

Third report on Malta

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Foreword

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

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

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

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

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 14 December 2007 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

Executive summary

Since the publication of ECRI's second report on Malta on 23 July 2002, progress has been made in a number of the fields highlighted in that report. The legal and institutional framework against racism and racial discrimination has been strengthened. Thus, criminal law provisions against racist expression and racially and religiously-aggravated offences are now in force. Primary anti-discrimination legislation covering different areas of life has also been introduced, and the National Commission for the Promotion of Equality, whose mandate has been extended to cover racial equality issues, is entrusted with monitoring its implementation. Efforts have been made to accommodate and assist irregular migrants who are released from detention centres and to improve some specific aspects of their life in detention. Since February 2007, an institution has been made specifically responsible for issues of integration and welfare of asylum seekers. Education initiatives aimed at promoting an appreciation of diversity and knowledge and respect of human rights have been developed, notably in co-operation with the non-governmental sector. Requirements are in place as to standards and practice that must be respected by broadcasters in order to promote racial equality.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. As a result of migration movements from Libya to Europe, a number of irregular migrants equivalent to approximately 0.5% of the total population has arrived in Malta each year since ECRI's second report, posing a wide range of challenges. In response to this phenomenon, the Maltese authorities have implemented a policy of systematic detention of all such migrants, with negative consequences not only on the respect of the rights of the persons concerned but also on the perception of these people as criminals and the levels of racism and xenophobia among the general population. These perceptions have been sustained by a public, and notably political, debate around irregular immigration in which human rights and human dignity have generally not been in focus. Irregular immigration has also provided the platform for the development of organised right-wing extremist groups. Irregular migrants, asylum seekers, persons with humanitarian protection and refugees remain vulnerable to racial discrimination in accessing different services and to exploitation on the labour market, where they are predominantly employed illegally. The legal provisions against racist expression, racially-motivated offences and racial discrimination are not yet fully applied and there is still little awareness of the need to actively monitor racism and racial discrimination in order to identify and address these phenomena properly. Malta's perception of itself exclusively as a transit country for immigration has negatively affected the Maltese authorities' ability to devise integration measures for persons who may end up staying for long periods of time in the country.

In this report, ECRI recommends that the Maltese authorities take further action in a number of areas. It recommends that they commit to a process aimed at identifying non-custodial alternatives for reception of irregular migrants; while the current detention policy is maintained, it recommends that they improve the conditions of detention and provide these persons with learning opportunities. ECRI also recommends that the Maltese authorities promote a more balanced debate on immigration that reflects the human rights dimension of this phenomenon. It furthermore recommends that the Maltese authorities improve the implementation of the provisions in force against racism and racial discrimination through: training and awareness-raising measures for the judges and police; awareness-raising measures for potential victims of discrimination; strengthening the independence of the National Commission for the Promotion of Equality. Further action is recommended in a number of additional areas, including: the need to ratify Protocol No. 12 to the ECHR; the need to introduce data collection systems to monitor the extent of racism and xenophobia in Malta; and the need to counter the exploitation of members of vulnerable groups on the labour market.

I. FOLLOW-UP TO ECRI'S SECOND REPORT ON MALTA

International legal instruments

1. In its second report, ECRI recommended that Malta sign and ratify Protocol No. 12 to the European Convention on Human Rights (ECHR), which provides for a general prohibition of discrimination. It also recommended that Malta sign and ratify the European Convention on Nationality and the Convention on the Participation of Foreigners in Public Life at Local Level. ECRI notes that none of these instruments have since been ratified by Malta. However, the European Convention on Nationality was signed in October 2003 and the Maltese authorities have stated that they are evaluating the legal implications of ratifying the Convention on the Participation of Foreigners in Public Life at Local Level.
2. In its second report, ECRI also recommended that Malta sign and ratify the European Social Charter (Revised) and the European Convention on the Legal Status of Migrant Workers. ECRI welcomes the ratification of the European Social Charter (Revised) by Malta in July 2005. It notes, however, that neither the European Convention on the Legal Status of Migrant Workers nor the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which has entered into force since ECRI's second report, have been signed by Malta. The European Charter for Regional or Minority Languages, which Malta had already signed at the time of ECRI's second report, has not been ratified.
3. Since ECRI's second report on Malta, the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems have been opened for signature and ratification and have entered into force. These instruments were signed by Malta in January 2002 and January 2003 respectively. However, Malta has not yet ratified them.

Recommendations:

4. ECRI recommends that the Maltese authorities ratify Protocol No. 12 to the ECHR as soon as possible. It also recommends that they ratify the European Convention on Nationality and the Convention on the Participation of Foreigners in Public Life at Local Level. It encourages the Maltese authorities to ratify the European Convention on the Legal Status of Migrant Workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the European Charter for Regional or Minority Languages.
5. ECRI furthermore recommends that the Maltese authorities ratify the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems as soon as possible.

Criminal law provisions

6. In its second report, ECRI noted the imminent entry into force of amendments to the Criminal Code introducing provisions against racist expression. ECRI welcomes the fact that such provisions, which are now contained in Article 82A of the Criminal Code¹, cover racist insults and threats as well as incitement to racial

¹ Article 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

hatred, as recommended in ECRI General Policy recommendation No. 7 on national legislation to combat racism and racial discrimination². The authorities report that since its entry into force on 19 April 2002, Article 82A has been applied in two cases, both of which concern discourse by exponents of extreme right-wing groups held at public meetings³. However, there have been no final convictions at the time of writing. ECRI understands that there have also been some cases of incitement to racial hatred committed through the media, in respect of which proceedings have been initiated notably under the Press Act or the Broadcasting Act⁴. However, ECRI notes that instances of incitement to racial hatred are not always prosecuted, especially when they are committed through the Internet.

7. In its second report, ECRI recommended that Malta introduce a provision establishing the racist motivation of an offence as a specific aggravating circumstance in sentencing. ECRI is pleased to note that amendments to the Criminal Code introduced in August 2006 increased punishment for certain offences (related, *inter alia*, to bodily harm, threats, private violence and harassment and crimes against property) when such offences are racially or religiously aggravated⁵. ECRI notes with interest that the definition of racially or religiously aggravated offences include, for instance, offences motivated “wholly or partly” by hostility towards members of the group in question and offences committed against persons who associate with members of the group in question. However, ECRI notes that so far there have been no cases of the implementation of these provisions, a situation which is at variance with reported instances of racially-motivated offences targeted at members of minority groups⁶. This situation appears to reflect, at least in part, a certain reluctance among members of minority groups to report the offences to which they fall victim, either because they consider that doing so will lead to no results or for fear of negative repercussions.
8. More generally, civil society organisations have underlined that those working in the criminal justice system, and notably judges and the police, are not always conversant with the provisions in force against racism, including those prohibiting racist expression and racially-motivated offences; nor are they adequately aware of the need to apply these provisions vigorously. The Maltese authorities have stressed, however, that judges regularly receive all new laws and keep abreast of all new legislation, which they implement in the normal course of their duties. The Maltese authorities have also informed ECRI that information on the amendments introduced in these areas since ECRI’s second report and their scope has been given to serving police officers and new recruits.

such a manner, with intent thereby to stir up racial hatred or whereby racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months. (II) For the purposes of the foregoing subarticle, ‘racial hatred’ means hatred against a group of persons in Malta defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.”

² See ECRI General Policy Recommendation N°7, paragraph 18 a), b) and c) (and paragraphs 38-40 of the Explanatory Memorandum).

³ See below, The impact on public opinion of political and public debate concerning immigration – Right-wing extremism.

⁴ See below, Media.

⁵ Act XVI of 2006.

⁶ See below, Racially motivated violence.

Recommendations:

9. ECRI recommends that the Maltese authorities improve the implementation of the provisions in force against racist expression and racially-motivated offences. It recommends that they strengthen their efforts to ensure that all those involved in the criminal justice system, from judges to the prosecuting authorities, the police and lawyers, are equipped with thorough knowledge of these provisions and are fully aware of the need to actively and thoroughly counter all manifestations of these phenomena.
10. ECRI recommends that the Maltese authorities ensure that all instances of incitement to racial hatred are duly prosecuted, including when they are committed through the Internet, letters to the editor published in newspapers, or by politicians.
11. ECRI recommends that the Maltese authorities work to improve the institutional response to racially-motivated offences. To this end, it recommends that they take steps to encourage the reporting of racist incidents by victims and witnesses and improve the investigation of these incidents by the police. ECRI strongly encourages the Maltese authorities to draw inspiration from its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which provide extensive guidance in both areas⁷.
12. ECRI encourages the Maltese authorities to keep the adequacy of the existing criminal law provisions against racism under review. It recommends that, in so doing, they draw inspiration from ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which contains a list of different types of conduct which should be penalised⁸.

Civil and administrative law provisions

13. In its second report, ECRI recommended that Malta introduce comprehensive civil and administrative anti-discrimination legislation covering all fields of life, from employment and education to housing and access to public places. ECRI is pleased to note that since then, Malta has adopted anti-discrimination legislation in order to transpose the two European Union Directives on equal treatment into domestic law⁹. Thus, through Legal Notice 461/2004 (Employment and Industrial Relation Act) and subsequent amendments, Malta has introduced provisions against discrimination on a number of grounds, including racial or ethnic origin and religion, in employment-related areas. These provisions were complemented in April 2007 by Legal Notice 85/2007 (Equal Treatment of Persons Order), which prohibits discrimination on racial or ethnic origin in areas not related to employment.

⁷ See ECRI General Policy Recommendation N°11, paragraphs 11, 13 and 14 (and paragraphs 65-67 and 72-75 of the Explanatory Memorandum).

⁸ See ECRI General Policy Recommendation N°7, paragraph 18 d), e), f), g) and h) (and paragraphs 41-44 of the Explanatory Memorandum).

⁹ Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

14. ECRI welcomes the fact that a number of elements included in its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination are reflected in the new provisions. However, other aspects of this Recommendation are not reflected therein. For instance, nationality (i.e. citizenship) and language are not included in the prohibited grounds of discrimination and public authorities have not been placed under a statutory duty to eliminate discrimination and promote equality in the exercise of their functions. ECRI also notes that important public authority functions, such as law enforcement and border control, fall outside of the scope of the newly-adopted provisions. In this last respect, in its second report ECRI already noted that public authorities are bound by the prohibition of discrimination contained in Article 45 of the Constitution. However, ECRI notes that no cases challenging an act of a public authority on the basis of this Article have ever been brought to court. ECRI also notes that the ECHR is part of Maltese domestic law and that an aggrieved person may also make claims before the Maltese Courts on the basis of the provisions of the Convention, including Article 14 (Prohibition of discrimination).
15. So far, there have been no cases of the implementation of the anti-discrimination provisions introduced through the Employment and Industrial Relations Act and the Equal Treatment of Persons Order on grounds covered by ECRI's mandate. Once again, ECRI notes that this situation is in contrast with reported instances of racial discrimination in different fields, including access to public places, transport and employment¹⁰. However, ECRI hopes that the National Commission for the Promotion of Equality will play a key role in improving the implementation of these provisions, as highlighted below¹¹.

Recommendations:

16. ECRI encourages the Maltese authorities in their efforts to ensure that civil and administrative law provisions provide adequate protection against racial discrimination. It encourages them to keep the adequacy of the existing provisions under review and, in so doing, to draw inspiration from ECRI General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, in particular as concerns the following issues: (i) the need to protect individuals from discrimination on grounds of nationality (i.e. citizenship) and language¹²; (ii) the need to bring important functions of public authorities under the scope of antidiscrimination legislation¹³; (iii) the need to place public authorities under a statutory duty to eliminate discrimination and promote equality in the exercise of their functions¹⁴.

¹⁰ See below, Access to services and Employment.

¹¹ See Specialised bodies and other institutions.

¹² ECRI General Policy Recommendation N°7, paragraph 1 (and paragraph 6 of the Explanatory Memorandum).

¹³ ECRI General Policy Recommendation N°7, paragraph 7 (and paragraph 26 of the Explanatory Memorandum).

¹⁴ ECRI General Policy Recommendation N°7, paragraph 8 (and paragraph 27 of the Explanatory Memorandum).

Specialised bodies and other institutions

- *National Commission for the Promotion of Equality*

17. The Equal Treatment of Persons Order¹⁵ has extended the mandate of the National Commission for the Promotion of Equality - a body established in 2003 to promote gender equality - to cover equality and non-discrimination issues on grounds of racial and ethnic origin. As recommended in ECRI's second report, the Commission has been given a statutory role to keep the working of the Order under review and assist with its implementation. Thus, for instance, the Commission can carry out investigations into possible instances of racial discrimination both on the basis of a complaint and on its own initiative. Following its investigations, it can report a case to the police or, if there is no evidence of a criminal offence, call upon the discriminating party to redress the situation and mediate between the parties.
18. As mentioned above, no allegations of racial discrimination have as yet been dealt with by the Commission, although ECRI understands that in July 2007 the Commission was gathering information on a possible case of racial discrimination in recruitment against two African applicants for a job, which had also been reported in the media. The Maltese authorities have underlined that people who feel that they have been discriminated against on the basis of racial and ethnic origin are generally hesitant to bring their cases before the institutions. In this connection, ECRI considers that strengthening the independence of the Commission could enhance the effectiveness of the Commission's work and impact favourably on the trust accorded to it by victims of discrimination. The authorities have also underlined that the Equal Treatment of Persons Order has only been in force for a few months and that the general public, including potential victims of racial discrimination, may therefore not yet be fully aware of this legislation and the possibility to submit their cases to the Commission to have their rights restored. In this connection, ECRI notes however that virtually no publicity has been given by the Maltese authorities to such legislation and remedies at the time of their adoption and entry into force. ECRI therefore welcomes that the Commission has initiated a campaign to raise awareness of these possibilities among the general public as part of a more general awareness-raising campaign on discrimination, including racial discrimination, in Malta.

Recommendations:

19. ECRI recommends that the Maltese authorities closely monitor the implementation of the Equal Treatment of Persons Order and take swift action to address any shortcomings found.
20. ECRI urges the Maltese authorities to take measures to raise awareness of the provisions in force against racial discrimination and the existing remedies to seek redress among the general public. It strongly recommends that special efforts be made to raise awareness of these possibilities among potential victims of racial discrimination.
21. ECRI recommends that the Maltese authorities consider strengthening the independence of the National Commission for the Promotion of Equality. In this connection, ECRI draws the attention of the Maltese authorities to the guidance it

¹⁵ See above, Civil and administrative law provisions.

has provided in its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, on how to guarantee such independence¹⁶.

