure 3 - MIPEX data on EU average (red) and Malta (blue) access to employment and support for migrants⁷⁰

Whilst labour migrants are identified on the basis of their specific skills, and will only receive an employment licence and residence permit on the basis of meeting a requirement of the labour market for which no Maltese or European national is qualified and available, the same cannot be said of persons who have been through the asylum system. As this report has already noted, very often they find themselves working in jobs which are considered 'low-skilled,' and for which they are over-qualified.

Even though there is no direct evidence of recruitment agencies and education networks being directly involved in discriminatory practices, some anecdotal evidence indicates complacency about discrimination, and a general consensus of acceptance regarding lower expectations of migrant work. The previous ENAR Report reported how an ETC representative turned away a woman wearing a headscarf on the basis that she would not be employable.⁷¹

Some NGOs have engaged in projects, often EU funded, which have aimed to empower migrants by providing them with specific skills to develop their own social enterprise. These initiatives, although well-intentioned, engaged migrants in low level skills whilst presuming that these skills were precisely what migrants wanted and were able to do. There was also a gender dimension to these projects (focusing predominantly on women), and the result was often a reluctance by the migrant population to engage with these initiatives.

No legal restrictions relating to the wearing of religious symbols at work exist, and indeed the issue has not yet been widely discussed in Malta. However, Muslim women who choose to wear the hijab continue to face problems accessing employment in Malta. This has been highlighted in the ENAR Shadow Report 2011-2012 which noted that "generally wearing the veil is frowned upon and women who wear the veil tend to find it harder to find work".⁷²

⁷⁰ Migrant Integration Policy Index (MIPEX), accessible [here](#).

⁷¹ See Gauci, J.P. & Pisani, M. (2013), 'ENAR Shadow Report 2011-2012: Racism and Related Discriminatory Practices in Malta', European Network Against Racism. (p.19) The report may be viewed [here](#).

⁷² Ibid.

3.5 Discrimination in the workplace

When persons who have been through the asylum system eventually find employment, discrimination and exploitation tends to be rampant. As a result of difficulties in accessing employment, the number of job opportunities are limited, and the conditions unfavourable. As noted elsewhere, migrants are often forced, by nature of their circumstances, to undertake jobs in the informal economy for which they are over-qualified, and which make legal protection less accessible.

Whilst refugees and persons with subsidiary and humanitarian protection have the right to an employment licence in their own name and are independent of any employment and employer, asylum seekers and persons whose asylum claims have been rejected need an employer to apply for their employment licence. However, even in the case of refugees and persons with subsidiary protection, the engagement form is often not submitted, meaning that their employment is not registered with the relevant authorities. It must be noted that the issue of working without the relevant registration documentation is not a problem which is limited to migrant workers, and indeed many Maltese nationals also face this problem. To this effect, the Employment and Training Corporation's (ETC) 2011 Annual Report indicates that within that same year, 2,349 law infringements were identified.⁷³

Another critical problem faced by many migrants in the labour market is that of non-compliance with health and safety requirements. It is important to note that health and safety regulations bind employers with regards to all employees, and not only those who are registered. Indeed, non-compliance is listed as a critical manifestation of exploitation as defined in the Maltese criminal code.⁷⁴ The situation is exacerbated due to migrant's general lack of awareness of their rights, and lack of familiarity with the necessary health and safety regulations, including the need for relevant gear and other standards.

It has already been noted earlier in this report that migrant workers are often paid wages that are well below the minimum wage, and significantly lower than the wages earned by their Maltese counterparts for the same work. They are often not paid for overtime, nor are they paid for working on weekends (which elicits a higher hourly rate). Other requirements such as vacation leave, sick leave and notice periods are often also not given to migrant workers.

Within employment, migrant workers often face a glass ceiling, finding it virtually impossible to move up from the 'dirty, dangerous and degrading' job levels despite their skills and experience. Anecdotal evidence indicates that cases of harassment at work (including teasing and joking) are widespread but also that many migrant workers integrate well with their colleagues and friends. Indeed such evidence highlights employment as a key way in which migrants integrate into Maltese society, make Maltese friends, and become part of the social fabric. Of course, individual experiences may vary. One research participant noted: 'when i started my job i felt that my Maltese workmates were quite racist and were not friendly with me. But as time passed things improved a lot and now we became friends and they treat me with respect. However, whenever a new migrant starts working with us my Maltese workmates would still have a hostile attitude towards him.'

