



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

Distr.: General
7 December 2010

Original: English

Committee on the Elimination of Racial Discrimination

**Reports submitted by States parties under article
9 of the Convention**

Fifteenth to twentieth periodic reports due in 2010*

Malta**

[6 July 2010]

* This document contains the fifteenth to twentieth periodic reports of Malta, due since 26 June 2000. For the thirteenth and fourteenth periodic reports and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/337/Add.3 and CERD/C/SR.1379 and 1380.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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I. General information

1. The Maltese authorities have undertaken several initiatives with a view to fight racism and xenophobia, as well as with a view to further promote equal opportunities for all. The measures in question, including in particular the legislative reforms, provide for greater protection, as well as rights to legal remedies, to all migrants.

2. It is considered that at the present date the national legislative framework fully implements all the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

3. Provisions against racial hatred and violence were introduced into the Criminal Code in 2002 and 2009. Whereas in 2002, the offence of incitement to racial hatred was introduced in article 82A of the Criminal Code, by means of Act No. III of 2002, this provision was also extended to incitement to racial violence through amendments made by Act No. XI of 2009. Article 82A of the Criminal Code thus makes provision against violence and racial hatred, while articles 82B and C, also introduced by the abovementioned amendments in 2009, deal with the offences of condoning or trivializing genocide, crimes against humanity, war crimes and crimes against peace, which are directed against a group defined by reference to race, colour, religion, descent or national or ethnic origin. The 2009 amendments also introduced the specific offence of aiding, abetting or instigating any of the above offences relating to racial violence or hatred, although it should be noted that such offences were already incorporated under the general provisions of complicity in terms of article 42 of the Criminal Code.

4. Pursuant to the 2009 amendments, the Criminal Code also provides for bodies corporate to be held liable for such offences,¹ and to be punished by means of a fine, as well as, in certain cases, the suspension or cancellation of the licence, the temporary or permanent closure of any establishment use in the perpetration of the offence, or the compulsory winding up of the body corporate.²

5. Article 141 of the Criminal Code provides in a general manner that where the offence is committed by a public officer, the punishment is to be increased by one degree, unless a specific punishment is envisaged for the perpetration of that offence by such an officer. This seeks to afford additional protection from the commission of offences relating to racism, by government officials, or persons acting in a public capacity.

6. Act No. XI of 2009 also introduced into the legislative framework the concept of aggravation of an offence whenever this is motivated by xenophobia. It also introduced a general provision making it possible for any offence to be considered racially or religiously aggravated or motivated by xenophobia, whereas racial aggravation had previously only been possible in relation to offences against the person (bodily harm). Thus, the punishment established for an offence is increased by one or two degrees whenever that offence is racially or religiously aggravated or motivated by xenophobia.

7. Other legislative reforms of note were also undertaken since 1999, including in particular the reversal of the burden of proof in civil proceedings involving racial discrimination by means of the Equal Treatment of Persons Order (LN 85 of 2007), as well as the introduction of the Immigration Appeals Board in the Immigration Act by means of Act XXIII of 2002, which enables migrants to appeal decisions by the Principal Immigration Officer.

¹ Article 82E(1).

² Article 82E(2).

8. Action was also taken against persons inciting racism and xenophobia, although cases were in fact not numerous.

9. Extensive reforms were also made in the asylum sector. The geographical reservation to the 1951 Geneva Convention was withdrawn in 2001, and an Office of the Refugee Commissioner became fully operational in 2002. The Refugees Act was originally published in 2000, and subsequently amended in 2004, 2007 and 2008. The Act is fully compliant with the provisions of the Geneva Convention and Protocol, as well as with the pertinent European Union Directives.

10. In this area significant progress was also registered in terms of integration programmes for beneficiaries of international protection, as several projects were undertaken. This was achieved in spite of a difficult situation seeing Malta cope with disproportionately large arrivals of irregular migrants and asylum-seekers between 2002 and 2009.

11. The mentioned legislative and other initiatives clearly build on the pre-2000 legislative framework, which already guaranteed the basic rights and liberties to all. Therefore any gaps that may have been present by way of measures implementing the Convention have now been addressed.

12. In response to the recommendation made by the Committee on the Elimination of Racial Discrimination in paragraph 15 of CERD/C/304/Add.94, the competent local authorities are considering the possibility of a wider dissemination of the Convention-specific report.

13. A number of human rights institutions are established in Malta to safeguard, inter alia, gender equality, equality of opportunity for persons with disabilities and the rights of children. Malta has therefore not considered it necessary to have a distinct authority to monitor human rights; however, the matter is under constant review.

Update by the Parliamentary Ombudsman

14. The Parliamentary Ombudsman was consulted in order to follow up paragraph 11 of CERD/C/304/Add.94; his contribution has been quoted in full in the annex, whilst the following paragraphs are a summary of his comments.

15. The Office of the Ombudsman was established in 1995. The Government of Malta provides the Office of the Ombudsman with the necessary tools to operate effectively and supports the office by providing necessary funding and upholding most of the recommendations made by the Ombudsman.

16. There have been many positive developments in since Malta's fourteenth periodic report, such as:

- The development of a strong working relationship with the Council of Europe's Commissioner for Human Rights
- The evolution over time, from the role of investigator of allegations of bad administration to a human rights protector
- The development of a very good work relationship with entities that seek to assist and protect migrants and their interests

17. The Office of the Ombudsman reports that there have not been any significant complaints on racial discrimination involving Government or Government entities – the areas on which the Office of the Ombudsman has jurisdiction. In this respect, the Ombudsman suggested that his jurisdiction be expanded to include the private sector also.

18. In respect of the recommendation of the Committee on the Elimination of Racial Discrimination, expressed in paragraph 11 of CERD/C/304/Add.94, it is felt that at present the Government of Malta is abiding by this recommendation. The role of dissemination of information is the responsibility of the Ombudsman. The Government of Malta provides the Ombudsman with the necessary funds and resources. As a means of disseminating information, the Office of the Ombudsman, for example, prints and distributes an annual report and case law (free of charge), and has an up-to-date website. The Ombudsman also organizes seminars, delivers lectures, and participates in television and radio programmes and issues press releases.

II. Information on the implementation of articles 2–8 of the Convention

Article 2

19. Condemnation and elimination of racial discrimination have been pursued through the enactment of legislation, both criminal and civil. As already stated in the previous report submitted by Malta, racial discrimination is prohibited by the Constitution, the European Convention on Human Rights (which has been incorporated into domestic legislation by chapter 319 of the Laws of Malta) as well as other international conventions to which Malta has adhered. In addition, of particular note are amendments made to the Criminal Code in 2002 and 2009 which serve to further implement the requirements of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, and the enactment of the Equal Treatment of Persons Order (LN 85 of 2007), the provisions of which respond to articles 5 and 6 of the Convention. Both the Criminal Code amendments and the Equal Treatment of Persons Order also contain provisions addressing recommendations made in various general recommendations by the Committee on the Elimination of Racial Discrimination.

Article 3

20. Malta has consistently continued to condemn racial discrimination and particularly the practice of apartheid.

Article 4

General recommendation No. 30 (2004) on discrimination against non-citizens: Part III on protection against hate speech and racial violence and part V on administration of justice

Response to the concerns expressed by the Committee in paragraphs 6, 7 and 12 of the concluding observations (CERD/C/304/Add.94)

21. Malta's previous report made reference to the prohibition contained in the provisions of the Press Act,³ particularly article 6, stating that:

Whosoever, by any means mentioned in article 3, shall threaten, insult, or expose to hatred, persecution or contempt, a person or group of persons because of their race,

³ Cap. 248 of the Laws of Malta.

creed, colour, nationality, sex disability as defined in article 2 of the Equal Opportunities (Persons with Disability) Act, or national or ethnic origin shall be liable on conviction to imprisonment for a term not exceeding three months and to a fine (multa).

22. Since that report however, considerable developments have taken place strengthening the criminal law framework against racial hatred.

23. The Criminal Code⁴ was amended in 2002 and again in 2009 to include provisions making incitement to racial violence or hatred an offence. Article 82A defines the offence as well as the term ‘violence or racial hatred’ as follows:

“82A. (1) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or racial hatred or whereby violence or racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

“(2) For the purposes of the foregoing subarticle “violence or racial hatred” means violence or hatred against a group of persons in Malta defined by reference to colour, race, religion, descent, nationality (including citizenship) or ethnic or national origins or against a member of such a group.”

24. Articles 82B and C deal with the offences of condoning or trivializing genocide, crimes against humanity, war crimes and crimes against peace, which are directed against a group defined by reference to race, colour, religion, descent or national or ethnic origin:

“whosoever publicly condones, denies or grossly trivialises genocide, crimes against humanity and war crimes directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;

“whosoever publicly condones, denies or grossly trivialises crimes against peace directed against a group of persons defined by reference to race, colour, religion, descent or national or ethnic origin or against a member of such a group in a manner likely to incite violence or hatred, likely to disturb the public order or which is threatening, abusive or insulting”.

25. Article 82D then also provides that anyone who aids, abets or instigates any of the above offences, shall be guilty of an offence, and subject to the same punishment as that stipulated for the offence aided, abetted or instigated.