- **Office of the Ombudsman**

22. Since ECRI's second report, the Office of the Ombudsman has continued to work in areas of concern to ECRI, including conditions and treatment of irregular migrants detained in a number of detention centres in 2002, and in a hospital, in 2004. The Ombudsman has reported that overall, 85% of the recommendations he has issued have been complied with by the State authorities.

Recommendations:

23. ECRI recommends that the Maltese authorities ensure the compliance of State and other public administrations with the recommendations and findings of the Ombudsman in areas of ECRI's interest.

Education and awareness-raising

24. In its second report, ECRI recommended that the Maltese authorities introduce more teaching in schools about different religions, cultures and societies. The Maltese authorities report that such teaching is provided as part of the curriculum for different subjects. ECRI notes that a non-governmental organisation, the Jesuit Refugee Service, has been implementing a programme aimed at raising awareness of refugee issues and promoting appreciation of cultural diversity among school students through extra-curricular activities organised in secondary schools and since 2006, primary schools, too. ECRI is pleased to note that this programme has received the endorsement of the Ministry of Education, Youth and Employment, which has urged all schools to organise these activities.
25. ECRI notes that human rights are not taught as a separate subject in Maltese schools, but as part of other subjects, notably Personal and Social Development (PSD). The Maltese authorities report that steps have been taken to train teachers in human rights, in co-operation with the non-government sector. For instance, Amnesty International has been running in-service courses for PSD teachers. ECRI also notes that this organisation has a human rights education programme for children.
26. In its second report, ECRI also recommended measures to raise awareness of racism and racial discrimination in Malta among the general public. Since then, a number of initiatives, often financed through EU funding programmes, have been taken by the non-governmental sector and have targeted specific sectors of civil society, such as youth. As mentioned above, at the end of 2007 the National Commission for the Promotion of Equality¹⁷ has also initiated an awareness-raising campaign against discrimination on various grounds, including racial discrimination.

¹⁶ ECRI General Policy Recommendation N°2, Principle 5.

¹⁷ See above, Specialised bodies and other institutions.

Recommendations:

27. ECRI recommends that the Maltese authorities strengthen their efforts to provide students with education that promotes an appreciation of diversity and an understanding of other cultures and backgrounds, including immigration and refugee issues. ECRI draws the attention of the Maltese authorities to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, which provides guidance on the provision of this type of education. It also strongly encourages the Maltese authorities to support and make the most of existing expertise in the non-governmental sector in these fields.
28. ECRI recommends that the Maltese authorities strengthen their efforts to educate students in human rights. It strongly encourages the Maltese authorities to continue and reinforce its co-operation with the non-governmental sector, as concerns both teacher training and actual provision of education to children. In the long term however, ECRI considers that the Maltese authorities should consider making human rights a compulsory subject at both primary and secondary level.
29. ECRI strongly recommends that the Maltese authorities carry out a wide campaign to raise the awareness of racism and racial discrimination among as broad a range of civil society sectors as possible.

Reception and status of non-citizens

30. In its second report, ECRI dealt at length with the situation of irregular migrants, including their reception and the arrangements in place for them to apply for asylum. Since then however, Malta has experienced considerable changes in these areas. The number of persons reaching the shores of Malta by boat, in attempts to navigate across the Mediterranean Sea from Libya to Italy, has increased dramatically. The Maltese authorities estimate that around 9,000 such persons (corresponding to approximately 2.1% of the resident population of Malta) have reached the country since ECRI's last report. In 2007 alone, approximately 2,000 persons arrived, mostly originating from Eritrea, Somalia and Egypt, but also Morocco and countries in East Africa.
31. The Maltese authorities have put in place policies and practices to respond to the challenges posed by this new phenomenon. However, they have repeatedly stressed that Malta's geographical location between Libya and the continental part of the European Union, combined with the country's limited resources and high population density, have put Malta under a disproportionate strain that the country is unable to sustain. The Maltese authorities have therefore underlined that, while the utmost is done to ensure that the fundamental rights of the irregular migrants are protected, in their view it is only through meaningful assistance from the European Union, both in terms of financial assistance and of a fairer distribution of reception responsibilities, that the challenges posed by current migration movements in the region will be adequately met.

32. In the present chapter, ECRI will examine some of the policies and practices that are in place in Malta to respond to these challenges. Other such policies and practices will be addressed in Section II¹⁸. ECRI is aware that the Maltese authorities have been under serious strain since its second report in their attempts to face up to the new situation. ECRI also wishes to emphasise here the crucial importance it attaches to concerted efforts by the international community, including the European Union, to meet the challenges related to migration movements in the region. At the same time, ECRI stresses that under no circumstances must the human rights and dignity of migrants, including their right to be free from racism and discrimination, be protected less vigorously.

- ***Detention of irregular migrants***

33. The Maltese authorities implement a policy of detention in respect of all irregular migrants, although persons belonging to vulnerable categories are released and accommodated in open centres¹⁹. At the time of writing, approximately 1,400 persons were detained in the country's four detention centres. At present, irregular migrants are detained for a maximum duration of twelve months (if they have applied for asylum but have not yet received a final decision on their claims) or eighteen months (if they have not applied for asylum or if their asylum claims have been finally rejected). However, prior to the adoption of government policies fixing these maximum terms, they have been detained for longer periods.

34. The principle of systematic detention itself, along with the adequacy of this policy for ensuring respect of human rights and promoting a climate where racism and xenophobia are not allowed to flourish, will be addressed in Section II of this report. Here, ECRI examines from the same standpoint some specific aspects of the policy of systematic detention applied by the Maltese authorities.

35. Since ECRI's second report, the material conditions of detention centres in Malta have been the subject of extensive national and international attention. Conditions well below minimum standards, including those concerning hygiene, the maintenance of facilities, overcrowding, the protection of privacy and provision of food and healthcare have been highlighted in many centres. ECRI notes that since its last report, progress has been made in a number of areas. More recently, these areas have included the provision of food and access to healthcare, with, for instance, private doctors visiting some of the detention centres five days a week. Overall, however, conditions are still reported to be seriously below minimum standards.

36. One aspect of particular concern to ECRI is the total lack of organised activities, and notably of training and learning opportunities, for detainees. This situation is reported to have negative consequences on the detainees' mental well-being. ECRI notes that it also entails a waste of potential integration opportunities. The Maltese authorities have repeatedly stressed that Malta is not the migrants' intended final destination and that therefore integration measures targeting this group of persons have not so far been a priority. ECRI notes however, that in practice most detainees are eventually released and that a considerable number of them obtain humanitarian protection or refugee status. It also appears to ECRI that while a policy of detention of a duration as considerable as the current one is maintained, learning opportunities, including language or work-related training or

¹⁸ Criminalisation of immigrants as a result of detention policy.

¹⁹ See below, this Chapter.

the provision of general knowledge about the functioning of society, for detainees should be considered as a minimum measure. In this respect, ECRI notes that the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS)²⁰ has recently started to implement a project co-funded by the EU in detention centres, in partnership with organisations with expertise in the fields of education, cultural orientation, vocational assessment and training, as well as research and development.

37. As mentioned above, persons belonging to vulnerable categories, such as families with minor children, unaccompanied minors, pregnant women, lactating mothers, persons with disabilities and elderly persons are not detained. However, it has been reported to ECRI that the process of identifying and releasing persons who belong to some of these categories (especially those whose vulnerability is less immediately apparent, such as unaccompanied minors or persons suffering from serious physical or mental conditions) may take several weeks or months. The Maltese authorities have reported that they are aware of the need for further improvement in this area and that they have submitted a request to the European Refugee Fund for the funding of a project to this end.
38. Concern has consistently been expressed at limitations on access to detention centres by the media and, to a lesser extent, by civil society organisations. It has been stressed that such lack of transparency limits the opportunities to improve conditions in the centres. In ECRI's opinion, it also restricts opportunities for the general public to become aware of migrants' experiences and therefore less hostile towards them. The Maltese authorities have stressed that detention centres operate an open-door policy in respect of non-governmental organisations. ECRI notes that a number of such organisations, such as the Jesuit Refugee Service, the Emigrants' Commission, the Red Cross and the Peace Laboratory, regularly visit detention centres and provide invaluable services to detainees. It also notes, however, that other organisations working in the field of protecting the rights of migrants, such as Médecins du Monde, have not been authorised to provide services in detention centres. As concerns the media, the government may authorise visits in exceptional cases and ECRI notes that one such visit was organised in March 2006. The Maltese authorities have stressed that this policy aims to protect potential refugees and their families and friends who may still live abroad, as well as avoid sensational reporting. ECRI shares the view that the protection of refugees and their relatives is an important concern, although it considers that such concern can be met in ways that do not affect transparency of government policies and practices in detention centres.
39. In its second report, ECRI recommended that the Maltese authorities ensure that all those working in detention centres are fully trained in human rights and in dealing with persons of different backgrounds. Since then, the Detention Service (in which the police and the military are under a joint command in charge of the detention centres) was established in 2005. ECRI notes that the Maltese authorities are committed to replacing police and military personnel with civilian personnel and that this process has started. At the time of writing, the Detention Service is composed of 97 soldiers, 25 policemen and 99 civilians. The Maltese authorities have also reported that human rights training is given to all those working in detention centres. However, ECRI has received consistent reports according to which there is still a disproportionate emphasis on security and control, which is all the more inappropriate when dealing with persons who are not criminals. The treatment of detainees by Detention Service personnel is also

²⁰ See below, Open centres and measures to promote integration.

reported to not always respect the detainees' rights and dignity, as illustrated by reported instances where, for instance, racial abuse by this personnel has not been addressed or has not received adequate punishment.

40. There is no automatic judicial review of detention. The Maltese authorities have pointed out that, under Article 25 (A) 10 of the Immigration Act, detainees can apply to the Immigration Appeals Board to have their detention reviewed. ECRI notes, however, that the Board can only examine the *reasonableness* of detention. Civil society organisations consider that the remedy provided for by Article 25 (A) 10 of the Immigration Act does not meet the requirements of Article 5(4) of the ECHR, which concerns judicial review of the *lawfulness* of detention²¹. In this respect, ECRI notes that in June 2006, the Civil Court, First Hall, decided to exercise its powers to review the detention of an applicant on the basis of Article 36 of the Constitution of Malta (Protection from arbitrary arrest or detention) and Article 5 of the ECHR (Right to liberty and security), considering that the applicant did not have a remedy available that was appropriate to the breaches of the rights alleged²².

Recommendations:

41. ECRI urges the Maltese authorities to improve the material conditions of detention centres for irregular migrants and to ensure that adequate standards of living are thoroughly met in all such centres.
42. ECRI urges the Maltese authorities to provide detained migrants with learning opportunities, including language or work-related training and the provision of general knowledge about the functioning of the society. This is particularly important for as long as a detention policy of the present duration is maintained.
43. ECRI encourages the Maltese authorities in their efforts to ensure that all persons belonging to vulnerable categories, including unaccompanied minors or persons suffering from serious physical or mental conditions, are promptly identified and released from detention.
44. ECRI strongly recommends that the Maltese authorities improve access to detention centres by the media and civil society organisations.
45. ECRI encourages the Maltese authorities to pursue their plans to replace all police and military staff of the Detention Service with civilian personnel. It strongly recommends that the Maltese authorities intensify their efforts to train all Detention Service personnel in human rights, including non-discrimination, and in dealing with persons of different backgrounds in a sensitive manner. It urges the Maltese authorities to ensure that any treatment of detainees by Detention Service personnel which does not respect the detainees' rights and dignity be swiftly and adequately addressed.
46. ECRI recommends that the Maltese authorities ensure that the persons held in detention centres have a remedy available to challenge the lawfulness of their detention which complies with the requirements of Article 5(4) of the ECHR.

²¹ Article 5 (4) stipulates that: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".

²² Civil Court (Constitutional jurisdiction) 20 June 2007, Application No. 27/07JRM, *Tafarra Besabe BERHE Vs Police Commissioner as Principal Immigration Officer and Minister of Justice and Home Affairs*

- **Asylum seekers**

47. Reflecting the increase in the number of irregular migrants, a sharp rise in asylum applications has been registered since ECRI's second report. Thus, from January 2002 to May 2007, the Office of the Refugee Commissioner (the national institution responsible for first-instance asylum decisions) processed 4303 asylum applications involving 4817 persons. Around 4% of all applicants have obtained refugee status and approximately 45% of them have been granted humanitarian protection. While these figures indicate that approximately half of all asylum applicants are granted some form of international protection, they also reportedly reflect a tendency to grant humanitarian protection to applicants who, in some cases, may qualify for refugee status. In this connection, the Maltese authorities have stressed however, that each application is examined in full and according to its own merits. They have also stressed that training is provided on an ongoing basis to all staff of the Office of the Refugee Commissioner. ECRI also notes that persons granted humanitarian protection are allowed to work and can access education and medical services. However, these rights are granted as a matter of government policy and are not laid down in a statute.
48. In its second report, ECRI expressed the hope that the Office of the Refugee Commissioner would alleviate the situation of asylum seekers by reducing the time they spend in detention waiting for their claims to be examined. ECRI is pleased to note that since then, the staff of the Office has considerably increased and that there are plans to extend it further, including through the appointment of an Assistant Refugee Commissioner. However, ECRI understands that at the time of writing, it takes still a long time, sometimes many months, for an asylum seeker to be called to an interview with the Office. However, the Maltese authorities also report that, for instance, persons arrived in October 2007 had been called for an interview and had their case decided by December 2007.
49. In its second report, ECRI stressed the need for legal assistance to be made more easily accessible to asylum seekers. Asylum seekers do not currently have access to free legal aid in first instance asylum proceedings before the Office of the Refugee Commissioner, although they can be represented by a lawyer at their own expense. At present, the Jesuit Refugee Service provides, through EU-funded projects, free legal assistance to asylum seekers, including in some cases assistance in proceedings before the Office of the Refugee Commissioner. However, these projects can only cover part of the demand. Free legal aid from the State is only available to asylum seekers in appeals before the Refugee Appeals Board.
50. In its second report, ECRI recommended that more information should be made available to irregular migrants on their rights, including the right to seek asylum. It also stressed the need for interpretation services to be made more easily accessible. ECRI is pleased to note that on arrival, irregular immigrants are given an information booklet, available in three languages, by immigration officials. The Office of the Commissioner for Refugees also gives out various documents, including a preliminary questionnaire, available in several languages, which is filled in by the person in question as an indication of his or her intention to apply for asylum. ECRI also notes that an information booklet prepared by the Jesuit Refugee Service is distributed to migrants held in detention centres. It understands that the booklet is available in English, French and Arabic and that, subject to the availability of funding, it will be translated into other languages. Less progress is reported to have been made in the area of providing asylum

seekers with professional interpretation and translation services, a circumstance that negatively affects their possibilities to fully present their cases.

