

Submission to the
National
Consultation on
Human Rights and
Equality



The People for Change Foundation
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About The People for Change Foundation

The People for Change Foundation's vision is of a just, fair and inclusive society where all members may reach their full potential unhindered by factors such as age, race, colour, gender, language, religion, political or other opinion, national origin, property, birth or other status. Since 2007, the People for Change Foundation (Pfc) has been conducting on-the-ground legal and policy research in Malta in the fields of migration, asylum and racism in the European Union. The Foundation operates at the intersection between law, policy and social science, delivering analysis that is practical in input and pragmatic in outcome.

The People for Change Foundation was set up with the express aim of contributing to a multilateral process between different entities - governmental, non-governmental and academic - to conduct research in an area of direct relevance to the livelihood and quality of life of asylum seekers, and to address human rights concerns through international and national legal obligations and development.

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1. Introduction

The People for Change Foundation welcomes this opportunity to make submissions as part of this wide-ranging consultation on issues of human rights and equality in Malta. The consultation provides the first countrywide consultation about protecting and promoting human rights and equality. Such broad-based consultation processes are a good example of participative democracy, allowing individuals and organization throughout the country, and working on different human rights issues to channel their concerns and ideas to the Maltese authorities.

Our submissions to this consultation are limited to the areas of work of the People for Change Foundation. We have therefore chosen to focus our recommendations on the following area:

1. General Human Rights Situation
2. Migration and Asylum
3. Statelessness
4. Human Trafficking
5. Racial Discrimination and Racist Violence and Crime
6. Children's Rights

This is not an exhaustive list of issues, but rather a list of the issue that The People for Change Foundation can best contribute to based on our expertise and experience. Our recommendations regarding the general human rights situation are informed by the need to have remedies for human rights violations that are available, accessible and effective and whereby human rights concerns can be adequately addressed and the general population is well aware of human rights issues, and the remedies available in case of breach.

2. General Human Rights Situation

Setting Up and Powers of the National Human Rights Commission

At present the National Commission for the Promotion of Equality is the equality body established by law to oversee the anti-discrimination provisions. Media reports over recent weeks reported the proposal of extending the remit of the Commission to cover other human rights issues. The People for Change Foundation supports this proposal and sees having a National Human Rights Commission as an important aspect of the country's institutional framework in the area.

Recommendation: an independent Human Rights Commission able to provide adequate remedies in cases of discrimination and human rights violations.

In order to safeguard the independence and impartiality of the Commission it should be granted the **same status and autonomy enjoyed by the Office of the Ombudsman**. Such a Commission should be appointed from amongst individuals with a solid background in human rights. It should be given the resources (human and financial) necessary for the accomplishment of its objectives.

The Commission should be given the powers by law to **grant adequate remedies** in situations where it finds that the principle of equality was not respected or that human rights violations had occurred. Without replacing the role of the Courts to enforce legislation, having accessible and effective remedies available through a process which is easier to access would go a long way to safeguarding human rights and to encouraging victims of human rights violation and of discriminatory incidents to report these cases. In deciding these cases, the Commission should not be subject to any direction.

The head of the Commission should be required to present, on an annual basis, a **report** to the House of Representatives about the state of human rights in Malta. Such an annual report will help generate political and public debate on issues around human rights and will help raise awareness of the priority being given by the Maltese authorities to respect

human rights. It will also identify issues to be addressed. The preparation of such a report should be informed by wide consultation with relevant stakeholders.

Human Rights Education

The past few years have seen a number of significant steps in the development of human rights awareness, with the presence of a human rights education officer at the Ministry of Education, a human rights in-service training for teachers, as well as an equality review of the curriculum as was carried out as part of NCPE's Strengthening Equality Beyond Legislation project. At the same time, the international community reiterated in the United Nations Declaration on Human Rights Education that every individual has a right to 'know, seek and receive information about all human rights and fundamental freedoms'.

*Recommendation: The establishment of a **national human rights education program**, which includes a national human rights education strategy, the mainstreaming of human rights issues into the curriculum, and the establishment of resources for facilitators.*

We recommend that such a program should be developed through a wide consultation with educators, human rights organizations as well as various interest groups. The programme should not only cater for the formal education setting, but rather should be one that includes the wider Maltese population. Local Councils, youth empowerment centres, informal groups should be involved in order to create a more inclusive society. At the same time, schools should be targeted and human rights education mainstreamed into both curricula as well as sets of resources made available to teachers and children (for instance in libraries).

3. Migration and Asylum

Access to Protection and the Principle of *Non-Refoulement*

Whilst *refoulement* is clearly prohibited under Maltese law, issues around access to asylum came to the fore over the course of 2013 with the threatened push back to Libya and the decisions of the Maltese Constitutional Court. The human rights situation in Libya, and specifically for non-Libyan nationals, remains critical and any returns to Libya would be in violation of human rights.