26. Bodies corporate may also be held responsible for such offences,⁵ and may be punished by means of a fine, as well as, in certain cases, the suspension or cancellation of the licence, the temporary or permanent closure of any establishment used in the perpetration of the offence, or the compulsory winding up of the body corporate.⁶

27. The Criminal Code also provides that racist or xenophobic motivations constitute an aggravation.

28. Article 222A was introduced in 1990 and establishes such aggravation in the context of offences against the person (bodily harm):

⁴ Cap. 9 of the Laws of Malta.

⁵ Article 82E(1).

⁶ Article 82E(2).

“(2) The punishments established in the foregoing provisions of this sub-title shall also be increased by one to two degrees when the offence is racially or religiously aggravated or motivated, wholly or partly, by xenophobia within the meaning of the following subarticles.

“(3) An offence is racially or religiously aggravated or motivated by xenophobia if:

(a) at the time of committing the offence, or immediately before or after the commission of the offence, the offender demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim’s membership (or presumed membership) of a racial or religious group; or

(b) the offence is motivated, wholly or partly, by hostility, aversion or contempt towards members of a racial group based on their membership of that group.

“(4) In subarticle (3)(a):

“membership”, in relation to a racial or religious group, includes association with members of that group;

“presumed” means presumed by the offender.

“(5) It is immaterial for the purposes of subarticle (3)(a) or (b) whether or not the offender’s hostility is also based, to any extent, on any other factor not mentioned in that those paragraphs.

“(6) In this article:

“racial group” means a group of persons defined by reference to race, descent, colour, nationality (including citizenship) or ethnic or national origins;

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief”.

29. Article 83B of the Criminal Code then introduced a general provision stating that *any* offence which is motivated by racism or xenophobia is considered aggravated: “The punishment established for any offence shall be increased by one to two degrees when the offence is racially or religiously aggravated within the meaning of sub-articles (3) to (6), both inclusive, of article 222A or is motivated, wholly or partly, by xenophobia.”

30. In addition to the above, the Criminal Code also includes provisions against racial discrimination by public officers. In this regard, article 141 provides that where an offence is committed by a public officer, the punishment is to be increased by one degree, unless a specific punishment is envisaged for the perpetration of that offence by such an officer. Moreover, article 139A establishes as a specific offence the infliction by public officers of intentional pain or suffering for any reason based on discrimination of any kind, and establishes a punishment of 5 to 9 years, unless any other provision applies which establishes a higher punishment.

31. Besides the provisions of the Criminal Code, members of the Police Force may also be subject to disciplinary action. Article 4(c) of the Police Act⁷ lays down that one of the objectives of the Police Force is “to apply the law without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social

⁷ Cap. 164 of the Laws of Malta.

origin, association with a national minority, property, birth or other status.” It should however be noted that any disciplinary action taken in respect of a holder of public office, including Police Officers, would be in addition to (not to the exclusion of) criminal proceedings and the punishment established for criminal offences, including those related to racial hatred as described above. The public officer would thus be charged with an aggravated criminal offence, in addition to the disciplinary proceedings which may be taken against him.

Court cases related to racial discrimination (2001 – February 2010)

<i>Year</i>	<i>Cases</i>	<i>Indictment</i>	<i>Judgement and penalty</i>
2001	Nil	Nil	Nil
2002	Nil	Nil	Nil
2003	Nil	Nil	Nil
2004	Nil	Nil	Nil
2005	Nil	Nil	Nil
2006	2	(Case 1)	(Case 1)
		[a] for using threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up racial hatred;	Not guilty
		[b] for using violence to compel a person to do or to refrain from doing any act;	
		[c] for voluntarily disturbed public good order and the public peace with shouting and fighting or in any other manner;	
		[d] disobeys the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, unless such disobedience or interference falls under any other provision of this Code or of any other law;	
		[e] attempts to use force against any person with intent to insult, annoy or hurt such person or others, unless the fact constitutes some other offence under any other provision of this Code;	
		[f] utters insults or threats not otherwise provided for in this Code, or being provoked, carries his insult beyond the limit warranted by the provocation;	
		[g] Frightens or terrifies any other person, in a manner that might cause harm to such person although it is done in jest.	

<i>Year</i>	<i>Cases</i>	<i>Indictment</i>	<i>Judgement and penalty</i>
		(Case 2) [a] For using threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or racial hatred or whereby violence or racial hatred is likely, having regard to all the circumstances; [b] For using any defamatory, insulting, or disparaging words, acts or gestures in contempt of the person of the President of Malta.	(Case 2) Guilty – Sentenced to imprisonment, suspended for 2 years.
2007	Nil	Nil	Nil
2008	1	[a] For pursuing a course of conduct which amounts to harassment of another person, and which you knew or ought to have known that it amounts to harassment of such other person; [b] And for further causing on the same day, at the same time and in the same place that the act took place or immediately before the act is motivated, wholly or partly, by hostility, aversion or contempt towards members of a racial group based on their membership of that group and uttering derogative remarks of racial hatred towards people of a different race; [c] And for further causing on the same day, at the same time and in the same place attacked the person without harming him; [d] And for further causing on the same day, at the same time and in the same place, threatened and use abusive or insulting words against the same person.	Conditional discharge on condition not to commit another offence within 3 years
2009	1	[a] For threatening, or causing a bodily harm to a person lawfully charged with a public duty, and while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty; [b] And for further causing on the same day, at the same time and in the same place and circumstances assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority; [c] And for further causing on the same day, at the same time and in the same place and circumstances publicly utters any obscene or indecent words, or makes obscene acts or gestures, or in any other manner not otherwise provided for in this Code, offends against public morality or decency; [d] And for further causing on the same day, at the same time	<i>Sub judice</i>

<i>Year</i>	<i>Cases</i>	<i>Indictment</i>	<i>Judgement and penalty</i>
		<p>and in the same place and circumstances disobeyed the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, unless such disobedience or interference falls under any other provision of this Code or of any other law;</p> <p>[e] And for further causing on the same day, at the same time and in the same place and circumstances voluntarily disturbed public good order and the public peace;</p> <p>[f] And for further causing on the same day, at the same time and in the same place and circumstances and use of threatening, abusive or insulting words or behaviour, or displays certain behaviour in a manner, and with the intent to stir racial hatred or in such manner create the probability that when one considers all circumstances thereby stir up racial hatred.</p>	
2010 ⁸	Nil	Nil	Nil

Article 5

Response to the concern expressed by the Committee in paragraph 8 of CERD/C/304/Add.94

32. As stated in Malta's previous report, the Constitution and the European Convention on Human Rights grant civil and political rights to all and prohibit discrimination on grounds of race in relation to such rights. Thus, while sector-specific legislation applies indiscriminately with no reference to race, any law, policy or practice which is considered to be racially discriminatory may be challenged.

33. In 2007, the Equal Treatment of Persons Order⁹ was adopted, transposing the provisions of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. This Order provides additional protection against racial discrimination, with reference to a number of sectors, and also applies indiscriminately.

Article 5 (a)

34. With regard to article 5(a) of the Convention, on access to tribunals and courts, it is pertinent to note that there is no racial discrimination in relation to such access. Civil proceedings are regulated mainly by the Code of Organisation and Civil Procedure while criminal proceedings are regulated by the relevant provisions in the Criminal Code, neither of which contains provisions which make a distinction on grounds of race. Moreover, the

⁸ Data provided as at 28 February 2010.

⁹ Legal Notice 85 of 2007.

right to equal treatment before organs administering justice is enshrined in article 39 of the Constitution of Malta, which lays down that:

“(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

“(2) Any court or other adjudicating authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.”

Article 5 (b)

35. As regards article 5(b) of the Convention, concerning the right to security of person and protection by the State against violence or bodily harm, whether inflicted by Government officials or by any individual group or institution, the provisions of the Criminal Code relating to bodily harm apply regardless of the perpetrator, and the offence is aggravated, as explained under article 4, if racially aggravated or motivated by xenophobia. However, if committed by a public officer, the offence is aggravated, while article 139A establishes the specific offence of infliction by a public officer, of pain or suffering for any reason based on discrimination of any kind. In addition, a body corporate can also be held responsible, pursuant to article 82E of the Criminal Code which extends the application of articles 121D and 248(E)(4) to racial offences. Articles 121D and 248(E)(4) provide as follows:

“**121D.** Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) ...”

“**248(E)(4).** Where the person found guilty of any of the offences under this sub-title:

(a) was at the time of the commission of the offence an employee or otherwise in the service of a body corporate, and

(b) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and

(c) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in article 121D

“the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) ...”

36. Article 82E(2) then also provides that when article 121D applies to the offences relating to racial violence and hatred in articles 82A-D (outlined under article 4), in addition to the fine, the Court may also order the suspension or cancellation of the licence, the temporary or permanent closure of any establishment used in the perpetration of the offence, or the compulsory winding up of the body corporate.