Recommendations:

51. ECRI encourages the Maltese authorities in their efforts to ensure that all persons entitled to refugee status actually secure this status. To this end, it recommends in particular that the Maltese authorities intensify their efforts to train the caseworkers of the Office of the Refugee Commissioner.
52. ECRI recommends that the Maltese authorities ensure that the rights attached to possession of humanitarian protection are laid down in statute.
53. ECRI recommends that the Maltese authorities take steps to speed up the examination of asylum applications. To this end, it recommends in particular that the Maltese authorities ensure that the Office of the Refugee Commissioner is staffed at all times in a manner that is adequate to deal with the caseload.
54. ECRI recommends that the Maltese authorities make free legal aid available to asylum seekers from the outset of the asylum proceedings.
55. ECRI encourages the Maltese authorities to pursue their efforts to ensure that information is available to detained migrants on their rights, including the right to seek asylum, in a language that they understand.
56. ECRI encourages the Maltese authorities to take steps to improve asylum seekers' access to professional interpretation and translation services.

- **Rescue of people at sea**

57. Due to its geographical location and the extent of its search and rescue area (SRA, approximately 250,000 square km), Malta has frequently been engaged in rescue operations which have saved the lives of many persons trying to cross the Mediterranean to reach Europe. Recently however, there have been incidents where Malta's role in rescuing irregular migrants in life-threatening situations at sea has attracted considerable attention and come under criticism both at national and international level. These include in particular, an incident at the end of May 2007, involving twenty-seven shipwrecked African migrants found outside Malta's SRA and in waters under Libya's jurisdiction.
58. The Maltese authorities have reiterated their commitment to rescue operations within their SRA. They have also stressed that, although they have never failed their obligation to provide assistance to people in danger at sea, they cannot be expected to be responsible for rescue operations outside the country's SRA. They have furthermore repeatedly underlined the absolute need for shared responsibilities among the EU countries for such rescue operations. As mentioned above, ECRI is well aware of the serious difficulties encountered by Malta at present in dealing with persons trying to cross the Mediterranean to reach continental Europe. It also reiterates its view that efforts by the EU to support Malta and find an appropriate solution to this kind of situation in a spirit of solidarity are crucial. At the same time, ECRI can only recall that none of these considerations can take priority over a State obligation to protect human life.

Recommendations:

59. ECRI calls on the Maltese authorities to continue to protect the right to life of migrants at sea and to do so in all circumstances where they are in a position to ensure that this right does not come under threat.

- Open centres and measures to promote integration

60. Once released from detention, refugees, asylum seekers and immigrants are accommodated in open centres that are run either by the State authorities (the Ministry for the Family and Social Solidarity) or by civil society organisations (including the Emigrants' Commission). At the time of writing, these centres housed approximately 2,000 persons. Generally speaking, conditions in open centres that accommodate persons belonging to vulnerable categories of migrants²³ are reported to be good. In the other open centres, however, conditions vary. ECRI regrets that at the time of writing, several hundred persons are accommodated in tents in totally inadequate conditions at the State-run Hal Far open centre, located just opposite the Hal Far detention centre. The Maltese authorities have informed ECRI that they are working to improve the conditions at the centre, although ECRI understands that for the foreseeable future, people will continue to live in tents. Conditions at the Marsa open centre are reported to be considerably better.
61. In its second report, ECRI encouraged the Maltese authorities to assist asylum seekers and refugees in finding accommodation and to provide them with financial support when necessary. ECRI notes that, in addition to accommodation and food, residents of open centres are granted a daily allowance (around 4,60€ per adult and 2,30€ per child). ECRI also notes that some former residents of open centres have found private accommodation in the private market, although these are reported to be still very rare occurrences²⁴. When they leave, however, former residents cannot go back to the centres and lose their entitlement to the allowance. Some civil society organisations have expressed the view that this system is excessively geared towards keeping the immigrants in the centres and tends to prevent them from gradually becoming self-sufficient, thereby delaying their integration in the community.
62. In its second report, ECRI noted that Malta had considered itself as a transit country for immigrants. The Maltese authorities have repeatedly stressed that this is still the case, in that irregular migrants do not consider Malta as their intended final destination. As already mentioned above²⁵ however, ECRI notes that in practice the perception that Malta is simply a transit country does not fully reflect the reality of the situation, as a number of people may end up spending long periods of time in the country. ECRI considers that there is a need for the Maltese authorities to seriously reflect on measures to favour the integration of these persons, who include refugees and persons with humanitarian protection status, into society. Although the government has provided free healthcare, access to education and social benefits already for several years now, there has been little involvement in and no assumption of general responsibility for, issues of integration of refugees and persons with humanitarian protection status into

²³ See above, Reception and status of non-citizens - Detention of irregular migrants.

²⁴ See below, Access to services.

²⁵ Reception and status of non-citizens - Detention of irregular migrants.

society by the Maltese authorities. So far, isolated initiatives in this direction have essentially been taken by individual civil society organisations or professionals. In this respect, ECRI hopes that the welcome establishment of the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) in February 2007 will mark a change in direction. Attached to the Ministry for the Family and Social Solidarity, the OIWAS is responsible for asylum seekers' access to accommodation, financial assistance, services and training.

Recommendations:

63. ECRI encourages the Maltese authorities in their efforts to provide accommodation to refugees and asylum seekers. It urges them to ensure that the material conditions in all open centres meet adequate standards of living.
64. ECRI encourages the Maltese authorities to consider ways in which the combined system of accommodation in the open centres and financial support could be adjusted so as to favour the gradual development of residents' self-reliance and early integration into society. Access to accommodation in the private housing market should in particular be encouraged.
65. ECRI strongly recommends that the Maltese authorities take responsibility for issues of integration of immigrants, refugees and persons granted humanitarian protection in Malta. In so doing, it recommends that they support and make the most of existing expertise in the non-government sector in these fields.

Access to services

66. In its second report, ECRI noted that discriminatory refusal of members of ethnic minority groups in bars and discotheques occurred on quite a regular basis, and recommended that the Maltese authorities take action to address this situation. Since then, reports of racial discrimination in access to these places have continued. Once again however, most occurrences of this type are not formally reported and as a general rule, the only instances that come to the attention of the Maltese authorities seem to be those that escalate into violence. Nevertheless, in comparison with the situation as described in the second report, the fact that there is now legislation (Equal Treatment of Persons Order²⁶) which clearly covers these instances is an improvement. However, there is reported to be at present very little awareness of the legal framework in force and of the need to respect it among those involved in the management and security of these establishments. In this connection, ECRI notes for instance that the training syllabus of private security guards does not contain training on avoiding racial discrimination.
67. ECRI has also received some disturbing reports of racial discrimination in access to public transport, including buses not stopping at stops where persons of ethnic minority background were waiting or drivers not letting these persons board the bus on the false pretence that it was full. Once again, ECRI notes that the legal framework now allows for any such occurrences to be addressed and remedied.
68. In its second report, ECRI noted that some instances of discrimination had been reported in the renting of accommodation in the private market. As mentioned above²⁷, in general migrants released from detention are accommodated in open

²⁶ See above, Civil and administrative law provisions.

²⁷ Reception and status of non-citizens – Open centres and measures to promote integration.

centres and it is very difficult for them to access the private housing market. Such difficulties are linked partly to their work situation, because their employment is often precarious and/or undeclared²⁸. However, racial discrimination is also reported to play a role. In its second report, ECRI recommended that the Maltese authorities put in place legal remedies for dealing with such instances. ECRI is pleased to note that the Equal Treatment of Persons Order also applies to instances of racial discrimination in the private housing market.

Recommendations:

69. ECRI strongly recommends that the Maltese authorities take steps to address racial discrimination in access to places of entertainment, public transport and the private housing market. These measures should include a public stance by the Maltese authorities condemning such forms of discrimination and stressing that all such instances are illegal and will not be tolerated. The Maltese authorities should also ensure that the Equal Treatment of Persons Order is applied effectively, as recommended above²⁹.
70. ECRI strongly recommends that the Maltese authorities take swift action to raise the awareness of racial discrimination among those working in the entertainment sector, including owners, managers and security personnel. ECRI also recommends that the Maltese authorities target similar awareness raising measures at those working in the public transport sector and, to the extent possible, private landlords.

Employment

71. In its second report, ECRI noted that a sizeable number of non-citizens were employed in the black economy and exposed as a result to exploitation by their employers. ECRI recommended that the Maltese authorities take measures to address this situation, including by adequately punishing the employers that resort to undeclared employment.
72. Since then, an increasing number of non-citizens have found employment in Malta. ECRI notes that refugees and persons granted humanitarian protection are granted work permits, which since 2005, are issued directly to them and are therefore not tied to a specific job with an employer. It also notes that, after twelve months from filing their claims, asylum seekers are allowed to work. In addition, the Maltese authorities have reported that they are considering granting short-term work permits to those individuals who are released from detention with neither refugee nor humanitarian protection status.
73. ECRI notes, however, that a large number of these permit holders continue to be employed in the black economy, a circumstance that makes them more vulnerable to exploitation by their employers. For instance, not only is remuneration reported to be considerably lower for these workers, but in some cases employers also simply refuse to pay them. ECRI notes that there have been cases where the trade unions have had to intervene to secure such payments. Longer working hours, worse conditions of work and exposure to safety hazards have also been reported. Although ECRI understands that no

²⁸ See below, Employment.

²⁹ Civil and administrative law provisions.

formal complaints have been filed, there have also been allegations of racial discrimination in recruitment³⁰.

74. The Maltese authorities report that the labour inspection investigates undeclared work both on the basis of complaints and at their own initiative and stress that these inspections have led to results. Thus for instance, the number of illegal employment situations involving non-citizens detected has increased from 104 in 2000 to 148 in 2005 and represents some 10% of the total number of illegal employment situations detected. The Maltese authorities have also stressed that the construction sector, where many immigrants are employed, is not unionised. However, civil society organisations have consistently expressed the view that there is not enough dedication on the part of the Maltese authorities to ensuring that immigrants are employed regularly. They also report that in those rare cases where the immigrants accept to expose themselves and report abuses, there is either no action, or the fines imposed on the employers are extremely lenient. The Maltese authorities have informed ECRI that they are working on raising the fines in these cases.
75. ECRI notes that some training initiatives for refugees, persons granted humanitarian protection and asylum seekers have been taken since its second report. More recently, one such initiative carried out under the EU-funded EQUAL Project and co-ordinated by the Ministry for the Family and Social Solidarity, aimed to promote the labour market integration of a number of asylum seekers, through provision of training but also evaluation, validation and certification of competencies. This programme has generally been welcomed, although it has been highlighted that in order to increase its effectiveness, it must be better tailored to the specific circumstances of the trainees.

Recommendations:

76. ECRI strongly recommends that the Maltese authorities take steps to counter the labour exploitation of refugees, persons granted humanitarian protection and immigrants by addressing their over-representation in undeclared employment. It urges the Maltese authorities to ensure that the labour inspection step up their work to identify and redress these situations. It strongly recommends that the Maltese authorities ensure that the fines imposed on those who employ immigrants illegally have a meaningful deterrent effect.
77. ECRI recommends that the Maltese authorities extend support for training initiatives for refugees, persons granted humanitarian protection and asylum seekers. It recommends that they evaluate these initiatives together with the trainees and training institutions involved in order to increase their effectiveness.

Vulnerable groups

- ***Irregular migrants, asylum seekers, persons with humanitarian protection and refugees***
78. The situation of these groups of persons, of whom the majority are black Africans, and their vulnerability to racism and xenophobia are addressed in other parts of this report.

³⁰ See above, Civil and administrative law provisions.

- **Muslims**

79. In its second report, ECRI noted that although no serious manifestations of intolerance towards Muslims had been reported, prejudice and mistrust towards the members of this community existed in Malta. Since then, manifestations of Islamophobia are reported to have remained non-violent and consist essentially of gestures and verbal abuse, which are usually not reported to the authorities. However, the events of 11 September 2001 and the international context surrounding the fight against terrorism resulted in a considerable increase in generalisations and associations made between Muslims and terrorism, fundamentalism or violence. Furthermore, ECRI notes that Arabs and persons believed to be Arabs are represented among the groups most affected by reported discriminatory refusals of access to places of entertainment³¹.

Recommendations:

80. ECRI recommends that the Maltese authorities closely monitor the situation as concerns manifestations of Islamophobia and react to any manifestations that may occur.

Antisemitism

81. Since ECRI's second report, a few manifestations of antisemitism have been reported in Malta. Such manifestations, which are reported to be connected with the rise of right-wing extremist groups, have included the publication of an article, against which ECRI understands criminal proceedings were opened in 2006, and the posting of material on the Internet.

Recommendations:

82. ECRI recommends that the Maltese authorities closely monitor the situation as concerns manifestations of antisemitism and react to any manifestations that may occur. It draws the attention of the Maltese authorities to its General Policy Recommendation No. 9 on the fight against antisemitism, which contains practical guidance on measures governments can take to this end.

Media

83. As already noted in ECRI's second report, there are newspapers and television programmes in Malta that address issues of immigration, racism and racial discrimination in a responsible and balanced fashion. However, by and large, negative portrayal of members of minority groups and sensational reporting, particularly about irregular migrants, are reported to be still widely present in the Maltese print and broadcast media. Inappropriate terms to qualify immigrants or certain categories of immigrants are reportedly also still used and nationality is still sometimes unnecessarily mentioned, for instance in crime reporting. There has been no research aimed at gaining an overall picture of the way in which the print and broadcast media deal with issues of immigration and contribute to an understanding of the reasons behind migration flows and the human rights dimension of these phenomena.
84. As concerns the print media, ECRI is concerned at the content of many readers' letters to the editor. These letters are often not conducive to an atmosphere where the equal dignity of all is respected or to a balanced portrayal of the

³¹ See above, Access to services.

situation as concerns minority groups, especially as their content is rarely challenged. According to civil society groups, in some cases, the boundaries of incitement to racial hatred have also been crossed.