*Recommendation: Ensure that the principle of non-refoulement is **consistently respected** regardless of the classification of the particular act (as deportation, interception or rescue), in line with Malta's international legal obligations.*

*Recommendation: Raise **awareness** amongst the various administrative and judicial branches various branches, including those directly involved in immigration control of the various legal and policy implications of the Hirsi judgments including the positive obligations it identifies.*

*Recommendation: Ensure that respect for human rights, including the rights of non-nationals, is a priority in **negotiations with the Libyan government** and authorities.*

An analysis of the legal issues surrounding refoulement and an elaboration of these recommendations may be found in the Access to Protection: A Human Right Report produced by The People for Change Foundation in the context of the project under the same name. The report is available [here](#).

Detention

Malta's policy of automatic and mandatory detention has come under severe criticism from various human rights bodies not least the European Court of Human Rights. Protests, riots and disturbances in Malta's detention centers are not an infrequent occurrence. Neither

are allegations of wrongdoing by detention staff and personnel or complaints regarding the conditions of detention. Without prejudice to calls for a complete revamp of the detention policy and an upgrading of detention conditions, there is the need for a mechanism to investigate allegations of wrongful treatment in an independent and impartial manner. Subsidiary Legislation 217.08 provides for such a mechanism in the form of the Visitors' Board for Detained Persons. The board enjoys wide ranging powers under the regulations even if the board's decision are currently not legally binding on the detention services. Information available on the DOI website indicates that the visitors' board has not been constituted leaving a considerable lapse in the potential protection framework.

*Recommendation: **Revise without delay the policy of automatic detention** ensuring that Malta's policy and practice is in line with Malta's human rights obligations including the Geneva Refugee Convention (Article 31) and the European Convention on Human Rights. Such a revision should effectively consider the implementation of alternatives to detention.*

*Recommendation: Extend without delay **meaningful activities** for detained migrants to undertake whilst in detention.*

Such activities will include education activities as well as sports and other forms of recreation. Any time spent in detention should be utilized to prepare asylum seekers for integration in Malta. Adequate health and social services should be made available in detention, including through the development of a different management model that includes care as a primary objective of the detention service.

*Recommendation: Ensure that **the Visitors' Board for Detained Persons** is provided with the competence and resources (human and financial) necessary to carry out the functions assigned to it by virtue of Subsidiary Legislation 217.08. The board should include, as a member, a representative of the United Nations High Commissioner for Refugees. The annual report prepared by the board should be made publicly available and be presented to the House of Representatives. The decisions of the board should be binding on the Head of the detention services (this would require an amendment to Article 7(2) of the Regulations). The board should be independent and impartial and should, in the performance of its*

functions, be free from any direction or guidance from the Ministry responsible for immigration or any other party. The competence of the board should be clearly explained to detained persons whilst opportunities to file complaints and grievances with the board should be readily and safely available.

Integration

In light of the changing demographic population, ethnic diversity is no longer an abstract concept, but rather a concrete reality which frames a number of everyday interactions amongst members of the population. This ever-increasing cultural-diversity necessitates a holistic and comprehensive approach from policy-makers, in order to ensure that the changing reality is no longer ignored, but is addressed and embraced as a prominent feature of Maltese society.

*Recommendation: the development, adoption, and implementation of a national **integration policy**, along with an overarching national strategy working towards meaningful integration.*

In order for integration efforts to be meaningful, they must go beyond the surface issue of language, and must respect the integrity and nuances of diverse cultures (without falling into the trap of essentialising them). Furthermore, integration should not be considered purely in terms of assimilation to the cultural ideas of the host country. Rather, it must be considered as a two-way process of mutual accommodation. It demands efforts from migrants and the Maltese population alike, calling for both to adapt to new realities and respect the rights and responsibilities of each individual whose country of residence is Malta. In this respect, a future integration policy in Malta must be based upon the *Common Basic Principles for Immigrant Integration Policy in the European Union*.

It is crucial that the policy and strategy be inclusive, and formulated in consultation with migrant communities and non-governmental organizations. The policy must cater for a wide range of migrant groups and communities, and to this effect, it is also vital that the

policy not relegate the idea of 'migrants' to sub-Saharan Africans, either directly or indirectly. The policy should focus on migrant groups and ethnic and religious minorities more broadly, again reflecting the diversity of nationalities and ethnic backgrounds currently represented and taking up residence in Malta. Lastly, a 'one-size-fits-all' approach will not suffice and the policy should also take account of the vulnerable groups that exist within these ethnic minorities, including women, children, persons with disabilities, the elderly, and trafficked persons.