⁷³ ETC Annual Report 2011. The document may be viewed [here](#).

⁷⁴ Chapter 9, Laws of Malta. This legislation may be viewed [here](#).

3.6 Economic sectors

As noted repeatedly within this report, many migrants face discrimination within the informal economy, and this is particularly problematic due to the difficulty in finding employment that is secured or longer-term.

Applications for a personal loan in Malta require evidence of identity as well as income, which includes income tax paperwork, as well as FS3 paperwork (which is an employer-issued summary of income, taxes and National Insurance paid). This is problematic for those who have not been in Malta for long enough to be able to provide such paperwork, are not officially employed, are employed on a casual basis, and/or have no proof of address. Whilst such criteria are not restricted to migrants, migrants often tend to be employed on a casual basis (if they are employed at all), and this does have an impact on their ability to take out bank loans.

3.7 Geographical areas and relevant actors

The island of Malta is largely composed of urban areas, which increasingly encroach upon rural spaces. Open centres are often located within or around current or former industrial zones, whilst other migrants residing in private households (and sharing rent charges amongst them) are spread all over the island. Whilst tension over the integration of migrants is likely to be concentrated in areas where there are large open centres, there is no evidence to suggest that discrimination is restricted to particular areas, particularly as employment in such a small country is often sought in a number of different towns and villages.

Out of a total of 70,782 businesses registered in Malta, 97.1% are considered to be micro organizations, as they employ up to 9 people. Another 2% employ between 10 and 49 people, 0.5% employ between 50 and 249 people, and 0.1% employ over 250 people.⁷⁵ Whilst this does not have any direct impact on where or whether discrimination in employment takes place in particular sectors, it does indicate particular challenges to both the quantification as well as the generalization of data sought from such micro enterprises, as well as on the potential of positive action measures.

⁷⁵ National Statistics Office Malta, News Release 085/2013 (2nd May 2013) *Business Demographics: 2007-2012*.

4. Tackling the challenges

4.1 Public policies

Whilst not specifically addressing discrimination, a number of measures have been implemented in Malta which are aimed at promoting the integration of migrants into the labour market. Foremost amongst these was a project called the Employment Support Initiative for Refugees and Beneficiaries of international protection, which was set up by AWAS (Agency for the Welfare of Asylum Seekers) and which came to an end in 2012^{76 77}. The project involved the setting up of employment support offices in the main open centres in Malta, which aimed to support migrants in their aim to find legal employment.

As noted by the European Commission Against Racism and Intolerance (ECRI)⁷⁸, the National Commission for the Promotion of Equality has also undertaken various initiatives to raise awareness of its work among the migrant population. It is notable that a key programme of the National Commission for the Promotion of Equality within the field of employment, the Equality Mark scheme, is restricted to gender discrimination and does not cover grounds of race or religion.

One of the key challenges faced by all entities attempting to assess and/or address government efforts to combat discrimination in the labour market (as well as the issue of labour market discrimination in itself) is the lack of data available. This is a persistent concern, both in terms of official data collection, as well as in terms of the basic data which would be required in order to develop quantitative (and qualitative) indicators, as well as estimates. Another aspect of data collection which is lacking is that relating to the ethnic identity of the population in Malta, by virtue of migrant backgrounds or otherwise. As has been highlighted in this report, the National Census asks questions about the individual's country of birth, citizenship and mode of acquisition of Maltese citizenship (if applicable). However, no data is collected pertaining to migrant background, religious affiliation or beliefs, and/or ethnic background.

4.2 Access to effective remedies

4.2.1 Judicial remedies

No complaints on racial discrimination in employment were filed with NCPE from March 2011 until March 2012 (although the Commission has received complaints of discrimination in other fields, which shall be illustrated later in the report). The current procedure stipulates that anybody who believes that they may have been a victim of discrimination may submit a complaint to the National Commission for the Promotion of Equality (NCPE), the process for which is detailed later in this report. The Commissioner may then initiate investigations, following which they may refer the matter to the competent civil court, or to the Industrial Tribunal for redress. The 2013 ECRI report noted that the limited number of

⁷⁶ See *The Malta Independent*, 'Employment and Training on Wednesday,' 6th July 2011 [here](#).