Article 5 (c)

37. This provision is covered by sections 57 and 58 of the Constitution.

38. The operative part of section 57 states the following:

“Subject to the provisions of section 58 of this Constitution, a person shall not be qualified to be registered as a voter for the election of members of the House of Representatives if, and shall not be qualified to be so registered unless:

(a) he is a citizen of Malta;

(b) he has attained the age of eighteen years; and

(c) he is resident in Malta and has during the eighteen months immediately preceding his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months.”

39. Section 58 states that:

“No person shall be qualified to be registered as a voter for the election of members of the House of Representatives if:

(a) he is interdicted or incapacitated for any mental infirmity by a court in Malta or is otherwise determined in Malta to be of unsound mind;

(b) he is under sentence of death imposed on him by any court in Malta or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or

(c) he is disqualified for registration as a voter by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives.”

40. Section 15 of the General Election Act in fact stipulates that “a person shall be entitled to be registered as a voter for the election of Members of the House if, and shall not be entitled to be registered unless, he has the qualification required by section 57 of the Constitution and provided he is not so disqualified in terms of section 58 of the Constitution or in accordance with the provisions of this Act”.

41. As regards local government, the electoral process concerning the election of representatives to the 67 local councils of the Maltese Islands is governed by the Local Councils Act, which in section 5 specifies that every citizen of Malta whose name appears in the last published Electoral Register and who has not been convicted of any offence connected with the election of members of Local Councils shall be entitled to vote at elections of Local Councils.

42. Article 45, in its blanket prohibition of any laws that are discriminatory either of themselves or in their effect, in combination with article 32 of the Constitution, is also relevant in this respect. This right is also guaranteed through article 3 of the Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (which was also incorporated and is enforceable as part of the laws of Malta), combined with article 14 of the ECHR. Once again, there has been no case law on this ground.

Article 5 (d) (i)

43. The right to freedom of movement is guaranteed through the existence of article 44 and article 45 of the Constitution of Malta.

44. Article 44 states the following:

“(1) No citizen of Malta shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Malta, the right to reside in any part of Malta, the right to leave and the right to enter Malta.

“(2) Any restriction on a citizen’s freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

“(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or decency, or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(b) for the imposition of restrictions on the freedom of movement of any citizen of Malta who is not a citizen by virtue of section 22 (1) or 25 (1) of this Constitution;

(c) for the imposition of restrictions upon the movement or residence, within Malta of public officers; or

(d) for the imposition of restrictions on the right of any person to leave Malta that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

“(4) For the purposes of this section any person:

(a) who has emigrated from Malta (whether before on or after the appointed day) and, having been a citizen of Malta by virtue of section 22 (1) or 25 (1) of this Constitution, has ceased to be such a citizen; or

(b) who emigrated from Malta before the appointed day and, but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of section 22 (1) of this Constitution; or

(c) who is the spouse of a person mentioned in paragraph (a) or (b) of this sub-article or of a person who is a citizen of Malta by virtue of article 3(1) or of article 5(1) of the Maltese Citizenship Act as in force upon the coming into force of the Maltese Citizenship (Amendment) Act, 2000, and who has been married to that person for at least five years and is living with that person, or is the child under twenty-one years of age of such a person; or

(d) who is the widow or the widower of a person mentioned in paragraph (a) or paragraph (b) of this subarticle or of a person who at the time of his or her death was a citizen of Malta by virtue of article 3(1) or of article 5(1) of the Maltese Citizenship Act as in force upon the coming into force of the Maltese Citizenship (Amendment) Act, 2000, and who was still living with him or her at the time of his or her death and had been married to that person for at least five years or who would, but for the death of that person, have been so married for at least five years,

or is the child under twenty-one years of age of such a person, shall be deemed to be a citizen of Malta by virtue of article 3(1) or of article 5(1) of the Maltese Citizenship Act as in force upon the coming into force of the Maltese Citizenship (Amendment) Act, 2000:

Provided that if the Minister responsible for matters relating to Maltese citizenship at any time by order declares that it is contrary to the public interest that a spouse as is mentioned in paragraph (c), or a widow or widower as is mentioned in paragraph (d), or a child over eighteen years of age as is mentioned in paragraph (c) or (d) is to be so deemed, or to continue to be so deemed, such spouse, widow, widower or child, as the case may be, shall thereupon cease to be deemed to be a citizen of Malta as aforesaid.

Provided further that the Minister responsible for matters relating to Maltese citizenship shall not be required to assign any reason for the issue of any order referred to in the immediately preceding proviso, and the decision of the Minister on any such order shall not be subject to appeal to or review in any court.

“(5) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection 3 (a) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the Civil Court, First Hall.

“(6) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.”

45. There has been no case law concerning racial discrimination in connection with the above provisions.

Article 5 (d) (ii)

46. Articles 44 and 45 of the Constitution of Malta apply also to article 5 (d) (i). An additional positive development in this respect is the deletion from the Codes of Malta of the Title on “Impediment of Departure” as applicable to physical persons, i.e. a court action which could prohibit a person from departing the country for such offences as non-payment of debts or non-support of an estranged wife or children. Through articles 32 and 45 of the Constitution, the latter amendment is applicable in a non-discriminatory manner. There has been no case law concerning racial discrimination with respect to the foregoing provisions.

Article 5 (d) (iii)

47. Chapter III of the Constitution and the Maltese Citizenship Act (Cap 188) are applicable to all persons in a non-discriminatory manner. There has been no case law concerning racial discrimination with respect to the above-mentioned provision.

Article 5 (d) (iv)

48. The right to marriage and choice of spouse is guaranteed through the provisions of the Marriage Act in combination with article 32 of the Constitution. Chapter 255 of the Laws of Malta (Marriage Act) provides for the regulation of marriages and for matters connected thereto. The Act does not contain any provisions concerning marriage and choice of spouse that are discriminatory either of themselves or in their effect. The restrictions on marriage contained in the Act are basically the following, as stipulated in sections 3–6 of the Act:

“(a) A marriage contracted between persons either of whom is under the age of 16 shall be void;

“(b) A marriage contracted between persons either of whom is incapable of contracting by reason of infirmity of mind, whether interdicted or not, shall be void;

“(c) A marriage contracted between:

(i) An ascendant and a descendant in the direct line;

(ii) A brother and a sister, whether of the full or half-blood;

(iii) Persons related by affinity in the direct line; or

(iv) The adopter and the adopted person, or a descendant or the husband or the wife, of the adopted person, shall, whether the relationship aforesaid derives from legitimate or illegitimate descent, be void.

“(d) A marriage contracted between persons either of whom is bound by a previous marriage shall be void.”

49. The right to marriage without any form of discrimination is also provided for through article 12 of the European Convention on Human Rights (ECHR), in combination with article 14 of the same Convention.

50. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (d) (v)

51. The right to own property is guaranteed through article 37 of the Constitution in combination with article 32, together with article 1 of Protocol No. 1 to the ECHR, in combination with article 14 of the European Convention as incorporated into Maltese legislation.

52. Article 37 of the Constitution states the following:

“(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition

(a) for the payment of adequate compensation;

(b) securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and

(c) securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta:

“Provided that in special cases Parliament may, if it deems it appropriate so to act in the national interest, by law establish the criteria which are to be followed, including the factors and other circumstances to be taken into account, in the determination of the compensation payable in respect of property compulsorily taken possession of or acquired; and in any such case the compensation shall be determined and shall be payable accordingly.

“(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property:

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for, or as a consequence of, breach of the law, whether under civil process or after conviction of a criminal offence;
- (c) upon the attempted removal of the property out of or into Malta in contravention of any law;
- (d) by way of the taking of a sample for the purposes of any law;
- (e) where the property consists of an animal upon its being found trespassing or straying;
- (f) as an incident of a lease, tenancy, licence, privilege or hypothec, mortgage, charge, bill of sale, pledge or other contract;
- (g) by way of the vesting or administration of property on behalf and for the benefit of the person entitled to the beneficial interest therein, trust property, enemy property or the property of persons adjudged bankrupt or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporated in the course of being wound up or liquidated;
- (h) in the execution of judgements or orders of courts;
- (i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;
- (j) in consequence of any law with respect to the limitation of actions, acquisitive prescription, derelict land, treasure trove, mortmain of the rights of succession competent to the Government of Malta; or
- (k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon:
 - (i) of work of soil conservation or the conservation of other natural resources of any description or of war damage reconstruction; or
 - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed to carry out.

“(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for vesting in the Government of Malta the ownership of any underground minerals, water or antiquities.

“(4) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes by any law and in which no monies have been invested other than monies provided by any legislature in Malta.”

Article 5 (d) (vi)

53. The right to inherit is indirectly guaranteed through article 32 of the Constitution, which guarantees the right to every person in Malta, “whatever his race, place of origin, political opinions, colour, creed or sex”, to “life, liberty, security of the person, the enjoyment of property and the protection of the law”.

54. The provisions of the Civil Code are also relevant in this respect. Sections 600, 601, 605 and 610 (reproduced below) specify, in the case of testate succession, those persons who are not capable of receiving by will.

“600. (1) Those who, at the time of the testator’s death or of the fulfilment of a suspensive condition on which the disposition depended, were not yet conceived are incapable of receiving by will.

“(2) The provisions of this section shall not apply to the immediate children of a determinate person who is alive at the time of the death of testator, nor to persons who may be called to the enjoyment of a foundation.”