4. Statelessness

There is very little available information about the issue of statelessness in Malta. Stateless persons are particularly vulnerable and the issue should therefore be addressed without delay. Whilst various human rights instruments to which Malta is a Party extend their protection to stateless persons, Malta has not signed the Statelessness Convention. Statistics presented in parliament on 25th March 2014 (PQ8668) stated that there are currently 8 stateless persons in Malta.

*Recommendation: The development of a specific **statelessness determination procedure** and a protection status for stateless persons.*

The establishment of such a procedure and status should be based on established good practice in the field, such as those elaborated by the European Network on Statelessness and the Office of the United Nations High Commissioner for Refugees.

5. Human Trafficking

Human Trafficking is criminalized in the Maltese Criminal Code and in recent years anti-trafficking has been made a political priority not least through the adoption of two subsequent action plans against trafficking in human beings, the setting up of a monitoring

committee and anti-trafficking taskforce and the setting up of the LIMES Project. Malta was evaluated by the Council of Europe's GRETA in 2013 and has been placed in Tier 2 of the US State Department's Trafficking in Persons Report. Adopting a human rights based approach to combatting human trafficking however goes well beyond criminalization and the adoption of action plans. The focus of our recommendations here are on the issue of protecting trafficked persons. Subsidiary Legislation 217.06 provides for the issuance of a residence permit and assistance and support to trafficked persons who cooperate with the authorities in the prosecution of the traffickers.

*Recommendation: Amend existing legislation making support and protection available, accessible and **not conditional** on the will and ability of the trafficked person to collaborate with the authorities. Such unconditional protection will help safeguard the human rights of the trafficked person.*

*Recommendation: Make any legal amendments and give any policy direction to ensure that trafficked persons are **not punished** for acts committed as a result of their having been trafficked. This is in line with the human rights approach to anti-trafficking and avoids situations where the trafficked person is punished for such acts as he/she was compelled to perform by the trafficker or traffickers.*

6. Anti-Racism

Adoption of National Action Plan Against Racism

Racism and racial discrimination are a critical concern for Malta and continue to impact the daily lives of ethnic and religious minorities. The latest discrimination Euro-barometer found that 53% of Maltese think that racial discrimination occurs frequently in Malta. The EU Midis Report found that 63% of respondents (defined as Africans in Malta) had faced discrimination in the 12 months immediately preceding the data collection. The report found that there were 353 instances of discrimination per 100 respondents over the same

period of time. In the meantime however, close to no reports were processed by the National Commission for the Promotion of Equality.

These findings highlight the need for an effective strategy to combat discrimination. In 2010, the National Commission for the Promotion of Equality, commissioned the Equality Research Consortium, of which The People for Change Foundation was a lead partner to draft a National Action Plan Against Racism and Xenophobia. The requirement of adopting such an action plan is also one of the main conclusions of the World Conference Against Racism of Durban in 2001 as well as the follow up conference in 2011. The draft was presented in December 2010. Whilst some elements of this draft plan have been implemented through subsequent projects of the NCPE, the authorities never formally adopted the document.

*Recommendation: 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.*

The [draft action plan](#) addresses a number of cross cutting issues including: awareness raising and training, mainstreaming, data collection, research and analysis, promoting the reporting of discriminatory incidents and empowerment and capacity building as well as measures in specific areas including; employment, education, housing and accommodation, racist violence and crime, healthcare, media, policing and the criminal justice systems as well as access to goods and services.

Collection of Ethnically Segregated Data

The Maltese islands have for many decades experienced demographic changes through the arrival and departure of individuals, groups and families. Whilst some of these changes have been captured in the collection of data relating to, for instance, citizenship of individuals residing in Malta as well as nationality prior to naturalization, we have no data

on the ethnic composition of the Maltese population. This means that any discussion on racism is, at the time being, restricted to assumptions of a direct link between ethnic minority status and 'foreignness'. We suggest that understanding the ethnic composition of the Maltese population would allow us to better address issues of discrimination and racism.

*Recommendation: To introduce a **question or questions in the National Census** as well as the National Demographic Review that asks specifically about individuals' ethnic background.*

The process leading to the introduction of this question must be both transparent and sensitive, with a study into the different groups present in Malta as well as the processes through which other countries have negotiated the introduction of categories as well as self-definition options within the question. Moreover, the process should indicate that the collection of such data will not be used for any purposes related to the segregation or classification of individuals insofar as access to services is concerned, but rather will form part of an anonymous process of data collection that can help with inclusion as well as achieving a better understanding of the make-up of the Maltese population in the same way that gender and age segregated data does.

7. Children's Rights

Citizenship for Children born on Migrant Boats

Article 285 of the Civil Code stipulates the procedures to be followed in the case of children born at sea, and particularly on board a vessel registered in Malta. The Civil Code at present makes no reference to children who are born on unregistered vessels in international waters, and who eventually arrive in Malta (often seeking asylum). This lack of a legal provision may give rise to situations of statelessness, whereby the child involved does not enjoy the citizenship or protection of any state. It goes contrary to Article 8 of the UN Convention of the Rights of the Child, signed and ratified by Malta, which states that

“Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.” In this regard, Malta has not signed or ratified the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.