⁷⁷ See *The Malta Independent*, 'Employment Support Initiatives for Refugees', 23rd June 2012 [here](#).

⁷⁸ *ECRI Report on Malta* (fourth monitoring cycle), CRI(2013)37, October 2013, European Commission Against Racism and Intolerance. This report may be viewed [here](#).

complaints received by the NCPE has been ascribed by civil society to the limited powers attributed to the equality body. Indeed, the report states that this finding in itself “is supported by a study of the NCPE⁷⁹ 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 recalled that the NCPE may mediate or call upon a person to redress the situation, however its decisions are neither binding nor enforceable.

There is the possibility for migrants to present their case to the Industrial Tribunal, which is a judicial tribunal. The awards or decisions made by the tribunal are binding on both parties, and in cases of unfair dismissal the Tribunal may order the reinstatement of the employee, or award compensation. No cases of racial discrimination in employment have ever reached the tribunal, this largely being put down to the judicial procedures being inaccessible to migrants who lack knowledge on how to access these services. Suban⁸⁰ also notes how, despite the competence of the industrial tribunal to address cases of discrimination in the labour market, very few irregular migrants have filed such complaints. Suban puts this down to a lack of awareness, along with the fact that whenever claims were filed with the Department of Industrial and Employment Relations (DIER), no evidence was produced, meaning that the Department was unable to proceed with the case.⁸¹ It must be noted that in cases of discrimination, the law provides for a shift of the burden of proof.⁸²

4.2.2 Non-judicial remedies

4.2.2.1 Ombudsman or equality body

For a number of years, the equality body framework with regards to racial and ethnic discrimination in Malta was divided between the [National Commission for the Promotion of Equality](#) and the Department of Industrial Relations. The latter had competence over issues of employment and related matters, whilst the former covered access to goods and services. Further to significant lobbying efforts by various parties, including, *inter alia*, by the NCPE itself. As communicated in previous ENAR Shadow Reports, the competence of the Commission was extended in 2011 to cover the remit of racial discrimination in Employment. The National Commission for the Promotion of Equality is therefore now the equality body for the purposes of the Race Equality Directive.

The mission statement of the Commission as set out on its [website](#) states:

“The National Commission for the Promotion of Equality (NCPE) envisions a society which is equal and free from discrimination and champions inclusiveness whereby everyone, irrespective of their gender and family responsibilities, race or ethnicity, sexual orientation, age, religion or belief, and gender identity, is able to achieve their full potential.

⁷⁹ National Commission for the Promotion of Equality (NCPE), Underreporting of discriminatory incidents in Malta – A research study, December 2010. The report may be viewed [here](#).

⁸⁰ Suban, R. (2012) ‘Irregular Immigrants in the Maltese Labour Market: Current Situation and Problems’ in Xuereb, P.G (ed), *Migration and Asylum in Malta and the European Union: Rights and Realities 2002 to 2011*. Malta: Malta University Press (p.183)

⁸¹ Ibid.

⁸² Equal Treatment of Persons Order, [Legal Notice 85 of 2007](#)

In order to have a society which champions equality, NCPE works towards the elimination of discrimination on the grounds of gender and family responsibilities, race/ethnic origin, sexual orientation, age, religion or belief, and gender identity by raising awareness; monitoring national laws and EU Directives; implementing policies; networking with different stakeholders; investigating complaints and providing assistance to the general public.

NCPE will continue to work to eliminate discrimination by promoting equality for all and diversity as an added value for society by empowering individuals as well as organisations.”

The National Commission for the Promotion of Equality may initiate proceedings either on its own initiative, or upon receipt of a complaint by an individual. This complaint is to be filled in writing, via a standard form which is readily available online via the Commission’s web-page on the government’s website. The form is split into 4 parts. Part 1 asks for details about the complainant, including contact details. Part 2 asks for information about the person/entity against whom the complaint is being made, and their contact details as well as their relationship with the complainant. It then moves on to ask about the incident, including: what happened, where it happened, who did it, whether there were witnesses and whether other information might also be available. It specifically asks the complainant to highlight where he/she is identifying discrimination. A series of questions aimed at placing the incident within the legal prohibitions are set out in the second section of Part 2. Part 3 then asks for supporting evidence, the support which is expected from the NCPE, whether other complaints have been made with other entities, and whether other measures have been taken by the complainant to resolve the complaint. Part 4 asked for the complainant’s consent for the NCPE to take action. Whilst the form is somewhat technical, most notably the second section of Part 2, a complainant can set an appointment with an NCPE representative if he wishes to be assisted in filing the complaint. Every complaint is acknowledged in writing.