85. ECRI is also particularly concerned at reported instances of incitement to racial hatred posted on the Internet, notably on sites connected with extreme right-wing movements and groups, none of which have so far been prosecuted³².
86. As regards the broadcast media, ECRI welcomes the adoption by the Maltese authorities in April 2007 of requirements as to standards and practice that must be observed by broadcasters in order to respect and promote racial equality³³, the implementation of which is monitored by the Broadcasting Authority. ECRI notes that a fine has been imposed on a television channel for failure to comply with these requirements in July 2007 in connection with the broadcasting of views expressed by exponents of an extreme right-wing group. Prior to the entry into force of these requirements, the Broadcasting Authority had levelled another fine on the same channel in 2004 in connection with the broadcasting of speech by the leader of another extreme right-wing group, on the basis of Article 13 (2) (a) of the Broadcasting Act³⁴, combined with Article 82 A of the Criminal Code³⁵. ECRI understands however, that an appeal has been filed against this decision and is currently pending.
87. ECRI welcomes the fact that according to these requirements, media owners must raise awareness about the expected standards and practice including among editors and journalists and that the requirements should be a standard element of journalists' training. ECRI also notes that the Broadcasting Authority has planned to train broadcasters on gender equality in co-operation with the National Commission for the promotion of Equality and believes that there is a real opportunity to extend such training to issues of race equality now that the mandate of the Commission has been extended accordingly³⁶.

Recommendations:

88. ECRI encourages the Maltese authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that the material they publish does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups vulnerable to racism, including irregular migrants, asylum seekers and refugees. ECRI recommends that the Maltese authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved.

³² See below, The impact on public opinion of political and public debate concerning immigration – Right-wing extremism.

³³ "Requirements as to standards and practice on the promotion of racial equality", Government Notice 413/2007, Subsidiary legislation 350.26.

³⁴ Article 13 (2) of the Broadcasting Act stipulates that "[i]t shall be the duty of the Authority to satisfy itself that, so far as possible, the programmes broadcast [...] comply with the following requirements: (a) that nothing is included in the programmes which offends against religious sentiment, good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling".

³⁵ See above, Criminal law provisions.

³⁶ See above, Specialised bodies and other institutions.

89. ECRI recommends that the Maltese authorities ensure that all instances of incitement to racial hatred are duly prosecuted, including when they are committed through the Internet, as mentioned above³⁷.
90. ECRI recommends that the Maltese authorities support research on the way in which the media deal with issues of immigration and contribute to promoting acceptance of difference in Maltese society.

Conduct of law enforcement officials

91. In its second report, ECRI noted that there had been allegations of ill-treatment of non-citizens by law enforcement officials, although investigations had found such allegations to be unsubstantiated. ECRI recommended that allegations of police misconduct be investigated by an independent body separate from the police forces and the prosecuting authorities.
92. ECRI notes that since then reports of ill-treatment of non-citizens, including persons held in detention centres, by law enforcement and army personnel have continued. Racist abuse of these persons is also reported to have taken place. The Maltese authorities have informed ECRI that since ECRI's last report there have been three cases in which allegations of this type were investigated: one case, in which a police officer was accused of using violence on migrants held at Ta' Kandja detention centre in December 2003, ended in a three-day suspension of the officer from duty; two separate cases in 2005 concerning the alleged use of racist language and, respectively, offensive language towards an irregular migrant, ended in the acquittal of the police officers concerned.
93. The most serious incident since ECRI's second report, however, happened at Hal Safi Barracks detention centre in January 2005, when a group of migrants who were being held at the centre started a protest against the length of their detention. After trying in vain to persuade the protesters to return to their rooms, a team of soldiers charged and many of the protesters were severely beaten. It was also reported that some soldiers egged others on with racist utterances. Twenty-six detainees and two soldiers were injured. The Prime Minister immediately appointed a retired judge to head an inquiry into the incidents. ECRI notes that the Report by the Board of Enquiry, published in December 2005, concluded that excessive force was used by soldiers but found that the violence was not racially motivated. The Maltese authorities have reported that disciplinary action was taken against the police officers identified. ECRI considers that giving publicity to disciplinary and other measures taken following incidents of this type is an essential and powerful tool to signify the authorities' rejection of this type of behaviour and their determination to eradicate it. However, it does not appear to ECRI that this has been done in this case, as reflected by the fact that civil society organisations were unaware of the follow-up given to the enquiry.
94. In its second report, ECRI recommended that the Maltese authorities intensify initiatives to train police officers in human rights and particularly non-discrimination. ECRI is pleased to note that specific training covering police responsibilities in dealing with racism and xenophobia and aimed at identifying how these affect the work of police officers was given in recent years, initially as part of training for new recruits and subsequently as in-service training.

³⁷ See above, Criminal law provisions.

Recommendations:

95. ECRI urges the Maltese authorities to ensure that any allegations of racially-motivated misconduct by law enforcement and army personnel are investigated effectively and that the outcomes of such investigations are given publicity. To this end, it draws the attention of the Maltese authorities to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which provides detailed guidance on this aspect³⁸.
96. ECRI recommends that the Maltese authorities pursue and intensify their efforts to provide law enforcement and army personnel with specific training on their obligation to respect the right to be free from racism and racial discrimination and recommends that this be done both for all new recruits and as in-service training to all officers.

Monitoring the situation

97. In its second report, ECRI recommended that the Maltese authorities put in place systems for monitoring manifestations of racism and uncovering possible patterns of racial discrimination. Since then, no progress appears to have been made in Malta towards the implementation of this recommendation. Civil society organisations consistently report that lack of official data in these fields is one of the main obstacles they encounter in their daily work against racism and racial discrimination.
98. In its General Policy Recommendation No. 1, ECRI recommends the collection of data that can assist the authorities in assessing the situation of groups vulnerable to racism and devising corrective measures. ECRI notes that at present no data broken down by grounds such as ethnic or national origin, religion, nationality and language is collected in Malta in order to monitor the situation of minority groups across a number of areas (including education, employment, housing, healthcare).
99. As explained in its General Policy Recommendation No. 4, ECRI also attaches importance to generating data concerning manifestations of racism and racial discrimination based on the perceptions of potential victims of these phenomena. Although no such surveys exist at present, ECRI understands that the National Commission for Equality stands ready to promote such research.
100. As concerns monitoring racist incidents and racist offences, ECRI has already addressed this aspect in other parts of this report, with respect to the role of the police³⁹. Here ECRI wishes to stress that in order to gain a comprehensive picture of the response of the criminal justice system as a whole to racist incidents and racist offences, easily retrievable data on the implementation of the relevant provisions should also be available within the prosecuting authorities and the courts.

³⁸ See ECRI General Policy Recommendation N°11, paragraph 9 (and paragraphs 54-57 of the Explanatory Memorandum).

³⁹ See above, Criminal law provisions.

Recommendations:

101. ECRI strongly recommends that the Maltese authorities improve their systems for monitoring manifestations of racism and uncovering possible patterns of racial discrimination in Malta.
102. ECRI recommends that the Maltese authorities consider collecting relevant information broken down according to categories such as ethnic or national origin, religion, nationality and language. This should be done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. Collection of such information should be elaborated in close co-operation with all the relevant actors, including civil society organisations and take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.
103. ECRI recommends that the Maltese authorities generate data concerning manifestations of racism and racial discrimination based on perceptions of potential victims of these phenomena. To this end, it draws the attention of the Maltese authorities to its General Policy Recommendation No. 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, which provides detailed guidance on how to carry out these surveys.
104. ECRI recommends that the Maltese authorities ensure that data on the response of the criminal justice system to racist incidents and racist offences is available at all levels of the criminal justice system, from the police to the prosecuting authorities and the courts.

II. SPECIFIC ISSUES

Criminalisation of immigrants as a result of detention policy

105. ECRI is concerned that the policies put in place by the Maltese authorities to respond to the challenges of irregular immigration into the country are seriously reinforcing perceptions of immigrants as criminals and increasing the levels of racism and xenophobia among the general population.
106. The policy of systematic detention of irregular migrants, whereby all such persons are immediately put in detention irrespective of the motives that brought them to Malta, has in ECRI's opinion a central role in reinforcing associations between immigrants and criminality and their image as a threat to security among the general public. These associations and perceptions are then compounded by the treatment that these persons receive in detention which, in spite of welcome developments that ECRI has highlighted in other parts of this report, remains essentially punitive in nature. For instance, in ECRI's view the fact that irregular migrants are handcuffed every time that they need to leave a detention centre to go to a hospital cannot but reinforce criminal imagery about immigrants among the general public.
107. In its second report, ECRI stressed that asylum seekers, even when their claims are considered not valid by the authorities, should not be treated as criminals and recommended that any measures taken with regard to these persons should reflect such an approach. In that report, ECRI also expressed the opinion that the

holding of asylum seekers in detention should be avoided to the greatest extent possible and that efforts should be made to guarantee their freedom of movement wherever possible. ECRI regrets that policies and practices developed in Malta since its second report have taken a direction opposite to that indicated by these recommendations.

108. ECRI has addressed specific aspects of the detention policy in other parts of this report. There, it has made recommendations that aim not only at ensuring that the rights of the persons held in detention are respected and that their hardship is reduced, but also at countering the perception of a linkage between immigrants and criminality by promoting a more humane treatment of these persons. Here, however, ECRI would like to challenge the very principle of systematic detention, both because of the human rights implications of this policy and in view of its impact on public opinion.
109. ECRI has taken note of the position repeatedly expressed by the Maltese authorities whereby there is no alternative to systematic detention in Malta at present. There are several reasons put forward by the Maltese authorities for this, including the need to: carry out registration and medical and security screening; facilitate repatriation; protect a social fabric and labour market characterised by a small absorption capacity against a disproportionate influx of immigrants; and act as a deterrent against new arrivals. In ECRI's opinion, however, none of these reasons justify a systematic detention policy such as that currently operating in Malta. ECRI believes that there are alternatives that would allow Malta to meet the challenges posed by the current migration patterns in a manner that is more respectful of the rights of immigrants and beneficial for Malta. For example, ECRI notes that the Maltese authorities already operate non-custodial alternatives for people in vulnerable situations and for asylum seekers that are released after twelve months, which in many cases are reported to work well.
110. ECRI believes that only policies underpinned by the genuine recognition of the equal value of all human beings and by a thorough respect of human dignity can hope to counter the spreading of racism and xenophobia among the general public in a long-lasting manner.

Recommendations:

111. ECRI reiterates its recommendation that asylum seekers should not be treated as criminals and that any measures taken with regard to these persons should reflect such an approach. It calls upon the Maltese authorities to commit to a process aimed at identifying and implementing non-custodial alternatives to detention and not to resort to detention unless it is strictly necessary in the particular circumstances of an individual case.

Racially motivated violence

112. ECRI is concerned at the increase in racially-motivated violence in Malta since its last report. This has included violence targeted at both immigrants themselves and individuals and organisations who work against racism and for the protection of the rights of immigrants, or who have publicly exposed and denounced racist attitudes in Maltese society.
113. There are only a few instances of violence targeted at immigrants that have reached the Maltese authorities. In some cases, instances of racially motivated violence are reported in the media. However, civil society organisations have stressed that generally those immigrants who have experienced violent behaviour

tend not to report these acts to the authorities, either because they consider that doing so will lead to no results or because they are afraid of possible negative repercussions⁴⁰.

114. Attacks against individuals or organisations who are active in anti-racist work or who have been vocal in denouncing racism are, on the other hand, well documented. ECRI is seriously concerned that a spate of attacks of this type took place in 2005 and 2006. These have included arson attacks against the property of Jesuit anti-racist organisations in November 2005 and March 2006 and the personal property of persons working for these organisations in April 2006. They have also included arson attacks on the private homes of people who had spoken out against racism: in March 2006, that of a writer who had just published his latest poetry book that included works on racism and immigration; in May 2006, that of the editor of a weekly newspaper, who had published an editorial on racism and immigration just shortly before the attack; and also in May, that of a journalist who had spoken out against the Maltese extreme-right movements and written about racism and immigration. In this last incident, the arsonists put five burning tires filled with petrol against the backdoor of the journalist's house and spread smashed glass and petrol on the road in front of the house, in an apparent attempt to prevent the family from escaping and hinder the provision of help.
115. ECRI is pleased to note that these acts received nation-wide condemnation from all sides and that the Maltese authorities at the highest level condemned the attacks and expressed solidarity with the victims. Investigations into these acts were initiated immediately. ECRI notes, however, that so far no charges have been brought.

Recommendations:

116. ECRI urges the Maltese authorities to bring all those responsible for racially-motivated violence to justice without delay and ensure that they are adequately punished.
117. ECRI reiterates in this context its recommendations made above⁴¹ concerning the need to improve the implementation of the criminal law provisions against racially-motivated offences.

The impact on public opinion of political and public debate concerning immigration

118. ECRI is concerned at negative tendencies in the tone of public, and notably political, debate surrounding issues of immigration in Malta. It is particularly concerned at the impact that this debate has on the climate of opinion in fields covered by ECRI's mandate.
119. Irregular immigration and policies to meet the challenges posed by it are reported to be issues on which political parties in Malta hold substantially identical views. All political forces are also reported to use essentially similar arguments and general rhetoric concerning these issues. Civil society organisations working against racism and xenophobia and to protect the rights of immigrants have stressed that, as a result of this situation, the general public has little exposure to

⁴⁰ See above, Criminal law provisions.

⁴¹ Criminal law provisions.

alternative views or different types of public discourse on immigration more centred around the prominence of human rights and the need to actively counter the development of racist or xenophobic tendencies. In fact, public stands against racism and xenophobia or in favour of ensuring respect for human rights of immigrants are sometimes met with hostility and have in some instances been met with violence⁴².

120. There are tendencies in political discourse around irregular immigration to portray immigrants as posing a threat – as reflected in the use of expressions such as “human tsunami” – in different fields. For instance, immigrants are portrayed as a threat to the economy, in that they come “to take jobs away” from the Maltese, do not pay contributions due to their illegal employment or get red-carpet treatment in what is often deemed to be an act of excessive generosity to the non-deserving. They are also often portrayed as posing a threat to the preservation of Maltese culture, traditions and identity and a threat to health, connected to the spread of infectious diseases. In addition to the use of this general type of narrative, ECRI notes that there have been cases where specific measures of an apparent discriminatory nature have been put forward by politicians, such as more recently, separate buses for irregular migrants on certain bus lines.
121. The impact of this type of discourse on public opinion and on attitudes towards immigrants among the general population is bound to be very pervasive. In this respect, ECRI notes that a number of attitude surveys that have been conducted on the general population show considerable levels of hostility towards minority groups, and especially Arabs and Africans, although the validity of some of these surveys has been questioned. ECRI notes however, that racist name-calling in the street is unfortunately reported not to be uncommon in Malta and that manifestations of racism or discrimination in areas such as public transport or in access to places of entertainment are also reported.