“601. (1) Those who are not born viable are incapable of receiving by will.

“(2) In case of doubt, those who are born alive are presumed to be viable.”

“605. (1) Where any person has:

- (a) wilfully killed or attempted to kill the testator;
- (b) charged the testator before a competent authority with a crime punishable with imprisonment, of which he knew the testator to be innocent; or
- (c) compelled, or fraudulently induced the testator to make his will, or to make or alter any testamentary disposition; or
- (d) prevented the testator from making a new will, or from revoking the will already made, or suppressed, falsified, or fraudulently concealed the will

he shall be considered as unworthy, and, as such, shall be incapable of receiving property under a will.

“(2) The provisions of this section shall also apply to any person who has been an accomplice in any of the said acts.”

“610. (1) Nor can the notary by whom a public will has been received, or the person by whom a secret will has been written out, benefit in any way by any such will, unless immediately after the disposition made in favour of the said notary or person there be affixed the signature of the testator.”

55. In the case of intestate succession, the relevant provisions are the following:

“788. Where there is no valid will, or where the testator has not disposed of the whole of his estate, or where the heirs-institute are unwilling or unable to accept the inheritance, or where the right of accretion among the co-heirs does not arise; intestate succession takes place, wholly or in part, by the operation of the law.”

“789. Intestate succession is granted in favour of the descendants, the ascendants, the collateral relatives, the illegitimate children and the spouse of the deceased, and the Government of Malta, in the order and according to the rules hereafter laid down.”

“796. Persons who are incapable or unworthy of receiving under a will, for the causes stated in this Code, are also incapable or unworthy of succeeding ab intestato.”

“797. Persons who, by fraud or by violence, shall have prevented the deceased from making a will, shall also be, as unworthy, incapable of succeeding ab intestato.”

56. Because of article 15 of the Constitution and article 14 of the European Convention together with article 1 of Protocol No. 1 to the said Convention it is impossible to discriminate on the grounds of race in both testate and intestate succession. As a matter of interest the Civil Court has also been amended to eliminate provisions which discriminated against children born out of wedlock insofar as their succession rights are concerned.

Article 5 (d) (vii)

57. The right to freedom of thought, conscience and religion is guaranteed through article 40 of the Constitution, combined with article 32 of the same law, and article 9 of the ECHR combined with article 14 of the Convention, together with article 2 of Protocol No. 1 to the European Convention.

58. Article 40 of the Constitution declares that:

“(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.

“(2) No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto:

“Provided that no such requirement shall be held to be inconsistent with or in contravention of this section to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes and except so far as that requirement is shown not to be reasonably justifiable in a democratic society.

“(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1), to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.”

59. Students in government schools may opt to decline instruction in Roman Catholicism.

Article 5 (d) (viii)

60. The right to freedom of opinion and expression is guaranteed through article 41 of the Constitution combined with article 32 of the same document, and article 10 of the

ECHR in combination with article 14 of the same Convention, together with article 2 of Protocol No. 1 to the European Convention.

61. Article 41 states the following:

“(1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinion without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

“(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision:

(a) that is reasonably required:

(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainment; or

(b) that imposes restrictions upon public officers,

“and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

“(3) Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically:

“**Provided that provision may be made by law:**

(a) prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty-one years of age; and

(b) requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.

“(4) Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty-four hours of the seizure bring the seizure to the notice of the competent court and if the court is not satisfied that there is a prima facie case of such offence, that edition shall be returned to the person from whom it was seized.

“(5) No person shall be deprived of his citizenship under any provisions made under Section 301 (1) (b) of this Constitution or of his juridical capacity by reason only of his political opinions.”

62. In practice, an independent press, an effective judiciary, and a functioning democratic political system combine to ensure freedom of speech and press, including academic freedom, and this regardless of race.

Article 5 (d) (ix)

63. The right to freedom of assembly and association is guaranteed through article 42 of the Constitution in combination with article 32, together with article 11 of the ECHR combined with article 14.

64. Article 42 stipulates:

“(1) Except with his own consent or by way of parental discipline no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade or other unions or associations for the protection of his interests.

“(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) that is reasonably required:

(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(ii) for the purpose of protecting the rights or freedoms of other persons; or

(b) that imposes restrictions upon public officers,

“and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

“(3) For the purposes of this section, any provision in any law prohibiting the holding of public meetings or demonstrations in any one or more particular cities, towns, suburbs or villages shall be held to be a provision which is not reasonably justifiable in a democratic society.”

Article 5 (e) (i)

Response to the concern expressed by the Committee in paragraph 10 of CERD/C/304/Add.94

Racial discrimination in employment

Employment and Industrial Relations Act (EIRA)

65. The Employment and Industrial Relations Act (Chapter 452), the primary legislation on Maltese Labour Law defines “discriminatory treatment” as any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of amongst others colour and religious conviction.

66. Article 26 of the Act states that it shall not be lawful for any person when: (i) advertising or offering employment; (ii) selecting applicants for employment; to subject any applicants for employment or any class of applicants for employment to discriminatory treatment.

67. Moreover, in regard to employees already in the employment of the employer, it shall not be lawful for any person to subject any such employees or any class of employees to discriminatory treatment in regard to conditions of employment.

The Equal Treatment in Employment Regulations

68. The Equal Treatment in Employment Regulations 2004 (Legal Notice 461 of 2004 as amended by Legal Notices 57 of 2007 and 338 of 2007) implements directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. These regulations 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, among others, racial or ethnic origin. More specifically than EIRA, the legal notice is said to apply at all stages of employment life:

- Access to employment (advertising stage, selection criteria, recruitment conditions, promotions)
- Access to vocational guidance, vocational training, advanced vocational training and retraining, practical work experience)
- The employment and conditions of employment
- Membership of, and involvement in, any organization as trade union etc.

69. The general principle of equal treatment in employment is embodied in regulation 3 of LN 461 of 2004 as amended. This states that it shall be unlawful for a person to subject another person to discriminatory treatment whether directly or indirectly in any of the abovementioned stages of employment life. “Direct discriminatory treatment” occurs 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 mentioned in the regulations. “Indirect discriminatory treatment” occurs 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 at a disadvantage when 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.

70. Harassment is a form of discriminatory treatment. The regulations in regulation 3 (3) state that no person shall harass another person by subjecting him/her to unwanted conduct or requests relating to any of the mentioned grounds (including racial and ethnic origin), when such conduct or request takes place with the purpose, or which has the effect of violating the dignity of the person who is so subjected, and of creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected.

71. Besides harassment, discriminatory treatment may take other forms. Employers or any persons or organisation shall also be deemed to have discriminated against a person if they instruct any person to discriminate against another person or if they neglect their obligation to suppress any form of harassment at their workplace or within their organisation, as the case may be.

72. According to regulation 7 of LN 461 of 2004, it shall be unlawful for a trade union or an employers’ association, or for the governing body or any officer or official representative of such organization to subject a person to discriminatory treatment:

- By refusing or failing to accept an application for membership
- In the terms or conditions on which such organization is prepared to accept applications for membership

73. It is also unlawful for a trade union or an employers’ association, or for the governing body or any officer or official representative of such organization to subject a member to discriminatory treatment:

- By denying access to any benefit provided by the organization, or limiting access to such benefit

- By depriving membership of the organization or varying the terms of such membership
- By subjecting him to any other detriment

74. The Regulations are also addressed to employment agencies, that is, a person, or an association of persons, who, whether for profit or otherwise, provides services related to the purpose of finding employment for workers or for supplying workers to employers, and includes guidance on careers and other services related to employment but excludes educational establishments. It shall be unlawful for an employment agency to subject a person to discriminatory treatment by refusing to provide any of its services, or in the terms or conditions it offers to provide any of its services or in the manner in which it provides any of its services. However, it cannot be said that a person is suffering discriminatory treatment if taking into account training, qualifications and experience relevant to the work sought, and all other relevant factors, such person would be unable to carry out the inherent requirements of the work sought.

75. The regulations impose a duty on the addressees of the same regulations to use appropriate means to bring the provisions of the regulations as well as of any measure taken to further their aim to the attention of every person concerned.

76. Last but not least, an important consequence of the principle of equal treatment is found in regulation 13 of the legal notice which states that any provisions contrary to this principle in any law, individual contracts, collective contracts or agreements, internal rules of undertakings or rules governing any registered organization shall be considered null and void.

Exceptions

77. The principle of equal treatment in employment does not apply to any differences of treatment based on nationality and is without prejudice to laws and conditions relating to the entry into and residence of third country nationals and stateless persons in Malta and to any treatment which arises from the legal status of the individuals concerned. This implements article 3 (2) of Directive 2000/43 which holds that the directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned. Moreover, the regulations do not prejudice any law necessary for public security, for maintaining public order, for the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

78. The law allows difference in treatment based on occupational requirements as laid down in article 4 of the Directive. Indeed, it is laid down in regulation 4 (1) that any difference of treatment based on a characteristic related to, amongst others, racial and ethnic origin, shall not constitute discriminatory treatment where by reason of the nature of the particular occupational activities concerned, or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement provided that the objective is legitimate and the requirement is proportionate.