An NCPE Complaints Sub-Committee meets regularly to discuss the complaints received, and to write to the parties against whom the complaint was made. The parties will be informed of the allegations made, and they will be asked for their version of the facts (by submitting a report within 10 working days). Interviews may be carried out, but are not a requirement. The Commissioner may also summon both parties and mediate in order to find an acceptable solution for all involved, subject to consent by both parties.

Further to such investigations, the Commission may, if it finds that the complaint has been proven:

- (i) where the action complained of constitutes an offence, make a report to the Commissioner of Police for action on his part; or
- (ii) where the action complained of does not constitute an offence, call upon the person against whom the complaint is directed to redress the situation, and mediate between the complainant and such person to settle the matter.
- (iii) The Commission may refer the matter to the competent civil court or to the Industrial Tribunal for redress.

Over the reporting period, 3 complaints were investigated by the NCPE⁸³ including 1 based on an ex officio investigation.⁸⁴ The first dealt with access to a service and was closed due to lack of evidence. The second involved racist comments and was not investigated by the Commission due to lack of jurisdiction. The third, based on an ex officio investigation, concluded that an advert was indeed discriminatory. None of these cases involved racial discrimination in employment.

Race Complaints lodged at NCPE covering period March 2011 to March 2012

Number of complaints filed	Grounds of discrimination invoked	Outcome of the proceedings
3	<ul style="list-style-type: none"> - Access to a service - Alleged racist comments - Ex Officio Investigation in access to housing 	<ul style="list-style-type: none"> - Case closed due to lack of conclusive evidence - NCPE had no jurisdiction to investigate the case - Wording used in advertisement was found to be discriminatory

Figure 5 : Complaints lodged at NCPE from March 2011 to March 2012
[Source : National Commission for the Promotion of Equality (NCPE)]

Evidence for investigations before the Commission is shared between the complainant who is required to present all available information and supporting documentation, and the Commission itself, which may hold interviews with the parties or other persons. No information is available on the average length of proceedings. Only one case determined by the commission was found to be discriminatory, and this was an ex officio investigation. Due to the low number of cases, no further information/ breakdowns of statistics were available. Decisions are not public.

It is difficult to provide a general assessment of the functioning of the equality body in Malta. Its independence, both actual and apparent, is one area of concern. No independent monitoring has been carried out in this regard. Regarding independence and impartiality, the members of the Commission are appointees of the government. The hosting of the Commission's webpage is placed directly within the government's website and the general impression of the Commission as a governmental department has negatively impacted the perception of the Commission.

A key concern regarding equality bodies in Malta is lack of awareness. Research published by the European Union Fundamental Rights Agency in 2010⁸⁵ found that only 11% of

⁸³ The content of these complaints is not publicly available.

⁸⁴ This means that the investigation was carried out by NCPE without a formal complaint by an individual victim of discrimination.

⁸⁵ European Union Agency for Fundamental Rights (2010), EU-MIDIS Data in Focus Report 3: Rights Awareness and Equality Bodies, European Union Agency for Fundamental Rights (FRA). The report may be viewed [here](#).

respondents, Africans living in Malta, were aware of the National Commission for the Promotion of Equality. 81% had not heard of any of the equality bodies. Whilst this research is now significantly dated, anecdotal evidence does not indicate that any renewed research would find significant improvements in this regard.

The National Commission for the Promotion of Equality manages a number of projects aimed at preventing discrimination on all grounds. Over the reporting period, the NCPE was implementing the 'I'm not racist but...' project. This project was aimed at combating racial discrimination, and in particular to empower the African minority to get their voice heard, to advocate for their rights and report discrimination, and to raise awareness on racial discrimination and promote cultural diversity. The project had a strong focus on discrimination in housing. The project components included research, awareness-raising, and information dissemination.⁸⁶

Moreover, the Commission also took some initiatives to raise awareness about its own role in combating discrimination. For instance, it organized awareness-raising activities in the various open centres, hosting beneficiaries of international protection, outlining rights stemming from anti-discrimination legislation, and explaining how and where to report incidents of discrimination.⁸⁷

4.2.2.2 Mediation or conciliation

The determinations of the National Commission for the Promotion of Equality are not binding; however the Commission can mediate between the parties in an attempt to settle the matter.