- ***Right-wing extremism***

122. ECRI is also concerned that since its last report, irregular immigration has provided a platform for the development of extreme right-wing political parties and movements in Malta. There are at present one political party and two movements, whose exponents have expressed strong anti-immigrant views and resorted to racist and xenophobic propaganda. ECRI notes that the only cases of the application of the provisions against incitement to racial hatred have concerned the exponents of these groups, for discourse held at public meetings or in the broadcast media⁴³. However, instances of incitement to racial hatred committed by sympathisers of these groups through the Internet have so far gone unpunished⁴⁴.
123. It has been stressed that these parties do not yet have real political clout. It has also been reported that support for some of these groups has declined following the spate of attacks against individuals and organisations working against racism and for the protection of the rights of immigrants that took place in 2005 and 2006⁴⁵. However, ECRI considers that these developments deserve the utmost attention by the Maltese authorities.

⁴² See above, Racially motivated violence

⁴³ See above, Criminal law provisions and Media.

⁴⁴ See above, Criminal law provisions and Media.

⁴⁵ See above, Racially motivated violence

Recommendations:

124. ECRI recommends that the Maltese authorities take the lead in promoting a public debate on immigration and asylum that reflects the human rights dimension of these phenomena. It recommends, in particular, that the authorities provide more information on the circumstances from which immigrants and asylum seekers are fleeing.
125. ECRI stresses that politicians must resist the temptation to approach issues relating to immigration and asylum in a negative fashion. Political parties should also take a firm stand against any forms of racism, racial discrimination and xenophobia. ECRI recommends that an annual debate be instigated in Parliament on the subject of racism and intolerance faced by members of minority groups in Malta.
126. ECRI recommends that the Maltese authorities adopt *ad hoc* legal provisions targeting specifically the use of racist and xenophobic discourse by exponents of political parties, including, for instance, legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts. In this respect, ECRI draws the attention of the Maltese authorities to the relevant provisions contained in its General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination⁴⁶.

⁴⁶ ECRI General Policy Recommendation N°7, paragraph 16 (and paragraph 36 of the Explanatory Memorandum).

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APPENDIX

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

ECRI wishes to point out that the analysis contained in its third report on Malta, is dated 14 December 2007, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Malta was subject to a confidential dialogue with the authorities of Malta. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the authorities of Malta requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

**Reply by the Government of Malta to
ECRI's Third Report**

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Strasbourg, 4 March 2008

Executive summary

ECRI's third report shows disregard of Malta's vital national interests and disrespect towards its democratic institutions, including parliament, the judiciary and the free press.

The report falls short of accepted standards of impartiality and is unconvincing in its claim that it "was drawn up by ECRI". For example, it criticises the detention centres at length and in detail, even though the ECRI mission did not take up an offer to visit them.

A close and attentive reading indicates that ECRI did not independently verify second-hand information provided by a few militant NGOs.

The report makes more than 30 references to anonymous sources ("it has been reported that ...") and unnamed NGOs ("civil society organisations have stressed ..."). It contains numerous errors and allegations which are unsupported by evidence. These are identified in the present reply.

In contrast, this reply includes (Section III) the testimonies of the Commander of the detention centres, the Refugee Commissioner, the Executive Director of the National Equality Commission, a psychotherapist and the Chairman of the Refugee Appeals Board. They correct and contradict many statements made in ECRI's report.

Parts of the report are confrontational, patronizing or moralizing in tone. Most of the recommendations (which cover 52 paragraphs) do not fit Malta's particular circumstances.

The Maltese Government regrets that such a blatantly biased and superficial report cannot serve any constructive purpose.

I. General comments

Disregard of Malta's vital national interests

1. In its report, ECRI fails to focus on the root cause of the crisis Malta is facing as a result of illegal immigration, namely, the illegal departure from Libya of boats carrying migrants from North and sub-Saharan Africa intending to enter Italy illegally and settle in mainland Europe. **Their desired destination is often the former colonial power of the country of origin.** Some end up in Malta after being rescued by Maltese military personnel, when in distress or feigning distress, or as a result of some accident. Sometimes traffickers in human beings travel in a large vessel and at night offload small boats with about 27 persons each. More than 90 per cent of arrivals are young men. Annual arrivals have equalled 0.5 per cent of Malta's population. The country's density of 1250 inhabitants per square kilometre is the highest in Europe and one of the highest in the world. Unless stopped, the inflow will be unending. Legal constraints inhibit the transfer of illegal immigrants to other countries.
2. Malta has a sovereign right and the government has a duty to protect the country's borders. The vital necessity of border control is not mentioned at all in ECRI's report. Malta has to some degree obtained the European Union's help to patrol its borders, also the EU's southernmost borders. The northbound flow has been somewhat moderated by FRONTEX patrols which have only recently been launched and not yet reached their full potential. Southern European states hope FRONTEX will in time attain its declared purpose of keeping migratory flows within the bounds of the law. Indeed, Malta welcomes the agreement Italy and Libya announced in December 2007, providing for patrols off the Libyan coast, and looks forward to concluding soon a Search and Rescue agreement with Libya. **ECRI's report fails to commend efforts by Malta and the EU to strengthen border controls and stem the problem at its source.** This failure is particularly glaring as the report makes a large number of recommendations, most of them inapplicable in Malta's particular circumstances.
3. International law recognises the right of each state to determine which foreign nationals may enter and remain in its territory, and to return those it refuses to their countries of nationality, but the report fails to consider the option of the illegal immigrants' repatriation. In addition, most of these countries have an ad hoc duty to take back their nationals under agreements with the EU. It is difficult to enforce the corresponding rights when immigrants destroy their documents and their countries refuse to issue new ones to evade their obligations. It is, therefore, deplorable that **ECRI fails to commend the legal option of return and to urge the countries of origin to comply with their international legal duties.** This is particularly serious as many laws are cited by the report to highlight Malta's real or supposed obligations.
4. In addition, the report is lukewarm in supporting Malta's appeal to other countries to share the burden of illegal immigration. In paragraph 31 it describes burden-sharing as the position of the Maltese authorities; in paragraphs 32 and 60 it describes as crucial efforts by other countries to support Malta. But at no point does

it make any recommendations regarding burden-sharing. In addition, **the report does not condemn UNHCR's opposition to Malta's demarches to other EU countries to include refugees from Malta in annual quotas agreed with UNHCR. In view of the above considerations, the Maltese government regrets that ECRI's report shows serious disregard of Malta's vital national interests.**

Disrespect towards Maltese democratic institutions

5. The Maltese people have a strong sense of ownership of their deep-rooted democratic institutions. At the last general elections in March 2008, 93 per cent of voters went to the polls. The two main parties - representing the Government and the Opposition - together obtained 98 per cent of valid votes cast and all the seats in the House of Representatives. The Constitution provides for the separation of powers and guarantees fundamental rights and freedoms. **In view of this, the Maltese government deplores the disrespect that the report shows towards Parliament, including both Government and Opposition; the independence of the judiciary; the police; press freedom ...** The only institutions which seem to find favour with the report are NGOs, which in most cases are not identified.

Parliament

6. The report remarks that "irregular immigration and policies to meet the challenges posed by it are ... issues on which political parties in Malta hold substantially identical views" (paragraph 121). Political parties agree that this is a national problem which has reached crisis proportions and they realise the need for a national consensus to face up to it. The report conveniently omits to state that Malta's policies on illegal immigration have the overwhelming support of the electorate. Parliament and the Government represent and execute the electorate's will. There is, therefore, no room for the report's patronizing and moralizing tone in paragraphs 107-128 where it tells the Maltese authorities how to govern. The Government takes exception to the sweeping and gratuitous statements made therein and does not think ECRI should advise it to go against the will and interests of the Maltese. It can guarantee that Maltese governments will always safeguard the interests of the people, as expressed in free, fair and democratic elections.

7. The report appropriates the right to recommend what subjects should be debated by Parliament (paragraph 127) and claims to know better than the Maltese authorities what would be "more ... beneficial for Malta" (paragraph 111). Referring to equal treatment legislation (paragraph 18), it states: "ECRI notes ... that virtually no publicity has been given by the Maltese authorities to such legislation ..." This is an unacceptable judgement on the legislative process which took its course as in all other cases. Without citing the official record and apparently only on the basis of press reports, the report criticises a speech made by a Member in Parliament (paragraph 122). The freedom of speech of Members of Parliament is protected by the House of Representatives (Privileges and Powers) Ordinance.

The judiciary

8. The report states: "... civil society organisations have underlined that those working in the criminal justice system, and notably judges and the police, are not always conversant with the provisions in force ... nor are they adequately aware of

the need to apply these provisions vigorously” (paragraph 8). This judgement, attributed to anonymous NGOs, is not supported by evidence and in any case it should not be ECRI’s role to echo the view about the “need” to apply provisions “vigorously”. The recommendation in the second sentence of paragraph 9 is unacceptable because it unjustifiably expresses lack of trust in the judiciary, the police, lawyers and the execution of the law. The recommendation in the Executive Summary in favour of “training and awareness-raising measures for the judges” is similarly baseless.

9. Referring to cases still before the courts, the report remarks: “However, there have been no final convictions at the time of writing” (paragraph 6). The report interferes with the independence of the judiciary by indicating that it favours “convictions”. In the same paragraph, it states: “ECRI notes that instances of incitement to racial hatred are not always prosecuted, especially when they are committed on the Internet.” This statement is objectionable because the “instances” are neither specified nor cited and, as a result, no reason is given why they should be “prosecuted” according to the law.

Press freedom and freedom of speech

10. The report repeatedly criticises the level of freedom of speech and press freedom recognised by law and enjoyed in Malta. It states: “As concerns the print media, ECRI is concerned at the content of many readers’ letters to the editor ... According to civil society groups, in some cases, the boundaries of incitement to racial hatred have also been crossed” (paragraph 86). ECRI does not cite any one of the “many” published letters. It hides behind allegations by anonymous “civil society groups” that “in some cases” (obviously not cited) the law has been violated. It recommends a reduction of freedom of expression in the case of “the Internet, letters to the editor published in newspapers, or by politicians” (paragraph 10) without citing instances which could justify being “duly prosecuted” under the law.

11. ECRI also recommends that the outcome of investigations into “allegations” of racially-motivated misconduct by police and army personnel be “given publicity” (paragraph 97). Shifting standards, it then takes the liberty to “encourage the Maltese authorities to impress on the media” (paragraph 90) the need to publish only material compatible with ECRI’s own bias and alleges that “inappropriate terms to qualify immigrants or certain categories of immigrants are reportedly also still used” (paragraph 85), without citing any reports or cases. **The Maltese government would like to assure ECRI that it does not have any intention of issuing instructions to the press or introducing press censorship.**

12. Furthermore the report expresses concern “at negative tendencies in the tone of public, and notably political, debate surrounding issues of immigration” (paragraph 120) and refers to “tendencies in political discourse around irregular immigration” (paragraph 122) which do not meet with its satisfaction. The Government wishes to emphasise that public and political debate in Malta will continue to be conducted in full respect of freedom of speech, as defined by the law. In this regard, it is absolutely untrue that “the general public has little exposure to alternative views or different types of public discourse on immigration” (paragraph 121) as anonymous “civil society organisations ... have stressed”. All NGOs, including those mentioned in the report, benefit from the same level of freedom of speech and make use of it. They also seem to have particularly good access to the press and like-minded international institutions. The general public may not be receptive to their message,

but that is not a good enough reason to stifle and censor the views of others as long as the law is respected. **The Maltese government and parliament have always been, and will continue to be, particularly attentive to maintaining the proper balance between freedom and responsibility as safeguarded by the Constitution.**

Anonymous sources: pervasive bias

13. In Malta NGOs are free and encouraged to contribute to public life through their specialised knowledge, dedication and enthusiasm. In 2007, parliament unanimously passed a law providing for the recognition of NGOs and their access to public funds. But no democratically elected government can abdicate its duties and responsibilities to NGOs, which specialise in a limited area of public life, represent small numbers of people and do not benefit from the same legitimacy and good governance (including transparent elections) as the government. The report reveals a lack of confidence in the ability of the government to govern in the interests of the people and seems to expect it to take orders from NGOs. **No government in Malta will ever abdicate its constitutional responsibilities.**

14. The report makes no mystery of its reliance on some NGOs as sources of information, but there is an all-pervasive and deliberate lack of transparency. In Section II - Detailed Comments (below) we cite eight statements or judgements attributed to unidentified “civil society organisations”. This anonymity is hard to explain since the NGOs’ and ECRI’s credibility would gain if they were named. Indeed, the report does name some of them on rare occasions in terms laced with praise or self-praise: the Jesuit Refugee Service in paragraphs 24, 38, 49 and 51; Amnesty International in paragraph 25; the Emigrants’ Commission in paragraphs 38 and 62; and the Red Cross and the Peace Laboratory in paragraph 38.

15. In addition, in the Detailed Comments we cite more than 20 unsubstantiated statements, allegations or judgements, many wrapped in words like ‘reports’, ‘reported’ and ‘reportedly’. The Government would have been ready to accept any of them, if they were substantiated by precise facts, citations or sources. As they are not, it has to deplore this systematic and deliberate opacity which is unnecessary and unjustified in Malta where criticism (especially of the government) is regular, frequent and an expected part of the democratic process. **Failure to disclose sources would have been understood if limited to a few delicate or confidential cases, but practised on a thorough and systematic scale it seriously undermines ECRI’s professionalism and credibility.**

16. In addition if, as seems likely, the anonymous sources are the same unnamed NGOs, the Government has to express its doubts about the report’s real authorship. **Indeed, what is the meaning of the assurance given in the Foreword that the “report was drawn up by ECRI” if we do not know which parts are the result of ECRI’s own findings and which others are the product of cut-and-paste report writing?**

17. Systematic lack of transparency extends to the bibliography which notes: “This bibliography ... should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report”. What is ECRI’s interest in hiding its sources? The bibliography cites (item 39) the ENAR Shadow Report 2006 - Racism in Malta, October 2007. It fails to mention its author’s name, Jean-Pierre Gauci, first described as affiliated to Amnesty International Malta and

then to ENAR on ENAR's own website. The ECRI report fails to specify which parts have been copied from the ENAR report which, in its turn, contains more than 120 references to NGOs, whether unidentified or named as the Jesuit Refugee Service, Amnesty International Malta or some other. **An attentive reader of these reports cannot help noticing that they keep using each other as sources to create a virtual world serving their authors' agenda. ECRI is a willing partner in this game.**

18. In an inadvertent indication of its sources, the report frequently calls for a transfer of authority from the elected government and parliament to "civil society organisations". The following self-serving cases can be cited:

Paragraph 28: "It strongly encourages the Maltese authorities to continue and reinforce its co-operation with the non-governmental sector, as concerns both teacher training and actual provision of education to children".