79. The regulations do not render unlawful any act done which affords persons of a particular race or ethnic origin access to benefits relating to training which would help prepare them for a particular work or which encourages such persons to take advantage of opportunities for doing a particular work.

Means of redress

80. Where an allegation is made that some form of discriminatory treatment has occurred, the Director of Industrial and Employment Relations or the alleged victim, has a right to send a written notification to the alleged perpetrator of the alleged discriminatory treatment received, giving any relevant details and requesting a reply. On receipt of such notification, the respondent shall submit a written reply within ten working days, giving the respondent's version of events and any grounds for disputing the allegations, as well as an explanation of any relevant procedures adopted by the respondent to prevent discriminatory treatment. Such correspondence is admissible in proceedings before the Industrial Tribunal or other Court. If it appears to the tribunal or court that the respondent deliberately, and without reasonable excuse, omitted to reply within ten working days or that the reply was evasive or equivocal, the tribunal or court may draw any inference from that fact that it considers just and equitable to draw, including an inference that he committed an unlawful act.

81. Any person who alleges that the employer is in breach of, or that the conditions of employment are in breach of article 26 of EIRA, or of the regulations issued thereunder, may within four months of the alleged breach, lodge a complaint to the Industrial Tribunal. The Industrial Tribunal hears such complaint and carries out investigations. If it is satisfied that the complaint is justified, it may take such measures as it may deem fit including the cancellation of any contract of service or of any clause in a contract or in a collective agreement which is discriminatory. It may order the payment of reasonable sums of money as compensation to the aggrieved party. The procedure initiated by the complainant before the Industrial Tribunal does not prejudice any other legal procedure commenced or which may be commenced by the complainant according to law.

82. In any proceedings as referred to above, where persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the defendant to prove that there has been no breach of the principle of equal treatment, and the Court or Tribunal shall uphold the complaint if the defendant does not prove that he did not commit that unlawful act.

83. Any association, organization or other legal entity, having a legitimate interest in ensuring that these regulations are complied with, may engage itself either on behalf of or in support of the complainant, with his or her approval, in any judicial or administrative procedure which is provided for the enforcement of obligations under the regulations.

84. The alleged victim may make a complaint that he/she has been discriminated against at the Department of Industrial and Employment Relations. The Department investigates the case and is empowered to initiate criminal proceedings against the alleged perpetrator who has contravened the regulations. If the latter is found guilty, he/she shall be liable to a fine not exceeding one thousand liri or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Article 5 (e) (ii)

85. See comments on article 5 (d) (ix).

Article 5 (e) (iii)**Response to the concern expressed by the Committee in paragraph 9 of CERD/C/304/Add.94**

86. Legal Notice 85 of 2007 prohibits racial discrimination in the provision of and supply of goods and services, in both the public and private sector and also in respect of housing.

87. The Housing Authority policies operate around equality and non-discrimination on the basis of race, sex, language or religion. Thus everyone has access to the services and initiatives offered by the Housing Authority as long as they meet the conditions of the schemes.

88. In relation to rental accommodation, the Housing Authority is responsible to allocate Government units for rent. Anyone who is not living in decent accommodation can apply for alternative accommodation under social housing. All applications submitted under the scheme are processed to determine whether they are valid or not. The validity is analysed in terms of the eligibility criteria which do not make reference to any form of discrimination on the basis of race, sex, language or religion.

89. Each application is analysed individually and allocations of social housing units are made based on the decisions of the allocation panel responsible for the allocations. Applications are prioritised on the basis of their housing conditions and social situation and not on the basis of race, sex, religion or language. In fact, the Housing Authority allocates units to couples or persons of different race or religions if they are in need of better housing conditions in line with the conditions of the scheme. These persons have equal access to renting Government Units as any other person.

Summary of a case concluded by NCPE in relation to racial discrimination in housing

90. The National Commission for the Promotion of Equality (NCPE) reported that its Commissioner was asked to investigate the occurrence of racial harassment in the provision of housing. The complainant, a professional of Egyptian nationality was on assignment with an established Maltese service provider and in the course of his stay in Malta took up residence in leased premises. He complained that he suffered racial harassment by the owner of the premises when the latter sought his removal from the premises. On the other hand, in the information provided by the owner to the Commissioner, he stated that he had acted correctly and in defense of his rights since the complainant was residing in the premises abusively.

91. The Commissioner collected information from the complainant, the owner and also other persons who were involved in the incident. From this information, it was established that the ethnic background of the complainant was referred to pejoratively even in the presence of other persons besides the complainant.

92. In this regard the Commissioner noted that Legal Notice 85 of 2007 prohibits racial discrimination in the provision of and supply of goods and services, in both the public and private sector and also in respect of housing. Harassment is therein defined as follows: "(c) harassment shall be deemed to be discrimination when it is related racial or ethnic origin and takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment". Consequently, it is recognized that racial discrimination may be effected by harassment perpetuated through any manner including the use of spoken words. Moreover, such words amount to discrimination when they are either spoken with the purpose or have the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

93. Without prejudicing the owner's claim of illegal occupation of the premises, the Commissioner concluded that the information collected did indicate the use of pejorative language in relation to the complainant's ethnicity and that the use of this language created a degree of hostility that amounts to racial harassment.

Article 5 (e) (iv)

94. The vast majority of the population is in some way recipient of social security benefits. The right to social security is provided by the Social Security Act (Chapter 318 of the Laws of Malta). The Act provides for two basic schemes. One scheme is known as the non-contributory scheme, and the other as the contributory scheme. In the non-contributory scheme the basic requirement for entitlements is that the conditions of the means test are satisfied. In the contributory scheme, the basic requirement for entitlement is that specific contribution conditions are satisfied.

95. The non-contributory scheme, which was originally meant to cater for those in society who were most vulnerable or at greater risk of poverty, has in time evolved into a comprehensive scheme with a number of provisions that are intertwined in such a way that one type of benefit supplements another. This scheme has over the years succeeded in providing additional assistance to certain specific categories such as the disabled, single parents, as well as, in the case of a family as a single unit. The non-contributory schemes basically cover pensions, social assistance and medical assistance.

96. On the other hand, the contributory scheme allows all employed, self-employed, self-occupied as well as unemployed persons, to be insured under the Social Security Act. Amongst the list of benefits falling under the contributory schemes, one can mention marriage grants, sickness benefits, unemployment benefits and various categories of pensions.

97. Hybrid schemes comprise:

- (a) Family benefits, including children's allowance, disabled child allowance and maternity benefit;
- (b) Bonuses for social security pensioners and recipients of social assistance.

98. Besides the social assistance allowance, one has to take into account the various social benefits to which the same person may be entitled, which amongst others include yearly bonuses, children's allowances, disabled children's allowances, housing allowances, sickness assistance, maternity benefits, medical aid grants, etc. In addition, it should be pointed out that Government subsidizes social housing schemes, and public transport is also relatively cheaper than that of other European countries. The Maltese health-care system is based on the principle of equity and solidarity with universal coverage. The public health care system provides a comprehensive basket of health services to all persons lawfully residing in Malta who are covered by the Maltese social security legislation and also provides for all necessary care to special groups such as irregular immigrants or foreign workers who have valid work permits. No user charges or co-payments apply but a few services, including elective dental services, optical services and coverage of certain formulary medicines, are means-tested. The private sector acts as a complementary mechanism for health-care coverage. The state health service and private general practitioners comprise primary health care in Malta. However, the two systems of primary care practice function independently of one another. Secondary and tertiary care is mainly provided by specialized public hospitals of varying size and function.

99. The main acute general services are provided by one new main teaching hospital incorporating all specialised, ambulatory, inpatient care and intensive care services. Malta has become almost self-sufficient in terms of providing most tertiary care. Patients are sent

overseas for highly specialized care required for rare diseases. Universal coverage is also in place for long-term care. Access is linked to need and to capacity within the currently available infrastructure. Services are provided by the state, church and private/voluntary organizations.

100. When one looks at the range of social benefits to which a person is entitled to under the Social Security Act, these are generally considered to be commensurate with one's needs.

101. The rights laid down in this subsection of the Convention are thus covered through the existence of the above-mentioned legislation in combination with Article 32 of the Constitution.

102. Moreover, Malta is party to the European Convention on Social and Medical Assistance, so that nationals of most States parties to the Convention are guaranteed social and medical assistance while living in Malta. Moreover, Legal Notice 85 of 2007 of the European Union Act (article 4, sub-article 1) on the "Equal Treatment of Persons" prohibits discrimination in access to health care on all grounds except nationality.

103. There has been to date no case law concerning racial discrimination in connection with the above-mentioned provisions.

104. No data is available with regards to migrants who have been granted refugee status or international protection.

Article 5 (e) (v)

105. The policies of the Ministry for Education, Employment and the Family Ministry, and the services emanating thereof, are formulated and offered on a non-discriminatory basis.