4.2.2.3 Labour inspectorate

Inspectors under the Department of Industrial and Employment Relations (DIER) carry out inspections relating to employment contracts and conditions of employment (in terms of the Employment and Industrial Relations Act), while the Occupational Health and Safety (OHSA) inspectors carry out inspections on health and safety at the workplace (in terms of the Occupational Health and Safety Authority Act). Both Acts apply to all workplaces in all sectors of the economy, both public and private. The role of the inspectors in combating discrimination is not explicitly elaborated, however they are entitled to investigate and act in situations where the provisions of the relevant acts are breached, including on the grounds of discrimination.

Complaints which are lodged with the Department of Industrial and Employment Relations are subsequently investigated in order to ascertain whether there has been a breach of the Employment and Industrial Relations Act⁸⁸. The Department's website outlines the procedures for lodging a complaint as follows:

Reports and complaints from employees who are still in employment, are dealt with by the Inspectorate Section. Any report is investigated and if it deems that the law has been breached, the employer concerned is contacted and the Department follows the issue accordingly. In case that the employer persists in breaching the law, criminal proceedings

⁸⁶ See [here](#) for further information about this project.

⁸⁷ *ECRI Report on Malta* (fourth monitoring cycle), CRI(2013)37, October 2013, European Commission Against Racism and Intolerance (p.17) The report may be viewed [here](#).

⁸⁸ Chapter 452, Laws of Malta

against the employer are initiated before the Court of Magistrates as a Court of Criminal Judicature.

Issues related to termination of employment are dealt with by the Enforcement Section. This section assists those whose employment relationship has been terminated, to ensure that all outstanding dues are settled. Upon lack of compliance, criminal proceedings are initiated. To process a claim in respect of outstanding dues, following the termination of employment, the ex-employee concerned has to call personally at the Department's offices where the necessary investigations are conducted. It is important that any documents related to the case are produced. If a breach of the law is detected, the Department issues a claim for outstanding dues to the ex-employer. Non-compliance leads to referring matter for legal action. The Department's Inspectorate Section also carries out regular inspections at workplaces both upon receipt of a particular complaint and also in a random manner.

4.3 Civil society initiatives

National legislation allows associations, organizations and other legal entities having a legitimate interest to engage either on behalf or in support of the complainant, with his or her approval, in judicial or administrative procedures provided for under the equality legislation. The National Commission for the Promotion of Equality has the competence to refer an allegation of discrimination to the competent court or tribunal. Despite these opportunities enshrined in the law, the European Commission against Racism and Related Intolerance notes that "neither associations nor trade unions nor the NCPE have taken up discrimination complaints on behalf or in support of claimants".⁸⁹

4.3.1 Trade Unions

In 2008, the General Retailers and Traders Union sent a formal complaint to the Maltese Government, describing the current situation surrounding the employment of migrants as unacceptable. A number of its members in the construction, repairs, and waste management sectors were (and are) heavily reliant on migrant labour, and in this respect the GRTU proposed that the informal temporary work system be regularized⁹⁰. Since then, as has been noted earlier in this report, a number of migrants are now in possession of work permits, however they still face a number of other obstacles in accessing and engaging in various forms of employment.

The ECRI report⁹¹ noted that in terms of measures aimed at countering the exploitation of migrant workers, the General Workers Union (GWU) launched a campaign which addresses racial discrimination in employment and advocates integration. Moreover, the Union also proposed the naming and shaming of employers who exploit migrant workers. The report

⁸⁹ *ECRI Report on Malta* (fourth monitoring cycle), CRI(2013)37, October 2013, European Commission Against Racism and Intolerance. (p.17). The report may be viewed [here](#).

⁹⁰ Gauci JP., Malta, in IOM, *Migration and the Labour Markets in the European Union* (2010).