Paragraph 40: "Civil society organisations consider that the remedy provided for ..."

Paragraph 67: "In so doing, it [ECRI] recommends that they [the Maltese authorities] support and make the most of existing expertise in the non-governmental sector in this field"

Paragraph 90: "ECRI recommends that the Maltese authorities engage in a debate with the media and members of other relevant civil society groups ..."

Paragraph 104: "Collection of such information should be elaborated in close co-operation with all the relevant actors, including civil society organisations ..."

ECRI can rest assured that the Maltese Government will always carry its constitutional responsibilities in accordance with the mandate given by the electorate and in the people's best interests.

19. The report's pervasive bias repeatedly emerges from other omissions and loaded phrases. Malta obviously accepts its "obligation to protect human life" (paragraph 60), but it cannot accept such an obligation worldwide and without any geographical delimitation. This obligation is carefully defined by international treaties and conventions to which Malta and other sovereign states are parties. Furthermore, it is hard to understand the objective meaning of paragraphs 107-108 and the words: "associations" (twice), "image", "perceptions" (twice), "compounded" and "imagery". The Maltese authorities reaffirm that handcuffing illegal immigrants outside detention centres is necessary because many of them escaped or tried to escape while on visits to hospital. They then try to cross over to Sicily in violation of the law.

Major lapses in ECRI's draft report

Detention services

20. The detailed section 'Detention of irregular migrants' (paragraphs 33-46) contains many errors. According to our records, during the meetings on 17 and 18 July 2007 the ECRI mission did not request to visit the detention centres. During the meeting at the Ministry for Justice and Home Affairs on 17 July, an ECRI member asked whether they would be allowed to visit the centres if they made such a

request. The head of the Maltese side replied that that would not be a problem if they submitted an official request in writing. **The ECRI mission did not follow this up and did not request to visit the centres, either verbally or in writing.**

21. It is, therefore, inexcusable that the report should rely on anonymous informers: “have been highlighted” (paragraph 35); “are still reported” (paragraph 35); “is reported” (paragraph 36); “it has been reported to ECRI” (paragraph 37); “ECRI has received consistent reports” (paragraph 39); “is also reported” (paragraph 39); and “reported instances” (paragraph 39). Indeed, how can ECRI affirm that “since its last report progress has been made” (paragraph 35) if it did not visit the detention centres either while preparing its last report or the present one? The report also refers to concern at limitations on access to the centres, adding: “It has been stressed that such lack of transparency limits the opportunities to improve conditions in the centres” (paragraph 38). It is cynical, to say the least, that the ECRI mission did not take up the offer of transparency and visit the centres if only to help “improve conditions” there.

22. ECRI recommends that the Maltese authorities improve access to the centres by the media and civil society organisations (paragraph 44). In his testimony (see Section III - Testimonies, below) the head of the centres names eight NGOs which regularly visit; he reveals that Amnesty International Malta never requested to do so. Furthermore, the report is incorrect in saying that Medecins du Monde were “not authorised to provide services in detention centres” (paragraph 38). Medecins du Monde refused all the alternatives that the centres’ authorities offered them for establishing their medical practice. The testimony further shows that many comments in the report do not correspond to the truth, namely, on hygiene, maintenance of facilities and healthcare (paragraph 35); mental well-being (paragraph 36); and training of detention centre personnel and treatment of detainees (paragraph 39).

23. In addition, the last sentence of paragraph 39 (“The treatment of detainees ... adequate punishment”) and paragraph 94 (“Racist abuse of these persons is also reported to have taken place”) are unsubstantiated and contradicted by the document ‘Report on the three-day seminar with Detention Officers’ on stress management by psychotherapist Dr Charles Cassar (see Section III - Testimonies, below). The report, presented in parliament and available on www.parliament.gov.mt/information/Papers/6453.pdf, states in particular:

“The immigrants are hostile towards the officers and threaten them continuously. They work under constant abuse by them. This abuse is both verbal and physical and the officers are instructed not to react to such provocations ... Moreover the detention officers are very concerned about the chance of getting infected by contagious diseases by the immigrants ... The detention officers see the necessity of wearing gloves and masks when doing ward rounds ... They also feel that the system in which they work is more respectful towards the illegal immigrants than towards them ...”

The Depasquale Report

24. ECRI’s report (paragraph 95) refers to the incidents at Hal Safi detention centres in January 2005. The only authoritative document on the subject is the **Report of a Board of Inquiry** (97 pages), known as the Depasquale Report after the former judge who carried out the inquiry. ECRI ignores some of its key findings (section 15, pages 65-67):

*“... the detainees had been preparing their protest for at least three days...”;
“this protest was not spontaneous ... it was premeditated and organised in all its details”;
“on the day of the protest they decided to go against the centre’s regulations with violence (though not considerable violence) ... and escaped from the confines laid down for them. Their behaviour was certainly against the regulations and therefore illegal”;
“Although the protesters were unarmed ... the protest was certainly neither peaceful nor legitimate”.*

25. It also ignores the following conclusions of the Depasquale Report:

“ The Board, having examined in detail the times that were reported, drew the impression that the first cameraman knew about the protest almost as soon as this was starting or perhaps even before ...” (page 24);

*“ journalists did not reply to questions about who had informed them to go to Hal Safi and felt they had to invoke their professional secret ... This ... contributed to the idea that some outsiders knew very well what was going on ... **When one compares the times, one does not conclude that journalists got to know about the protest only after it had started**”* (page 25);

“ in the days after the incidents some NGOs ... interviewed many [detainees] who gave their version...; the Board would have liked to have a copy of these interviews ... The NGOs told him that they would give him these ... but did not because they could not find them” (page 4).

Asylum seekers

26. When the phenomenon started, NGOs tended to speak of refugees and asylum seekers. It became obvious with time that most of the persons concerned are not refugees but economic migrants (see Section III - Testimonies, below, Analysis by the Chairman of the Refugee Appeals Board). Many apply for refugee status, sometimes encouraged and helped by NGOs, in the full knowledge that they do not qualify. The Refugee Commissioner has to face a large number of claims based on false or fabricated information. Systematic abuse has not contributed to the good reputation of the asylum system.

27. Several statements in the report are rebutted by the Maltese authorities. It is untrue that figures “reflect a tendency to grant humanitarian protection to applicants who, in some cases, may qualify for refugee status” (paragraph 47). The report gives no source for the statement, apart from saying “reportedly”, and no figures, apart from referring to a “tendency”. This leads to its recommendation (paragraph 52) where “ECRI encourages the Maltese authorities in their efforts to ensure that all persons entitled to refugee status actually secure this status” - which implies that some do not, which is untrue. Furthermore “to this end it recommends ... that the Maltese authorities intensify their efforts to train the caseworkers ...” This implies that some are denied refugee status because caseworkers lack training which is doubly untrue.

28. The report also states: “ECRI understands that at the time of writing it takes still a long time for an asylum seeker to be called to an interview” (paragraph 48). It omits to state that the process is often lengthened because asylum seekers fail to

turn up for appointments. In some countries, but not in Malta, missed appointments lead to the abandonment of the claim.

National Equality Commission

29. The report's section on the National Commission for the Promotion of Equality contains a typical instance of judgement by insinuation. In paragraph 18: "ECRI considers that strengthening the independence of the Commission could enhance the effectiveness of the Commission's work and impact favourably on the trust accorded to it by victims of discrimination." Taking its imagination for reality, it proceeds in paragraph 21 to turn "could" into a recommendation "that the Maltese authorities *consider strengthening* the independence of the National Commission". Indeed, it is so convinced of its advice that the Executive Summary repeats the recommendation of "*strengthening* the independence of the National Commission". In her testimony (see Section III), the Executive Director of the National Commission objects to the implication that the Commission's independence is inadequate and needs strengthening. She also notes that ECRI's statement is unsubstantiated: no evidence is given to support the insinuation that victims of discrimination do not accord it trust.

Unsuitable recommendations

30. An ECRI report is meant to be read by the general public, as well as lawyers. The present report does not claim that ECRI's general policy recommendations have the force of law, but their character is not defined clearly enough for a reader not versed in law. This is a significant omission since the report contains eleven references to six general policy recommendations reflecting ECRI's own bias (paragraphs 11, 12, 14, 16, 21, 27, 84, 97, 101, 105 and 128). **It would have been fairer to the reader if each reference were preceded by a statement clarifying that the recommendation does not have the force of law.**

31. The report's recommendations, spread over 52 paragraphs, call for the following comments.

- (i) Some recommendations are based on incorrect or unsubstantiated information.
- (ii) Others are divorced from Malta's reality, including its size, geographical location, history, population density and level of economic development.
- (iii) Many do not attempt to draw a comparison with practice in other member states of the Council of Europe, which very often falls far short of Maltese practice.
- (iv) The recommendations in paragraphs 41, 42, 45, 55, 58, 65, 66, 78, 79, 92, 98, 103, 104 and 105 involve additional expenditure. ECRI does not suggest how their implementation could be financed.

II. Detailed comments

Unsubstantiated statements, allegations and judgements

The following citations contain gratuitous statements or judgements or allegations not substantiated by references to precise facts or sources and try to hide this inadequacy by words or phrases like: ‘reports’, ‘it is reported’, ‘understands’ and so on. The italics have been added to show the objectionable words. The list is not exhaustive.

Paragraph 6: “ECRI *understands* that there have also been some *cases* of incitement to racial hatred ... ECRI *notes* that *instances* of incitement to racial hatred are not always prosecuted...”

Paragraph 15: “ECRI notes that this situation is in contrast with *reported instances* of racial discrimination...”

Paragraph 37: “However, it has been *reported* to ECRI ...”

Paragraph 38: “It has been *stressed* that...”

Paragraph 39: “ECRI has received *consistent reports* according to which ...”
“The treatment of detainees ... is also *reported* to not always respect ... as illustrated by *reported instances* ...”

Paragraph 47: “... they also *reportedly* reflect a tendency ...”

Paragraph 62: “conditions ... are *reported* to be good ... are *reported* to be ... better.”

Paragraph 68: “... *reports* of racial discrimination ...”
“... there is *reported* to be at present very little awareness ...”

Paragraph 69: “ECRI has also received some disturbing *reports* ...”

Paragraph 70: “... racial discrimination is also *reported* to play a role.”

Paragraph 75: “... not only is remuneration *reported* to be considerably lower ... Longer working hours ... have also been *reported*... there have also been *allegations* of ...”

Paragraph 83: “Such manifestations, which are *reported* to be connected ...”

Paragraph 85: “negative portrayal ... are *reported* to be still widely present in the Maltese print and broadcast media. Inappropriate terms ... are *reportedly* also still used ...”

Paragraph 94: “... *reports* of ill-treatment of non-citizens have continued ...”
“Racist abuse of these persons is also *reported* ...”

Paragraph 121: “... are *reported* to be ... All political forces are also *reported* to use ...”

Paragraph 125: “It has been stressed ... It has also been reported ...”

Paragraph 7

“ECRI notes that so far there have been no cases of the implementation of these provisions, a situation which is at variance with *reported instances* of racially-motivated offences ... This situation *appears* to reflect, at least in part ...”

This is a gratuitous allegation: no information whatsoever is given about the “reported instances”. Then a subjective conclusion (“appears to reflect”) is drawn from the unproven allegation. The report tries to excuse the absence of evidence by alleging some intimidation for which, again, it provides no evidence. The Recommendation in the first sentence of paragraph 9 is therefore baseless.

Paragraph 81

“... manifestations of Islamophobia are *reported* to have remained ...”

Which manifestations? Which reports?

“However, the events of 11 September 2001... resulted in a considerable increase in generalisations and associations”

Not one instance of these “generalisations and associations” is cited and no attempt is made to show that there has been a considerable increase and a causal nexus with the events of 11 September 2001. This is likely to be an extrapolation from other countries.

Paragraph 123

“ECRI notes that a *number of attitude surveys* ... although the *validity* of some of these surveys has been *questioned*.”

Which surveys? Who has questioned what? What is the value of citing an unknown number of unidentified surveys if the validity of an unknown number of them is questionable?

“ECRI notes, however, that racist name-calling in the street is unfortunately *reported* not to be uncommon in Malta... and manifestations ... are also *reported*.”

No information is given about the reports or the sources.

Statements and judgements attributed to unidentified organisations

Paragraph 8

“More generally, civil society organisations have underlined that those working in the criminal justice system, and notably judges and the police, are not always conversant with the provisions in force ...”

This statement is attributed to anonymous organisations and not supported by any evidence.

Paragraph 40

“Civil society organisations consider”. Which organisations?

Paragraph 76

“However, civil society organisations have consistently *expressed the view* that there is not enough *dedication* on the part of the Maltese authorities ... They also *report ...*”
Which organisations? What is the meaning of “not enough dedication”?

Paragraph 86

“According to civil society groups...” Which groups?

Paragraph 95

“civil society organisations were unaware of the follow-up ...”
Which organisations were aware and which were unaware?

Paragraph 99

“civil society organisations consistently report ...” Which organisations?

Paragraph 115

“civil society organisations have stressed ...” Which organisations?

Paragraph 121

“... civil society organisations ... have stressed ...” Which organisations?

III. Testimonies of various Authorities

**Comments by Lieutenant Colonel Brian Gatt,
Commander Detention Service**

DS/1001/000

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Safi

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Ambassador Joseph Licari
Permanent Representative of Malta
Council of Europe

28th February 2008

**THIRD REPORT ON MALTA BY THE EUROPEAN COMMISSION AGAINST RACISM AND
INTOLERANCE**

Please refer to the Draft third report on Malta by the European Commission against Racism and Intolerance and particularly the section on Detention of irregular immigrants (paragraphs 33 - 46).