Recommendation: children born on unregistered vessels at sea should have their birth registered immediately upon reaching Malta, and Maltese citizenship should be granted to that child automatically, irrespective of the status of the child's parents.

Recommendations to this effect have already been presented to the Government by the Commissioner for Children. The People for Change Foundation echoes the call for children's right to an official identity and to the protection of a state to be respected.

Migrant Children Integration within Schools

Concerns have been raised with respect to migrant children's integration within schools. A 2012 report entitled 'An Early School Leaving Strategy for Malta,' which was drafted by DSG Consultancy (working closely with the Ministry for Education and Employment), stated that insufficient priority had been given to providing resources aimed at facilitating the integration of migrant children in schools. New approaches are required in order to address increasing diversity within the educational system. Despite the increasing number of ethnic minorities in State schools, the report states that not enough importance has been given to providing specialized resources which would render integration efforts more effective. Language barriers and a distinct lack of cultural mediation in particular hinder the integration process, especially within education. As the aforementioned report notes, “unless these children, and their parents, are supported with pro-active measures that allow them to integrate as quickly as possible, then these children or youths will be at risk from disengaging from the education system”(p.63).

Recommendation: the development of integration measures at the national level and at the school level to support migrant children in schools. Such measures should include assistance with language learning, ongoing academic support and cultural mediation.

Out of Home Care

The main types of out-of-home care for children in Malta who are unable to live with their biological families are largely provided by the Roman Catholic Church or by the State, and generally consist of either family foster care or residential/institutional care. Whilst family foster care allows children to be cared for within a family-oriented environment by trained and assessed foster carers, institutional care is often provided by religious orders and NGOs, and involve children being cared for as part of a group within an institutional environment. Previously, the majority of children in out-of-home care resided in the latter, however this has shifted in recent years to a greater focus on family-based care through fostering. This is indeed a positive development, given that research has repeatedly shown that children placed within foster care (and thus a family environment) fare much better than those who are raised within an institutional environment. Furthermore, institutional care is potentially detrimental to children under the age of 5, given that due to the lack of one permanent carer or parent, they are at greater risk of harm in terms of attachment disorder, developmental disorder, and neural atrophy in the developing brain. In this respect, “the neglect and damage caused by early privation of parenting may be equivalent to violence to a young child.”

Such findings emphasize the importance of even further investment in foster care, and of disallowing institutional care for children under the age of 5. In the case of older children, there are exceptions where foster care may not always be in their best interests, whilst institutional care remains insufficient at meeting their emotional needs. In this regard, small-scale residential structures within the community would provide a positive alternative

to an institutional environment, and should be considered in lieu of the institutional structures which are currently in place.

Recommendation: Further development of small-scale residential structures within the community and the further investment in and development of the foster care system.

Children and Young Persons in Conflict with the Law

Children and young people in conflict with the law, despite their legal infractions, must first and foremost be regarded as children, particularly when considering that their transgressions may partly have come about from trauma and social and psychological difficulties experienced throughout their childhood that have been insufficiently addressed. Thus, children and young people who have breached the law must necessarily have their vulnerability (by virtue of being children) taken into account. At present, minors who are co-accused of a crime with adults are not heard by the Juvenile Court, which was specifically set up for the purpose of hearing cases of young offenders. These minors currently have their cases heard in the same court as adults, as do young offenders aged 16-18. Furthermore, the age of criminal responsibility is currently set at 9 years old, as the minimum age at which a person may be held criminally responsible.

*Recommendation: Implement such legislative and administrative changes to revise the age of **criminal responsibility** from 9 years to 14 years.*

*Recommendation: Necessary amendments and policy direction should be given to ensure that the **Juvenile Court** is responsible for hearing the cases of all children and young people under the age of 18, including those who have been co-accused of a crime with adults.*

Looking Ahead

We have focused our recommendations on the general human rights situation, migration and asylum, statelessness, human trafficking, racism and children's rights. Whilst not being an exhaustive list of issues, these are the areas of focus for The People for Change Foundation and therefore where we can make our best contribution based on our expertise and experience. We remain committed to working with the authorities and all other relevant stakeholders with a view to supporting the implementation of these recommendations and the achievement of respect for human rights more generally.

Further Resources:

- 1 [Malta Human Rights Report 2013](#)
- 2 [ENAR Shadow Report on Racial Discrimination in Employment](#)
- 3 [Access to Protection: A Human Right Report](#)
- 4 [PfC's Organization Profile](#)



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www.pfcmalta.org