⁹¹ *ECRI Report on Malta* (fourth monitoring cycle), CRI(2013)37, October 2013, European Commission Against Racism and Intolerance. (p.20). The report may be viewed [here](#).

also notes that according to the FRA report⁹² on the Impact of the Racial Equality Directive, the Maltese Trade Unions stressed the need for more awareness-raising campaigns, particularly so that employers and employees may become more aware of their rights and obligations. However, it must also be noted that no campaign has yet been led by the Maltese authorities in addressing the labour exploitation of migrants.

The FRA report on the Impact of the Racial Equality Directive noted that at the time of writing (in 2010), Malta was still in its early stages of fighting racial discrimination, and it states that a number of trade unions had limited awareness of the Racial Equality Directive at the time. Within the context of this report, the GWU reported having intervened in a small handful of cases involving irregular migrants, where they were injured at their place at work or not paid at all. They also made reference to planned training on matters of racial equality, however no further information was provided in that regard.

4.3.2 NGOs activities

NGOs play a critical role in combating racism and discrimination in Malta primarily through the provision of information to migrants and other persons vulnerable to discrimination, and by raising awareness of issues faced by these communities. Almost all NGOs working on racism and racial discrimination in Malta are organizations that have primarily focused their work on migration and asylum. As the two issues are intimately linked, NGOs often combine the two areas of work as anti-racism becomes an extension of work on migration and asylum.

Name	Info. Prov.	Legal Advice	Indiv. Support	Mediation	Social Action
People for Change Foundation	X	X	X		X
Integra Foundation	X		X		X
Aditus Foundation	X	X	X		X
Jesuit Refugee Service	X	X	X		X
SOS Malta	X				X
KOPIN	X				X
FSM	X				
Peacelab	X				X
GetupStandUp!					X
OFD					X

Figure 6 - An overview of the forms of intervention made by Maltese NGOs

The relationship between government and NGOs in the area of discrimination can be succinctly described as one of open communication. NGOs are primarily involved in the implementation of projects for the National Commission for the Promotion of Equality (NCPE) after competing for the role in a tender procedure. For instance, The People for Change Foundation drafted the National Action Plan Against Racism and Xenophobia which was published in 2011, whilst Aditus Foundation was involved in the provision of training to migrant communities in 2011 about equality and their rights under the equality legislation.

⁹² European Union Fundamental Rights Agency (FRA), 'The impact of the Racial Equality Directive: Views of trade unions and employers in the European Union', Summary Report, October 2010. The report may be viewed [here](#).

Both are examples of occasions where NGOs cooperated with the governmental authorities in the area of combating discrimination. Both projects covered discrimination generally, but included a specific focus on employment.

In the area of combatting discrimination more generally, in the past year SOS Malta joined up with Aġenzija Żgħażaġh in order to launch a one year project called “Youth Upbeat.” This project aimed to tackle “the fear of black people” on the island. Six Cultural Ambassadors who have refugee or humanitarian protection status in Malta were trained to work with young people as part of the project, in order to share elements of their culture as well as their personal stories. This was done within the context of 26 interactive workshops that hosted around 500 teenagers (13-14 year olds)⁹³.

4.3.3 Employers’ organisations

The Malta Employers’ Association has consistently highlighted the fact that it is unfair and wrong to consider all employers as a homogenous group that discriminate and exploit migrant workers. Indeed, within its Code of Ethics, the Association stipulated that members of the association shall “not discriminate among employees and prospective employees on grounds of politics, union affiliation, religion, creed, disability, civil status, gender or race »⁹⁴.

5. Conclusions and recommendations

5.1 Political and societal developments related to racism and discrimination

This report has clearly illustrated the prevalence of discrimination and exploitation in the Maltese labour market. It highlighted how over the reporting period the problems remained largely the same as those in previous years, and how the legal framework alone has proven ineffective in combating discrimination in the Maltese labour market.

Malta has a strong equality law framework that prohibits direct and indirect discrimination, as well as harassment and victimisation. Yet migrant workers continue to face discrimination both in accessing employment and within employment. Difficulties in accessing employment relate to the stereotyping of migrant workers, difficulties in acquiring the employment licences, the nature of the labour market and lack of recognition of foreign qualifications. Within employment, discrimination included failure to pay wages and benefits, failure to abide by health and safety regulations, as well as a concentration of migrant workers in the informal economy. There is no evidence that the situation has improved over the reporting period. On the contrary, it appears that many of the problems and concerns raised in previous reports remain pertinent.