I took part in the meeting between the Maltese official side and the ECRI mission team on 17 July 2007. The ECRI mission did not request to visit the detention centres during the meeting. They did not make any such request to me, either formally or informally. In fact they did not visit the detention centres at all, neither did the ECRI mission in 2002.

As regards the text of the draft report:

Paragraph 35

Hygiene: at all centres, every month immigrants are given cleaning materials to keep their accommodation clean. Cleaning materials include 8 litres of bleach liquid for the sanitary facilities, and 12 litres of floor disinfectant for every 70 persons. Other items include the necessary buckets, mops and squeezers with which immigrants are expected to clean their accommodation. Unfortunately, the majority of immigrants do not feel that they should contribute towards keeping their accommodation up to the desired hygienic level.

Maintenance of facilities: The Detention Service carries out maintenance at the centres on a daily basis to ensure that essential services are functioning. However, vandalism and lack of interest by immigrants contribute towards the degradation of the physical conditions within the centres. For instance, in all centres most immigrants dispose of their waste in the drainage systems of their sanitary facilities,

instead of in rubbish bins or skips. This causes blockage of the drain systems leading to overflow of waste water in the toilets and showers, thus resulting in the degradation of hygienic levels within the immigrants' accommodation area. Another malpractice is the constant tampering with the electrical installation of the accommodation leading to over-loading of the electricity system, as well as permanent damage to electrical equipment.

Major refurbishment projects are carried out every year. In fact in 2007, two compounds, each capable of accommodating 200 immigrants, were totally refurbished. Sanitary facilities are also refurbished during winter/spring period when the number of immigrants in detention is low.

Healthcare: Provision of healthcare is of paramount importance at the centres. At Safi and Lyster, the larger of the detention centres, healthcare is provided by a medical team of a doctor and a nurse at each centre, five times a week. During weekends and at night immigrants are taken to the nearest health centre or hospital if they complain of an ailment. At Ta' Kandja a doctor visits the centre twice a week but any immigrant who requires medical attention, any time of the day or night, is taken to the nearest health centre or hospital.

Paragraph 36

Mental well-being: There are no reports of immigrants suffering from mental health problems, except those cases that would be expected to be found within a community of 1400 immigrants. In fact, the number of cases of immigrants requiring mental health treatment is well below the national average.

Paragraph 38

Access to detention centres: The Detention Service has adopted an open door policy with respect to NGOs which would like to visit immigrants in detention. This policy has been in place since the establishment of detention centres. Indeed, a number of NGOs visit the centres on a regular basis. These include the Jesuit Refugee Service, the Emigrants Commission, the Red Cross, the Peace Laboratory, SOS Malta, Jehova Witnesses, Evangelists and Baptists. In 2007 Medecins du Monde requested to establish medical practice in the centres but, although alternatives were given where such practice would be most effective, Medecins du Monde refused this offer. They were never refused entry to visit the centres. Amnesty International has never requested to visit the detention centres.

Access by ECRI: It is interesting to note that ECRI has never submitted a request to visit detention centres in Malta.

Paragraph 39

Training of detention centre personnel: All personnel of the Detention Service receive training on humanitarian law and the treatment of asylum seekers and immigrants in custody. This training is structured in such a way as to achieve a balance between the requirements for the humane treatment of the immigrants and the security and safety of the personnel responsible for their custody. Experts from humanitarian based NGOs (such as the Jesuit Refugee Service), as well as from government departments usually participate as lecturers.

Treatment of detainees: The Detention Service adopts a policy of zero tolerance towards violence, whether such violence is perpetrated by its own personnel or by the immigrants themselves. Over the past couple of years reports on violence in the centres have been investigated resulting in disciplinary action taken against Detention Service personnel. Furthermore, Detention Service personnel must adhere to a code of conduct which lays down the rights of immigrants in custody and the responsibilities of Detention Service staff in respect of the same immigrants.

More recent, the Board of Visitors for Persons in Detention has been set up to monitor detention centres and to investigate any claims of maltreatment made by immigrants.

(signed)
B GATT
Lieutenant Colonel
Commander Detention Service

29th February, 2008

Considerations made by the Office of the Refugee Commissioner

RE: ECRI Draft third report on Malta, adopted on 14 December 2007

The Office of the Refugee Commissioner is limiting its considerations to remarks made about the same Office and its operation.

Paragraph 47: “they also reportedly reflect a tendency to grant humanitarian protection to applicants who, in some cases, may qualify for refugee status”.

The Office of the Refugee Commissioner has already strongly and vehemently rebutted this unsubstantiated allegation and it is appreciated that Refugee Commissioner’s position is also included in the draft report. This Office cannot but reaffirm its policy and practice of invariably examining each case in full and deciding according to each case’s particular merits.

Paragraph 48: “at the time of writing, it takes still a long time, sometimes many months, for an asylum seeker to be called for an interview with the Office”.

The Office of the Refugee Commissioner has already showed with facts that it is also true that many cases are decided in less than three months after the date of arrival in Malta. This is in fact reflected in the ECRI draft report. When cases take longer this is usually due to circumstances which may be beyond the control of this Office or created by the asylum seekers themselves who render themselves unavailable for the interview. It is not the practice in Malta to consider missed appointments as leading to abandonment of the asylum claim but to the eyes of the uninformed person the delay so caused may seem unjustifiable. No efforts are being spared to ensure that all are interviewed in the shortest period of time possible. One last remark is that one must also bear in mind the fact that almost all arrivals of asylum seekers are concentrated in the summer months and this necessarily creates a waiting list.

First recommendation: “ECRI encourages the Maltese authorities in their efforts to ensure that all persons entitled to refugee status actually secure this status. To this end, it recommends in particular that the Maltese authorities intensify their efforts to train the caseworkers of the Office of the Refugee Commissioner”.

It is the opinion of this Office that this recommendation is not in synchronization with paragraph 47 of the report. The way it is presented appears to reflect the opinion that actually there are persons who should be recognized as refugees and who are not, and that this is due to the lack of proper training of the caseworkers. This Office notes that this recommendation is based on the ‘reportedly reflect’ of paragraph 47, and although it is a very serious insinuation it is not substantiated by the ‘reporting’ body. The Office of the Refugee Commissioner is always more than happy of receiving feedback, suggestions and constructive criticism.

Mario Friggieri
Commissioner for Refugees



National Commission
for the Promotion
of Equality for
Men And Women

Kummissjoni Nazzjonali
ghall-Promozzjoni
ta' l-Ugwaljanza
ghall-Irġiel u n-Nisa

Considerations by the National Commission for the Promotion of Equality on
Draft third report by ECRI

March 2nd, 2008

The National Commission for the Promotion of Equality [NCPE] is mentioned in paragraphs 17 to 21 of the report.

Paragraph 17 seems to be a summary of the law, though NCPE came into being in 2004 and not 2003 as stated. However, its remit was extended to cover for race and ethnicity by Legal Notice 85 of 2007.

Paragraph 18 contains two sentences starting 'The Maltese Authorities' and 'The Authorities' – the source must be the meeting held between the Maltese official delegation and the ECRI visiting mission. The first sentence states that 'ECRI understands' without giving the basis of its understanding.

Paragraph 18 further states that '*ECRI considers that strengthening the independence of the Commission could enhance the effectiveness of the Commission's work and impact favourably on the trust accorded to it by victims of discrimination.*'

NCPE would like to object to the implication of this statement that its independence is inadequate and needs strengthening: no evidence is provided to support the insinuation that victims of discrimination do not accord it trust. Therefore, NCPE cannot support the recommendation contained in paragraph 21 unless substantiation of this statement is forthcoming.

Sina Bugeja
Executive Director

**Analysis by Professor Henry Frendo,
Chairman, Refugee Appeals Board, since 2001**

(*The Malta Independent*, 31 December 2007 and 2 January 2008)

The changing faces of asylum appellants in Malta (1) by Henry Frendo

Talk of illegal immigrants, asylum-seekers and refugees in the local media since 2002 has usually been couched in emotional, impressionistic rhetoric, often starting by the misleading confusion of all three categories as “refugees”, given that human news stories often tend to be intrinsically sensational.

This general profile here is from original sources regarding asylum appellants in Malta during 2006. It is a follow-up to my graphically illustrated findings for 2005 carried as a centre page spread in *The Sunday Times* entitled “Malta’s changing immigration and asylum discourse” (29 January 2006, pp. 46-47). It is an empirical reflection of the concern with “freedom” on one hand and “security” on the other in the EU’s ongoing “Challenge” project of which I am a research partner, which in 2005 held a conference in Malta comparing situations on the Southern and the Eastern borders of the Union; and largely based on data archived at the Refugee Appeals Board.

In addition to an analytical, illustrated breakdown by category compiled for appellants mainly during the calendar year 2006, this review seeks to offer some comparisons of the prevailing situation as this has been shifting and changing during the past two years or so, as illegal arrivals by boat continued apace, at the same time that many applied and then appealed after their tourist visas had expired.

The situation is somewhat less static than it seems, although Libya remains the main conduit for human trafficking. Changes continue into 2007, prompting new investigative categories in the case of appellants having a criminal background and, more recently, for those who specifically state that they choose to come to Malta or left their own country in order to do so, giving reasons for that. The very appearance of such a category, however small, is noteworthy. From the reasons given, it would seem that their intentions are motivated to a greater or lesser extent by the following five factors: the existence of democracy and human rights in Malta; Malta’s membership of the EU and therefore an obligation to help them; the ready provision of board and lodging as well as other forms of material assistance; the government’s policy generally not to send back failed asylum seekers (for example from West Africa) or an inability to do so; and the fact that appellants allegedly have “no one left” (relatives, friends, etc) in their own country of origin, thus implying that they however now have contacts on the island of Malta.

For the first time, therefore, a breakdown is given here of the “reasons for requesting asylum” in Malta; this will be further elucidated in due course. I only had this additional field of systematic inquiry introduced in dossier analyses towards the end of 2006; so the figures covered here, in so far as this new category is concerned, for the time being relate only to the period

from November 2006 to May 2007. Other figures and percentages relate to total numbers of cases which the Refugee Appeals Board adjudicated from 1 January to 31 December 2006. These comprise: the real or alleged country of origin; the country of last departure and the length of stay there (months, years, etc); formal education if any; gender; legal or illegal entry; religion; age group; and, as already mentioned, the reasons given for claiming asylum. In the past two years it was only in a few cases that recommendations made in the first instance were overturned and refugee status granted; the rest were manifestly unfounded or otherwise ineligible as Convention refugees.

Rising number of appeals

The total number of appeals received during 2006 from asylum-seekers who had been turned down at first instance or who - the majority of applicants - had been granted a temporary humanitarian protection, was 732. In accordance with the general trend since 2001/2, the number of appellants has been generally on the rise.

This is mainly because NGO assistance, facilitating recourse to both applications and appeals, has steadily consolidated, with fill-in-the-blank forms being made available to anyone who could benefit from the prospect of asylum. Equally, however, appeals over the last two years, particularly ones that may be adjudicated, have increased considerably thanks to an improvement in the provision by the Justice and Home Affairs Ministry of free legal aid by a specialised pool, in accordance with recommendations which had been made by the Refugee Appeals Board. As the law grants appellants the right to legal aid, the Board felt that it was unjust to adjudicate anyone who had asked for legal aid without him or her having received it. This situation has now improved so that not only has the number of appeals increased but the backlog in their adjudication has greatly decreased, sometimes it being reduced to nil, or decisions taken within a few weeks or less.

The profile of the Malta appeals caseload becomes clearer below from the evidence and analyses about the various categories researched, and should help the public understand why the vast majority of such appeals were judged to be ineligible for refugee status at law. In spite of a number of open hearings in which the Refugee Commission's decisions were fully re-scrutinised, it was rarely possible to reverse judgments; saddest of all was one such case where an appellant turned up for the open hearing with his lawyer (and his young, pregnant Maltese partner, who was actually married to another Muslim from another country) but, soon after his rejection, it transpired from the court columns in the press that he had been criminally charged with a serious offence, by which time however he had eloped. During 2007 there were four reversals of recommendation at appellate stage concerning two persons from a West African country and two from a North African one; these were granted refugee status.

The countries of origin

During 2006, the country or alleged countries of origin were the following, in descending numerical order:

Sudan: 182 (24.86%); Eritrea: 108 (14.75%); Ethiopia: 91 (12.43%); Niger: 69 (9.43%); Ivory Coast: 64 (8.74%); Nigeria: 41 (5.60%); Togo: 33 (4.51%); Somalia: 30 (4.10%); Liberia: 18 (2.46%); Ghana: 17 (2.32%); Palestine: 14 (1.91%); Iraq: 9 (1.23%); Sierra Leone: 9 (1.23%); Chad: 8 (1.09%); Burkina Faso: 8 (1.09%); Algeria: 7 (0.96%); Mali: 5 (0.68%); Syria: 4 (0.55%); Turkey: 3 (0.41%). Others: Benin, Cameroon, India, Libya, Morocco, Senegal, Tunisia, Democratic Republic of Congo (2), Guinea Bissau, Zimbabwe: 2%.

In percentage terms, this situation shows a notable increase in those from or claiming to be from the Sudan (up from 10% to nearly 25%) because of or in relation to the Darfur conflict; as well a big jump from 4-5% for Eritrea and Ethiopia, especially the former, where a relentless war-like dictatorship holds sway, increasingly bent, according to reliable BBC reports and interviews, on also Muslimising the country's large Christian population (several of whom have sought refuge in neighbouring Ethiopia, where Christians are not persecuted).

Ivory Coast has decreased from 11%, but Nigeria has gone up from 3%, while Togo was hardly a consideration at all until now. Somalis or alleged Somalis decreased markedly, down from 20%; Liberia also decreased from 3%, partly perhaps because the political situation improved following the end of internal fighting accompanied by democratisation and elections. Inexplicably, but mostly for economic reasons and the European quest, Ghanaians became a factor, whereas before they were not, although Ghana remains a reasonably safe, democratic country. Here it may be noted that not a single Ghanaian arriving illegally (and generally undocumented) in Malta, usually from Libya by boat, has been repatriated.

Palestinians declined from 8% to less than 2%, as did Iraqis, down from 3%. Turks, mainly claiming Kurdish nationality, declined markedly from 7%, although it is not known that failed Turkish asylum-seekers have been repatriated on the regular direct Air Malta route to Istanbul in recent years. Noteworthy caseloads which figured somewhat in 2005 but ceased to do so in 2006 include mainly South Asians (Pakistanis, Indians, Bangladeshis) and nationals from the Democratic Republic of Congo (down drastically from 12%), possibly as a result of peace-keeping initiatives there.