106. The Ministry also endeavours to implement the provisions laid out in article 5 (e)(v) as follows.

Amendments to the Education Act

107. An amendment to the Education Act (Cap. 327) has also been effected via Act No. XIII of 2006. The amendment makes provisions consonant with those set out in article 5 in as much as it clearly states, inter alia, the following:

“(d) ‘within the limits of that which is possible to place students in schools according to their needs’;”

“(g) ‘promote, encourage and monitor the democratic governance of schools through School Councils with the active participations of each school’;” and

“(w) ‘ensure a customer care service at national level for students, parents and staff of State and Non-State schools and provide guidance and clear procedures on how complaints should be made and be dealt with in an effective manner at the proper level’.”

108. Act No. XIII of 2006 also resulted in the setting up of 10 Colleges in Malta and Gozo.

Accessibility to education

109. As per the above-mentioned amendment to the Education Act, free compulsory education has been extended to children from European Union countries and third country nationals who have acquired long-term resident status (more than 5 years) and to children of irregular immigrants as follows:

(a) Minor children of asylum-seekers and asylum-seekers who are minors shall have access to the education system under similar conditions as Maltese nationals for so long as an expulsion measure against them or their parents is not actually enforced; such education may be provided as may be determined by the Director of Education.

(b) Access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor's parents: Provided that this period may be extended to one year where specific education is provided in order to facilitate access to the education system.

110. Furthermore, it should also be noted under this heading that school transport is provided to students living more than 1.6 km away from the school they attend.

Scholarships

111. Scholarships offered by the Ministry are open to all, irrespective of race, colour, or national or ethnic origin.

Waiver of fees

112. Persons in possession of a refugee status are exempted from paying fees for a number of examinations, including MATSEC.

Staff complement

113. The Student Services Department on 9 June 2009 issued a call for the Post of Support Teacher in the Peripatetic Service for Unaccompanied Asylum Seekers to plan and implement a transition programme to support students for entry into mainstream schools; plan the academic work for each student according to his/her individual needs and year group and liaise with coordinator/managers of the residential home amongst others.

114. The Human Resources Development Department has drawn up and issued several calls for application for specialized personnel to see to the students' social, emotional, intellectual and physical needs.

115. The Customer Care Service at the Education Directorates has been upgraded to be able to give a better service to clients. This upgrade includes a Psychological Support Unit, set up to give service to teaching personnel and parents of students.

Article 5 (e) (vi)

116. Although there is, as yet, no specific provision in Maltese legislation which caters exclusively for the protection of the right to equal participation in cultural activities, article 32 of the Constitution amply covers such situations and violation of this provision could be cited if participation in cultural activities is denied on grounds of race. The National Cultural Policy, expected to be finalized by the end of 2010, will enshrine the role of an inclusive culture across the whole range of cultural and social activities, including the participation and cultural enablement of disadvantaged or vulnerable groups.

Article 5 (f)

117. Although there is no specific provision in Maltese legislation which caters exclusively for the protection of the right of access to public facilities, article 32 of the Constitution is generic enough in its content to provide amply for such situations. There has been no case law concerning racial discrimination in connection with the foregoing provisions.

118. The enforcement of the above-mentioned protection provisions is regulated by article 46 of the Constitution. The Civil Court, First Hall, has original jurisdiction to hear and determine any application made by a person who alleges that any of the provisions of sections 33 to 45 (inclusive) has been, is being or is likely to be contravened in relation to him.

119. The Constitutional Court has jurisdiction to hear and determine appeals from the decisions of the Civil Court, First Hall, under section 4 of the Constitution.

Article 6

120. The abovementioned provisions of the Criminal Code apply regardless of nationality or immigration status of the victim.

121. Likewise, where a person suffers racial discrimination which violates his fundamental rights, action may be taken and reparation sought, on the basis of the Constitution or the European Convention on Human Rights, as also stated in Malta's previous report, regardless of nationality or immigration status, subject to the rules determining jurisdiction.

122. Moreover, reference may also be made to the Equal Treatment of Persons Order adopted in 2007 which provides additional measures to facilitate the exercise of the right of redress by victims of racial discrimination. Article 15 of the Order provides that where any of its provisions are violated, the person in question may institute civil proceedings requesting the Court to order the defendant to desist from the unlawful acts and to order the payment of compensation for damages. In such cases, the plaintiff would be required to prove less favourable treatment, while it would be up to the defendant to prove such different treatment is justified in accordance with the provisions of the Order.

123. In addition, article 13(1) reverses the burden of proof in civil proceedings involving racial discrimination, providing that:

If a person who considers that he or she has been discriminated against establishes, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination against him or her, the burden of proving that there has been no discrimination shall lie on the person, establishment or entity against whom the allegation of discrimination is directed.

124. The Order also envisages the assistance of the National Commission for the Promotion of Equality, and the possibility of such Commission referring a matter to the Court on behalf of the victim upon his complaint. Moreover, article 7 prohibits victimization for having made a complaint to the lawful authorities or for having initiated or participated in proceedings for redress on grounds of alleged breach of the provisions of these regulations, or for having disclosed information, confidential or otherwise, to a designated public regulating body, regarding alleged acts of discrimination or discriminatory treatment.

Race cases submitted to the National Commission for the Promotion of Equality

<i>Area of concern</i>	<i>General outcomes</i>
Allegation of unfair treatment at work and in recruitment based on race/ethnicity	Such cases are referred to relevant equality bodies – both nationally as well as internationally, depending on specifics of case.

<i>Area of concern</i>	<i>General outcomes</i>
Allegations of unfair treatment at work and in recruitment based on nationality in goods and services	Such cases are referred to relevant equality bodies – both nationally as well as internationally, depending on specifics of case.
Allegations of discrimination based on race/ethnic origin in the access to housing	Although most cases related to this subject have been recent and are still under investigation, NCPE has concluded that there was discrimination in a previous case on the topic of housing.
Allegations of discrimination based on race in the access to Visa	Such cases have been recent and are therefore awaiting investigation to be completed.
Allegations of discrimination on race in the access to and supply of goods and services	Such cases have been recent and are therefore awaiting investigation to be completed.
Alleged discrimination against European Union nationals	NCPE has no jurisdiction over such cases.
Alleged discrimination in freedom of movement	NCPE has no jurisdiction over such cases.

125. Malta's migration legislation also applies to non-citizens in a uniform manner with reference to their status as European Union Nationals or Third Country Nationals. Measures relating to irregular entry into Malta, in accordance with Part IV (Prohibited Immigrants) of the Immigration Act,¹⁰ apply irrespective of racial considerations. Such persons are subject to a removal order, in accordance with article 14 of the Act, and may be detained in custody in accordance with article 14(2).

126. As a matter of policy, the detention of prohibited immigrants is limited to a maximum of 18 months. Persons who enter the country irregularly and who apply for asylum, and who, after 12 months, have not had their case determined, are released from detention.

127. Persons issued with a removal order or a detention order, are entitled to file an appeal from such orders with the Immigration Appeals Board in accordance with articles 14 and 25A of the Immigration Act. The Board shall order the release of a person in detention if such detention is unreasonable on the grounds that there are no reasonable prospects of deportation within a reasonable time (article 25A(10)). A decision by the Board may also be appealed to the Courts on points of law. Habeas corpus rules are applicable to non-citizens as well; hence detention may also be challenged before the Courts.

128. Removal orders are issued without prejudice to the asylum process, as article 14(5) of the Immigration Act lays down that: "(5) Nothing in this article shall preclude or prejudice the application of Maltese law on the right to asylum and the rights of refugees and of Malta's international obligations in this regard."

129. In fact, this also means that such removal orders are suspended pending a definitive decision on an asylum application, as also envisaged by the asylum legislation.¹¹

¹⁰ Cap. 217, Laws of Malta.

¹¹ See section on asylum legislation below.

Racial discrimination in relation to asylum law and policy**Response to the concern expressed by the Committee in paragraph 13 of CERD/C/304/Add.94; recommendation No. 30 (2004); recommendation No. 22 (1996)***Legislation*

130. Malta is a signatory to the 1951 Geneva Convention and the Protocol of 1967. Malta withdrew its geographical reservation to the Convention on 13 December 2001. The Office of the Refugee Commissioner, Malta's asylum determination authority, became fully operational on 1 January 2002.

131. Malta has transposed into national legislation¹² the European Union's Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, as well as Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, thereby granting the relevant rights to both Convention Refugees and Beneficiaries of Subsidiary Protection.

132. Article 2 of the Refugees Act defines a refugee as:

a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events is unable or, owing to such fear, is unwilling to return to it.

133. In accordance with article 14 (1)(a) of the Procedural Standards Regulations, refugees recognized by the Maltese authorities are entitled:

- (i) to remain in Malta with freedom of movement, and to be granted personal documents, including a residence permit for a period of three years, which shall be renewable. However, a residence permit granted to a family member may be for less than three years, although it is also renewable;
- (ii) to be given a Convention Travel Document entitling him to leave and return to Malta without the need of a visa;
- (iii) to have access to employment, social welfare, appropriate accommodation, integration programmes, State education and training, and to receive State medical care especially in the case of vulnerable groups of persons.