⁹³ This initiative is one of many which took place in the field of human rights development in 2013. Others are detailed in ‘The Malta Human Rights Report 2013’, The People for Change Foundation (March 2013). The report may be viewed [here](#).

⁹⁴ The Code of Ethics for the Malta Employer’s Association may be viewed [here](#).

5.2 Conclusions and recommendations

Anti-racism in Malta has a number of opportunities and challenges. A 2012 EU-MIDIS Survey⁹⁵ revealed that 29% of Africans in Malta considered themselves to be the victims of racially-motivated in-person crime. The report further stated that Malta collects limited police and criminal justice data on 'racially motivated' crime, and thus this data is not published. This leaves a significant gap which must be addressed, with more detailed and segregated data collection urgently needed in confronting matters relating to discrimination on the grounds of race and ethnicity. Indeed, the need for such data collection has been highlighted throughout this report. Discrimination in employment remains rampant, and migrants and asylum seekers (specifically those who are Sub-Saharan African) continue to face discrimination both in accessing employment as well as within employment itself.

Despite the prevalence of incidents of racial discrimination, there are also opportunities and positive developments of note. There is a growing awareness of discrimination as a problem, there has been an increase in the number of pressure groups promoting efforts to curb discrimination, whilst the legal framework which has been put in place to combat discrimination has increasingly been strengthened in recent years.

Notwithstanding this, the report highlights how practical obstacles still persist, and thus how there remains much to be done in order to achieve meaningful racial equality. A few recommendations are being put forward in this regard, in order to build upon existing positive developments in this field and counter incidents of racial discrimination in the field of employment. These are as follows:

The Maltese Authorities should, in collaboration with all relevant stakeholders:

- Update, adopt and implement, without delay, the National Action Plan Against Racism and Xenophobia commissioned by NCPE. This will help ensure that issues of discrimination and racism are dealt with holistically and strategically rather than in isolated clusters and/or sectors. Equality should be mainstreamed into all areas of policy.
- Commission a review of the work of the National Commission for the Promotion of Equality, including a comparative assessment with the work conducted by similar equality bodies in other European Countries, with a view of enhancing and strengthening the NCPE's role. In particular, efforts should be made to ensure that NCPE is, and appears to be, independent and impartial and that cases of racial discrimination are efficiently and effectively addressed.
- Develop initiatives to measure equality as part of the positive duty to combat racial discrimination, and to promote equality and social inclusion of ethnic and religious minorities. Data collection and processing of equality data should be conducted in full compliance with data protection safeguards and in consultation with groups most at risk of discrimination.

⁹⁵ European Union Agency for Fundamental Rights (2009), EU-MIDIS: European Union Minorities and Discrimination Survey, Main Results report This report may be viewed [here](#).

- Develop a clearer understanding of discrimination as experienced by ethnic and religious minorities with a view of informing policy developments and awareness raising.
- Develop an education and employment strategy for migrants, with a view to facilitating migrants' entry into the Maltese labour market through, amongst others, recognition of previous qualifications as well as previous work experience and the development of new skills. Such a strategy could be part of a broader integration policy for Malta.
- Support ongoing research, and promote further research, in the area of migrant labour and entrepreneurship in order to identify trends and issues with a view of developing effective strategies to address concerns and promote developments.
- Extend and improve efforts to raise awareness amongst ethnic and religious minorities, rights and remedies available under national law and the role of the NCPE in supporting victims of discrimination.
- Extend the Equality Mark initiative to cover other areas of equality including on grounds of racial or ethnic origin and religion.

Trade Unions and Civil Society Organizations should:

- Work together to develop effective strategies for the inclusion of minorities (particularly migrants) in the labor market, including enhancing employers', employees' and other stakeholders' understanding of rights and responsibilities under national and European legislation.
- Engage more effectively with issues of discrimination in employment, including by raising awareness with members and populations at risk, supporting the reporting of discrimination and follow up thereon, and through the representation of migrant workers' interests
- Raise awareness that equality at work is not just a matter of preventing discrimination from happening but also about ensuring the workplace caters for the needs of an increasingly diverse workforce. Accommodating diversity at work will result in developing workers' potential, employee retention, a safe working environment and a better work-life balance.

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