With the exception of one-offs (Kyrgyzstan, Serbia, Senegal, Tunisia), the nationality profile of illegal immigrants seeking asylum in Malta has remained characterised by sub-Saharan Africans, mainly from East, Central and West Africa, travelling more or less by the same means via the same land-and-sea routes. What is less clear is the percentage of those arriving by air, who arrange to stay on expired visas or otherwise, most of whom would be from Arab countries, the Balkans, the Caucuses, South Asia or the Far East, including China, and only very occasionally from, say, Nigeria. Most of these do not seem to apply for asylum preferring other integration alternatives through networking, work permits, inter-marriage, etc.

The changing faces of asylum appellants in Malta (2)

Countries of departure

In 2006, as in 2005, the last country of departure of illegal immigrants who seek asylum in Malta has been Libya. In 2006 as many as 93 per cent of all appellants (678) came from Libya, a little more than in the previous year. A small percentage (12 per cent in 2005 down to 2 per cent in 2006) flew in from different airports in Europe, North Africa or the Near East. For the rest - those not arriving by boat via Libya - came from Turkey (3 per cent in 2005), the Ivory Coast or Tunisia, with isolated individual cases from Lebanon or Bulgaria.

Apart from the largely trafficked departures from Libyan ports in boat-rides procured at a price, what is even more telling is the duration of stays, usually, but not always, in Libya, prior to embarking on the voyage to Europe. 35 persons or 5 per cent had been mainly in Libya for more than 10 years before disembarking in Malta, while 19 or 3 per cent had been there for 5-10 years, and 101 or 14 per cent between two and five years. Most (252, or 34 per cent) had been in Libya for up to one year, with 142 or 19 per cent for about one month, i.e. effectively in transit on the mass illegal migration routes to Europe.

These figures compare with those for the previous year when 12 per cent had been in a third country, almost invariably, but not always, Libya, for more than five years before disembarking on Maltese shores (sometimes having been saved in search and rescue operations usually by the Maltese Armed Forces in Maltese waters). As many as 10 per cent had been in the country of departure for between two and five years, 22 per cent between one and two years, and 56 per cent up to one year. This shows fairly constantly that a slight majority, over 50 per cent, would have stayed in the country of departure, usually Libya, for up to one year, with the rest having lived and worked there for longer - often much longer. Thus, hardly any asylum-seekers come to Malta directly from their country of origin, and almost invariably, they have not applied, or even considered, applying for refugee status in any of the countries visited or lived in since leaving their home country, or alleged home country. The vast majority are not in possession of a passport or an identity document, many claiming to have lost these or had them confiscated en route.

Of all the appellants during 2006, 724 out of 732 or 99 per cent, had arrived/entered illegally; only eight persons or 1 per cent had entered Malta legally. This shows a considerable increase on 2005, when those entering Malta illegally were 84 per cent, with 16 per cent entering legally. The number of illegal entries would thus seem to be increasing further.

Age and gender characteristics

In 2006, the largest segment of appellants (335 or 45.77 per cent) were aged between 26 and 35 years. The second largest segment (266 or 36.34 per cent) was aged between 18 and 25 years. Only 26 said they were under 18 (3.55 per

cent). For the rest, 70 (9.56 per cent) were aged between 36 and 45 years, 6 (0.82 per cent) between 46 and 50 per cent, and only two (0.27 per cent) were over 50 years old. There were 21 (2.87 per cent) accompanied minors (including a few new-born babes, one or two on the boats), and 6 or 0.82 per cent were of an unknown age.

Age claims are often found to be untrue after technical/medical tests, particularly when arrivals claim to be minors so as not to be detained. Normally accompanied and unaccompanied minors are not detained, nor are families with children. However, clearly enough, the majority of arrivals are aged between 18 and 35 years, i.e. younger persons of working age, evidently seeking better jobs and futures in Europe. This statistic should be read in conjunction with the findings on gender below. In 2005 our findings regarding age groups were similar, most being in their 20s and 30s; only 7 per cent were over 40 years old.

Typically, as in previous years, in 2006 most asylum-seekers were young adult males. As many as 87 per cent (640) were males. Only 71 or 10 per cent were females. 21 or 3 per cent were accompanied minors. This statistic becomes clearer when looking at the stated reasons for claiming asylum. Most male adults are seeking better work prospects. A smaller number are evading military service, deserting the army, or are fugitives from justice. Few if any of these are ever females. Most boatloads usually comprise a token female presence with one, or perhaps two, children aboard. Of these, a number constitute families; occasionally couples claim to have been separated by traffickers in the process of being consigned to specific boats ashore, before leaving.

What this statistic also means, however, is that the country where asylum is being sought, in this case Malta, is increasingly under the stress of a increasingly disproportionate ratio between male and female residents. Moreover the great majority of males are relatively young and single. Additional light on this finding may emerge from the categories regarding religious beliefs and cultures, as well as educational standards, given below. Standards of hygiene and health have so far not been analyzed here, but in a minority of cases various diseases diagnosed by attendant doctors, most of which had been eradicated from Malta, have been mentioned in the press.

Beliefs and cultures

In 2006, religious professions of illegal immigrants seeking asylum at the appellate level in Malta were as follows:

Muslims: 53.83 per cent (394); Catholics: 24.45 per cent (179); Orthodox: 15.98 per cent (117); Pentecostal: 2.05 per cent (15); Protestant: 0.68 per cent (5); Other (including 2 Jehovah Witnesses): c. 3 per cent.

In 2005, the percentage of Muslim appellants was 67 per cent, with only 13 per cent Catholics. The rest were Protestants, Orthodox, other mainly Christian denominations and sects, with a few Hindus (3 per cent).

At first instance, the percentage would be higher, particularly because of the Somali applicants, to whom Malta, almost invariably, grants humanitarian

protection and assistance in deference to a standing UNHCR recommendation.

The implications for the host country, which has been traditionally very largely homogeneous and almost entirely Catholic, can be significant. Historically a Catholic bulwark against the advance of Islam and the Ottoman Empire, Malta's religious-cultural make-up among the ever-growing population is anyway changing at a fast and growing rate, with a relatively high proportion of Arab-Maltese marriages. So far, however, the Muslim population has grown to some 3 per cent and there is still only one big mosque (financed by Gaddafi in Mintoff's time) with a growing Islamic school adjoining it. On the other hand, for humanitarian reasons Catholic NGOs are foremost among those hosting and assisting asylum-seekers of whatever religious affiliation these may be, while efforts are being made towards facilitating integration (state schools, clinics and hospitals are free).

Educational standards

In 2006 most asylum-seeking appellants in Malta had either never attended school and were illiterate (40 per cent, or 289) or else they had attended primary school classes (36 per cent or 267). Only 17 per cent had been to a post-primary or secondary school (125), 5 per cent had been to a high school, and 2 per cent (14) to a tertiary institution such as a college or university.

These figures compare with 2005 and are not dissimilar. 35 per cent had never been to a school and were illiterate while 33 per cent had been exposed to some level of elementary schooling. In other words, in 2006 some 76 per cent were illiterate or semi-literate while in the previous year the corresponding percentage was 68 per cent. Some 10 per cent in all had been to secondary school, high school, college or university.

These statistics can be misleading because many of these appellants are (were) literally sons of the soil, coming from farming backgrounds. This means that while lacking a formal schooling several among them would have had practical experience in herding, farming, breeding, dairying or crop production of various kinds. However, from the point of view of integration, this places further pressures on a small and new island state such as Malta, where secondary education has been compulsory since 1947 and university free since 1970. It increases the need for more resources to combat illiteracy and it may well make any integration more difficult. Unfortunately farm land is extremely limited, with agriculture accounting for a small fraction of GDP, so there is little scope for any farming expertise to be put to good use on the island.

This data covers appellants whose cases have been adjudicated from November 2006 to May 2007. The most important reason given may be categorised as country instability. Such 'instability' accounts for 28 per cent of cases (42 persons). The second most important general reason given (19 per cent, 27 persons) may be said to fall within the bracket of 'politics', persons allegedly at odds with the governing party, or dissatisfied with its performance.

In both categories, corruption and a lack of Western-style democracy play a part, but complaints tend to be of a general nature or lacking in credibility, not strictly related to Convention definitions of refugee status (a well-founded fear of persecution). A third and most sincere reason for claiming asylum (15 per cent or 22 persons) is simply economic; poverty, drought, bad pay, lack of job opportunities and harsh labour conditions. As many as 10 per cent (14) left because they did not want to undergo military service in their home country, while 9 per cent (13) had committed, or been accused of having committed, a criminal act of one kind or another (murder, manslaughter, theft, fraud, tribal violence). Others said they had family problems (6 per cent, 8 persons); or religious problems (5 per cent, 7 persons), such as wishing to convert from Christianity to Islam or vice-versa; while two per cent or three persons wished to further their education in Malta, such as learning English, even saying they would then return home. There were other miscellaneous cases, but generally not cases warranting status.

This analysis of statistical compilations (which I undertook with the help of the Board's secretariat) are indicative of the nature of the influx being faced by Malta in the mass migratory phenomenon hitting Europe at the frontier, especially the Mediterranean island borders and the two smallest EU member states, Malta and Cyprus.

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Report on the Three-Day Seminar with Detention Officers

Stress Management

Stress can be described as 'the wear and tear' of the body. It can be defined in terms of external stimuli that cause tension, in terms of the stress response which it causes, which can be both psychological and physiological and in terms of the consequences or the damage resulting from stress.

This report will give a short description of the feedback I obtained from the detention officers as well as from my analysis of their state during the short time I spent with them. I will be corroborating my assessment by theories and relevant studies that confirm my assessment.

The detention officers are exposed to both **acute** and **chronic stress**. The acute stress is due to reaction to immediate threats. This kind of stress produces the *fight or flight* response, which is when the body mobilizes itself, even on a chemical level, by pumping up adrenaline, to fight or else flee the stress provoking situation.

When the body reacts to a stressful situation, there would be a mobilization of the brain, heart, lungs, blood vessels and the muscles. However if the stress persists over time all these parts of the body become over- or under-activated thus producing physical and psychological damage over time.

The detention officers have this alerted response all the time as they are aware of the potential danger that the immigrants are posing to their own well-being. The immigrants are hostile towards the officers and threaten them continuously. They work under constant abuse by them. This abuse is both verbal and physical and the officers are instructed not to react to such provocations. This adds on to their feeling of helplessness whilst they also have to keep their frustration pent up inside themselves. Not being able to express this frustration, not even in a separate setting is counteractive to their well-being.

Moreover the detention officers are very concerned about the chance of getting infected by contagious diseases by the immigrants. This preoccupation is a constant worry which keeps them alert. However at the same time they know that they can do nothing to better their situation.

A number of studies suggest that job-related stress is a great threat to health like smoking or lack of exercising.

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Studies suggest that the inability to adapt to stress is associated with the onset of depression or anxiety disorders. On a more obvious level, stress diminishes the quality of life by reducing feelings of pleasure and accomplishment and relationships are often threatened.

Heart disease is another possible effect which may result from prolonged exposure to stressful situations. Mental stress is a major trigger for angina and there have been associations between stress and heart rhythm abnormalities, hypertension, stroke, heart attacks and even deaths.

The detention officers showed great demotivation in their work. They feel that they are sandwiched between the illegal immigrants and their superiors. They feel alienated from their work and unsupported. They also feel that there are demands on them which are unreasonable and unrelenting. In fact they work in unhygienic conditions with inadequate washing facilities and toileting needs. The detention officers see the necessity of wearing gloves and masks when doing ward rounds. However they feel ambivalent towards this situation as this creates an antagonistic reaction in the immigrants and then the officers have to deal with this reaction as well.

The officers also reported working for long hours, not having a chance to stop for a break and feel that the ratio of officers to illegal immigrants is too little. This factor continues to further increase their tension and anxiety – about the fact that they and their colleagues can be in greater danger. Their perception further contributes to create intense stress as they feel they have no participation in decisions that effect their responsibilities.

They also feel that the system in which they work is more respectful towards the illegal immigrants than towards them as they are well taken care of. The detention officers also experience a sense of helplessness as they do not see any changes or are not given any explanations when they try to give feedback or suggestions to their superiors. The nature of the work, the less than favourable working conditions and the fact that they do not feel supported by the system are all factors which contribute to increase their anxiety and levels of stress.

Much of my work focused on letting them express their feelings of emotions, fear, frustration. As a recommendation I strongly suggest that they are given time and space in a supportive environment where they can vomit out their worries and their mind states. If this does not happen they will experience acute burnout and they will have other symptoms in the long run such as susceptibility to infections, immune disorders, gastrointestinal problems, heart disease, sleep disturbances, allergies, skin disorders and difficulties in memory. Obviously all these symptoms make the person weaker and thus make one more susceptible to further stress, vulnerability or weakness. A vicious cycle would be created.

I also suggest that individual detention officers be targeted individually and specific recommendations be made to each and every one of them. Personal issues and particular situations vary from one person to another. Thus, each detention officer's situation should be seen individually.

Group work can also be done with teams or with groups of detention officers who work in close contact to each other or together. This group work is important in order to:

- increase group cohesion, which can be a buffer against stress
- to educate the officers as regards diseases, the psychological states of immigrants and their backgrounds. Educating officers about the groups they are in contact with might help them to understand the background, the social, cultural, political and financial situation of the immigrants as well as their motivations and fears. This will help the officers to become more familiar with the situations they are handling – the fear would not be nameless but a little more within reach – a little more understandable.
- to continue training in how to handle stressful situations. The officers have to be helped to realize that they have to take care of themselves due to the vulnerable situation which their work exposes them to. They need to realize the importance of recreation, of creating networks which support them, of not letting the stress at work contaminate their family or intimate relationships. They also need to learn what to expect from such a highly stressful situation and be less guilty when they feel that they do not have energy, that they need to rest and have fruitful experiences outside the work place.
- They also need to learn to handle the 'side effects' of their burn out. For instance, they have to realize that sometimes they may displace their anger on their families or friends – that is, they may be angry at the system or at the immigrants and they may have been creating unpleasant situations at home or even with their colleagues at work.

Most importantly of all they need to have this difficult situation acknowledged by someone other than themselves. Having had these short sessions with me was a relief for them as they could pour their hearts out and have someone acknowledge their situation. If however nothing is done after that they will be confirming again their existing theory that they are not supported and that no one really understands their situation enough to do something about it.

Charles Cassar
Ph.D., ECP

April 2006

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