134. In accordance with article 17(1) of the Refugees Act, subsidiary protection is granted when the applicant does not qualify for refugee status, but where there are substantial grounds for believing that, if returned to his country of origin, or in the case of a stateless person, to his country of former habitual residence, the applicant would face a real risk of suffering serious harm. According to Article 2 of the Refugees Act, serious harm is defined as:

¹² Refugees Act (Cap. 420 of the Laws of Malta) and the Procedural standards in examining applications for refugee status Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

135. In accordance with article 14(1)(b) of the Procedural Standards Regulations beneficiaries of subsidiary protection recognized as such by the Maltese authorities are entitled:

- (i) to remain in Malta with freedom of movement and to be granted personal documents, including a residence permit for a period of one year, which shall be renewable;
- (ii) to be provided with documents which enable him to travel especially when serious humanitarian reasons arise that require his presence in another State, unless compelling reasons of national security or public order otherwise require;
- (iii) to have access to employment, subject to labour market considerations, core social welfare benefits, appropriate accommodation, integration programmes, State education and training, and to receive core State medical care, especially in the case of vulnerable groups of persons.

136. The principle of non-refoulement is therefore enshrined in Maltese legislation by virtue of the provisions of the Refugees Act and the pertinent subsidiary legislation. Article 14(1) of the Act states that:

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

137. It is also pertinent to point out that asylum applicants are entitled to remain in Malta until a final decision on their application has been given.¹³ Therefore, where an appeal has been lodged, any removal order is suspended until such time as the decision is definitive.

Asylum scenario (following the lifting of the geographical reservation)

138. Malta has experienced a substantial influx of irregular immigrants, many of whom applied for international protection, since 2002. In 2008 and 2009 the proportion of irregular immigrants who applied for international protection was 98 and 90 per cent respectively, clearly demonstrating the genuine accessibility of the asylum system.

139. Since 2002, the Office of the Refugee Commissioner has received a total of 10,881 applications. The total number of persons recognized as beneficiaries of international protection by the Office of the Refugee Commissioner between 2002 and the end of February 2010 stands at 6,061, with 237 being recognized as refugees, 5,082 as beneficiaries of subsidiary protection and 22 as beneficiaries of Temporary Humanitarian Protection.¹⁴

¹³ Article 12 of SL 420.07.

¹⁴ Temporary Humanitarian Protection is a non-European Union harmonized status awarded to applicants for international protection who neither qualify for refugee status nor for subsidiary protection status, but who, for other valid reasons, should not be immediately returned to their country of origin. Such reasons are: (a) that the applicant is a minor; (b) medical grounds; or (c) other

140. The reports of the Office of the United Nations High Commissioner for Refugees (UNHCR) on Asylum Levels and Trends in Industrialised Countries classify Malta first in terms of asylum applications per capita received in 2008 (6.4 applications per thousand inhabitants) and second in 2009 (5.8 applications per thousand inhabitants).

141. Moreover, as indicated by the statistics pertaining to the Office of the Refugee Commissioner, Malta has a consistently high asylum recognition rate hovering over 50 per cent, and which even reached 65 per cent in 2009. This is due to the nature of the migratory influx towards Malta, which includes a very substantial proportion of immigrants from unstable regions in the Horn of Africa, in particular Somalia.

142. Whereas Malta has fully complied with its obligations towards asylum-seekers and beneficiaries of international protection, this entails significant challenges for the country, particularly from an integration point of view. This is due, in particular, to Malta's small labour market, which is susceptible to saturation. In view of this, Malta has called for the resettlement of beneficiaries of international protection to other European Union Member States and other countries.

143. A number of European Union Member States have responded bilaterally to Malta's call for assistance over the last few years. In 2009 France has resettled 95 beneficiaries of international protection from Malta by means of a project co-financed by the European Refugee Fund Community Actions.

144. Moreover, 10 European Union Member States, namely France, Germany, Hungary, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia and the United Kingdom of Great Britain and Northern Ireland, are taking part in a Pilot Project for Intra-EU Resettlement of Beneficiaries of International Protection from Malta, co-financed by the European Union's European Refugee Fund Community Actions. This Project is expected to lead to the resettlement of approximately 250 beneficiaries of international protection during the course of 2010. The Project enjoys the full support and involves the participation of both the UNHCR and the International Organization for Migration (IOM).

145. Moreover, the United States of America has also responded to Malta's call for assistance, and has been running a programme for the resettlement of beneficiaries of international protection from Malta since 2007. A total of 514 beneficiaries of international protection have so far been resettled between 2007 and mid-June 2010 by means of this programme, which is still ongoing.

Racial discrimination and the fight against terrorism

Recommendation No. 30 (2004)

146. Subtitle IV (A) 'Of acts of Terrorism, Funding of Terrorism and Ancillary Offences' in Title IX of the Criminal Code, defines terrorism and persons or groups involved in terrorist activity exclusively on the basis of the acts concerned.

147. Article 328A(1) defines an "act of terrorism" as an act committed wilfully, which may seriously damage a country or an international organization where committed with the aim of:

“(a) seriously intimidating a population, or

humanitarian grounds. This status is recognized by the Refugee Commissioner on the basis of national policy.

“(b) unduly compelling a Government or international organization to perform or abstain from performing any act, or

“(c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.”

148. The acts which may constitute acts of terrorism are listed in article 328A(2):

(a) taking away of the life or liberty of a person;

(b) endangering the life of a person by bodily harm;

(c) bodily harm;

(d) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss;

(e) seizure of aircraft, ships or other means of public or goods transport;

(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons;

(g) research into or development of biological and chemical weapons;

(h) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person;

(i) interfering with or disrupting the supply of water, power or any other fundamental natural resource endangering the life of any person;

(j) threatening to commit any of the acts in paragraphs (a) to (i) ...

149. Arrest may only take place for the purpose of an investigation or charge relating to the offences established in the Criminal Code and it is therefore the elements of these offences, which are relevant and not ethnic or racial profiling.

Article 7

150. As a general rule, the policies of the Ministry for the Education, Employment and the Family (MEEF) and the services emanating thereof, are formulated and offered on a non-discriminatory basis.

151. The Ministry also endeavours to implement the provisions laid out in article 7 as follows.

Curriculum

152. The National Minimum Curriculum (1999) principles 2 and 8 on “Respect for Diversity” and “An Inclusive Education” promote education in value orientations with the aim to fostering tolerance, understanding, and respect among peoples, groups and individual persons. Such orientations are reflected in school programmes of study and pedagogy based on intercultural relations, interpersonal communication, and attitudes of openness to different life perspectives and experiences. Elements of human rights are integrated across the curriculum and are reflected in subjects like Social Studies, Personal and Social Development and European Studies. Examples of such programmes of study and

learning approaches are evident in subjects as Personal and Social Development (PSD) and Social Studies. Relevant topics dealt with comprise:

- (a) Personal and Social Development

Form 2

Values and Diversity: helping students identify values they own; identifying that different people have different values; understanding the importance of tolerance and diversity.

Form 3

Rights as a Citizen: defining the meaning of living in a democratic society; identifying rights and obligations as free and independent persons within our country.

Tolerance of ideas: considering the role of tolerance in being a responsible citizen; recognising stereotypes and prejudices in relation to other cultures.

Intercultural Awareness: identifying different rights and obligations in other cultures; establishing constructive and non-oppressive relationships with people from other cultures; identifying methods on how to be more interdependent between cultures.

- (b) Social Studies

Form 4

The Individual as a Social Being: social and interest groups, ethnic groups and cultural identities; social networks and social mobility; classes. Socialisation and social control: norms, values and laws; sanctions; solidarity and conflict; deviance.

- (c) European Studies

Module 3 – Migratory effects and ethnic diversity

Awareness raising

153. October 2003 – October 2008 the Education Officer for Democracy and Values in Education disseminated the Council of Europe Education for Democratic Citizenship (EDC) and Human Rights Education (HRE) project in Schools. One of the aspects of this project is diversity and race equality.

154. The basic programme of the Democratic and Values Education section up to 2008 was the building of “Democratic Citizenship Schools” based on the principles of the Council of Europe’s project for EDC/HRE (Learning and Living Democracy), which are:

- (a) Active participation;
- (b) Valuing diversity (the concept of pluralism);
- (c) Human rights values (rights and responsibilities).

155. Staff professional development sessions were held in both primary and secondary schools to disseminate this programme and to include it in the School Development Plan.

156. Given the fact that since 2004 more immigrants were reaching Malta from North African shores, the “valuing diversity” aspect has been taken very seriously in a number of schools where students are being enabled to develop a sense of respect, cooperation and solidarity among cultures. Positive measures and initiatives aimed at raising the awareness of the student population regarding culture, religion and history of immigrant refugees or

minority groups have been included in the School Development Plan. Schools aim to instil in students the value of acceptance and respect towards diversity. With this principle in mind there have been a number of significant initiatives in schools:

(a) The integration of multi-cultural ethnic groups and immigrants in school was among the topics chosen for discussion during the Comenius Projects of from 2001 up to the present day;

(b) Global Education Week is celebrated in collaboration with the European Centre for Global Interdependence and Solidarity, more commonly known as the North South Centre, of the Council of Europe, during the third week of November. Secondary schools in Malta have been participating in this Global and Development Education Project since 1999. Good examples of Maltese schools' participation in this European Programme are the seminars "Youth for Change", "Youth against Conflict – Youth for Peace", "Together for a World Without Poverty", "Learning for All, Everywhere Now", "Acting Together for a Just World", and "6 Billion: One Humanity" held in 2002, 2003, 2004, 2005, 2006 and 2007 respectively. In 2008 a number of projects and activities that promote the link between the local and global dimension were displayed under the motto "Inter-Cultural Dialogue";

(c) The celebration of specific citizenship calendar days such as Human Rights Day, Day of Tolerance and Non-Violence, World Refugee Day, Holocaust Memorial Day as a whole school approach. Lesson plans, curriculum and interdisciplinary resources to celebrate these days are now provided by the Humanities Section;

(d) Talks during assemblies;

(e) Visits by immigrants who share their experiences;

(f) Visits to the Mosque;

(g) Immigrant children attending Maltese schools are given the opportunity by the class teacher to talk about their culture and country of origin.

157. Schools are creating a democratic ethos which embodies the values of fairness, justice, equality and respect. They are embedding these principles in their school policies e.g. Anti-Bullying, Equal Opportunities, Intercultural and Anti-Racist policies.

In-service training

158. In-service courses are organized by the Training and Professional Development Section of the Curriculum Management and eLearning Department every July and September for all teachers.

159. In 2002 the Social Studies Section organized an in-service course entitled "The Student as Citizen – Challenges, Opportunities and Learning Approaches". It addressed educational values that underpin the development of civic competence and social responsibility needed to meet the challenges of a globalized society. The topics of social justice and appreciation of diversity were touched upon. The course was delivered by Margot Brown, the National Coordinator of the Centre for Global Education based at York, St John College.

160. This was followed by a one-day conference for all teachers from other teaching areas. The theme was "The Democratic School" organized by the Education for Democratic Citizenship Branch of the International Relations Section within the then Education Division. This branch also published *The Democratic School*, a publication that includes teaching resources for Education for Democratic Citizenship.

161. In 2006 the Democracy and Values Education Section organised an in-service course entitled “Education against racism, xenophobia and discrimination” for teachers teaching Personal and Social Development and Social Studies.

162. In 2007 the Department of Curriculum Management organized a training session focusing on Intercultural Pedagogy and Intercultural Mediation for all PSD teachers (Primary and Secondary) and Guidance Teachers. This entailed the methodology of intercultural learning, why it is important to have an intercultural way of thinking, when this is necessary and how to put it into practice.

163. Two Council of Europe workshops were held:

- 2007 – “A Route to Equality and Fairness in School” was organized for School Administrators, Education Officers, Subject Coordinators and Teacher Trainers in Malta. One of the days was focused on the topic “All Different – All Equal: Education Against Racism, Xenophobia and Intolerance”.
- 2008 – “Creating Opportunities for Developing Intercultural Dialogue”. This targeted teachers, heads of department, heads of school, education policymakers, educational psychologists, education officers, university students. It addressed the issues of minorities and migrants, inter-religious dialogue, cultural dialogue and human rights. It aimed to:
 - (a) Raise awareness of the need to engage in intercultural dialogue as a transversal competence that needs to be tackled across the curriculum in order to promote cultural understanding, harmony and cooperation;
 - (b) Promote dialogue as the way forward in enhancing mutual understanding and confronting differences through a culture of non-violence;
 - (c) Promote intercultural education as a means of achieving sustainable tolerance and peace, and therefore preparing individuals for living in a multicultural society;
 - (d) Share and disseminate good practice;
 - (e) Identify practical ways of engaging in intercultural education that enhances intercultural dialogue;
 - (f) Give cultural diversity a more positive connotation than it has today.

Drama Unit

164. In 2005 the Drama Unit within the then Education Division carried out a citizenship project for secondary schools in which racism, prejudice and discrimination were targeted. The subject was introduced through the theme of bullying, and through Forum Theatre, followed by a discussion.

Jesuit Refugee Service (JRS) Malta Outreach Programme in Schools

165. Since 2004 the Jesuit Refugee Service (JRS) Malta has been carrying out a project in collaboration with the Curriculum Management and eLearning Department in schools entitled “Strength in Diversity”, “Bridging Cultures” and “All Equal”. It includes talks by refugees, artistic workshops about human rights, role plays to appreciate the needs and fears of individuals concerned and students visiting the local mosque.

166. The aim of the project which is still running in schools is to give students the opportunity to interact with people from different ethnic backgrounds and to recognize such differences as a strength. Students are able to come into contact with aspects of African culture.

Courses

167. The Directorate for Lifelong Learning offers courses that assist non-Maltese residents and economic migrants to overcome communication and cultural barriers. These courses include Maltese for Foreigners and English for Foreigners as well as sessions on Maltese and European culture and values.

Funding

168. A number of administrative bodies within the Ministry, such as the Foundation for Educational Services and the Directorate for Lifelong Learning, are considering the possibility of applying for European Union funds to work on projects that promote integration.

Article 8**Response to the concern expressed by the Committee in paragraph 14 of CERD/C/304/Add.94**

169. The relevant authorities are studying the possibility that Malta ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of State Parties to the Convention.

Annex

Update by the Parliamentary Ombudsman

The Parliamentary Ombudsman, Chief Justice Emeritus Dr. J. Said Pullicino was consulted in order to follow up on paragraph 11 of CERD/C/304/Add.94. The following is the update he provided, which is being quoted in its entirety:

“The Office of the Ombudsman’s 15th anniversary is rapidly approaching. Looking back to my years of tenure (since 2005) I can confirm the following:

1. The State of Malta (CERD ‘State Party’) endowed my Office with the necessary legislative tools to operate effectively. These include security of tenure, powers to set up my own office, powers to enter premises and request any documentation considered necessary, power to summon any person to provide information, a wide discretion deciding what cases to take on, etc. Very wisely, the legislator balanced these powers, e.g. by stipulating that the Ombudsman must give detailed reasons for his action, must respect rules of professional secrecy, is subject to court action if he acts ultra vires, etc; and
2. The State of Malta has supported the office throughout the years, for example by providing the necessary funding, and upholding the vast majority of my recommendations.

I am also happy to report that in the years since the fourteenth periodic report, there have been a number of positive developments. These include:

1. The entrenching of the Ombudsman institution, in the Constitution of Malta (art. 64A).
2. The development of a strong working relationship with the Council of Europe’s Commissioner for Human Rights. Thanks to this relationship, various members of my Office have attended workshops and specific training in Fundamental Human Rights issues, and are now working to promote respect for Fundamental Human Rights in Malta.
3. The evolution over time, from the role of investigator of allegations of bad administration, to a human rights’ protector. Back in the late 1990s, the European Union Ombudsman of the time had claimed that good administration should be recognised as a Fundamental Human Rights. The EU recognised as much in the Charter of Fundamental Human Rights, Nice, December 2000, art. 41. This is now part of the TEU, since the Lisbon Treaty. Locally we have followed the same vein, insisting that Good Administration is a right. Over and above, we have carried out a number of investigations involving breaches of fundamental civil rights e.g. discrimination against senior citizens (http://www.ombudsman.org.mt/index.asp?pg=CL_Oct06), and the right to marry (http://www.ombudsman.org.mt/index.asp?pg=CL_Aug09).
4. In time we have developed a very good working relationship with entities that seek to assist and protect migrants and their interests, in particular the Emigrants’ Commission, which often refers immigrants to us when they face difficulties with government entities.

On the other hand, we have no significant complaints to report on racial discrimination involving Government or Government entities. It is emphasized that the Ombudsman’s jurisdiction is by law limited to these areas of investigation. Allegations of violations of fundamental human rights made by persons of different race or nationality do not as a rule directly involve issues of racial discrimination but rather other fundamental rights such as: right to employment, discrimination in medical treatment, right to religious belief, freedom of conscience and freedom of expression.

5. In this respect I have repeatedly submitted that the time is ripe for my Office to be designated as a National Human Rights Institution (NHRI). This would empower it to consider complaints concerning racial discrimination in the private sector.

With regard to the Committee on the Elimination of Racial Discrimination's recommendation '**The State Party is encouraged to increase its efforts in disseminating information about the duties and responsibilities of the Ombudsman, as well as about the procedure for launching complaints concerning racial discrimination**' as things stand, the role of dissemination of information lies in the Ombudsman's hands. The State supports the Ombudsman by giving the necessary funds and resources; it is then up to the Ombudsman to put these funds to effective use. E.g. we print and distribute an annual report and case law (free of charge), we have an up-to-date website too. These are effective means of publicity and dissemination of information, financed from the State's coffers. It is also up to the Ombudsman to organise seminars, deliver lectures, participate in TV and radio programmes, issue press releases.

On the other hand, the State cooperates even in this regard, for example by giving the Ombudsman coverage where this is called for e.g. on State television, through the Department of Information website, etc. It is my considered opinion that the State of Malta is abiding by the above quoted Committee recommendation. There is always room for improving ways and means of disseminating information on the rights of persons within the national territory to seek redress before competent authorities including the Ombudsman, when allegations of racial discrimination are made. This is particularly so in the area of irregular immigration.

J. Said **Pullicino**
Parliamentary Ombudsman"
