

ANNEXE : POINT DE VUE DU GOUVERNEMENT

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation à Malte.

Conformément à la procédure pays-par-pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de Malte sur une première version du rapport. Au cours de ce dialogue, l'ECRI n'a reçu aucune indication des autorités concernant d'éventuelles erreurs factuelles.

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

Response

of the Maltese authorities

to ECRI's Draft Report on Malta
(fourth monitoring cycle)

20 March 2013

INTRODUCTION

The following pages contain the detailed response of the Maltese authorities to ECRI's fourth report. We regret that ECRI's report, like its predecessors, relies heavily on anonymous sources. We have identified more than 20 instances of such phrases as "ECRI has been informed", "ECRI has received information", "ECRI's sources have confirmed", "representatives of civil society have informed ECRI", "ECRI's interlocutors" and "civil society has stated" (see e.g. paragraphs 6, 16, 17, 24, 37, 44, 47, 52, 57 etc). Maltese NGOs are well known, operate freely in public and have access to public funds. ECRI's efforts to hide the identity of its sources are, therefore, regretted and out of place.

It is also regretted that non-facts and factual errors have found their way in ECRI's report (e.g. in paragraphs 66, 84, 104, 106, 107, 108, 122, 126, 129, 137, 144 and 147) and that the report reveals inadequate knowledge of Maltese law and its interpretation (see e.g. paragraphs 14, 23, 24, 29, 45, 48, 84, 89, 90, 91, 108, 110, 116 and 131).

ECRI's report makes many recommendations (e.g. in paragraphs 18, 21, 35, 45, 99, 104, 126, 131, 137, 140, 142, 145 and 159), but does not proceed to cost them, let alone to provide the necessary funds for their implementation. The report also fails to make any economic, social or environmental impact assessment of the challenges of irregular migration in Malta.

ECRI has once more lost an opportunity to highlight Malta's need for support in the areas of irregular migration and asylum, including in particular the need for relocation opportunities for persons granted international protection in Malta. This is above all to the detriment of the beneficiaries of international protection themselves. Surely, the ECRI delegation could see that Malta cannot possibly integrate, in the long term, all the persons whom it recognises as in need of international protection. This is due to the limits imposed by Malta's geographical realities, including a small labour market prone to saturation.

Instead, ECRI's report underestimates Malta's considerable contribution in the asylum sphere, particularly given the disproportionately large number of asylum applications being received year after year, as well as the country's high asylum recognition rate. Moreover, in the years since the influx began in 2002 the personnel of the Armed Forces of Malta have saved the lives of thousands of irregular immigrants - a fact not given due recognition by the ECRI report. The efforts of Detention Service officials and AWAS personnel have also been underestimated or left unmentioned. These officials have striven to provide appropriate reception conditions and services to irregular migrants and asylum seekers, even in circumstances of exceptional pressure.

We understand that ECRI does not agree with all the policies followed by Malta in the area of irregular immigration. However, ECRI could have acknowledged that Malta is fully committed to the principle of asylum and has fully abided by the principle of non-refoulement. ECRI could also have recognised that Malta has safeguarded the rights of all immigrants despite very difficult circumstances.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
International legal instruments	
4. ECRI reiterates its recommendation that Malta sign and/or ratify the following international instruments: Protocol No. 12 to the European Convention on Human Rights; the European Convention on Nationality; the Convention on the Participation of Foreigners in Public Life at Local Level; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.	As of the time of writing, none of the EU's 27 Member States had signed or ratified the International Convention on the Protection of the Rights of Migrant Workers and their Families. The Maltese authorities have already informed ECRI that they have no intention of signing or ratifying the said Convention. Malta has signed the European Convention on Nationality, the Convention on Cybercrime and its additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Only 17 of the Council of Europe's 47 Member States have signed and ratified Protocol No 12 to the ECHR, while 20 other Member States have signed, but stopped short of ratifying, it.
Citizenship legislation	
6. In addition, civil society has stated that even when the above-mentioned requirements are satisfied, in practice, it may take up 15 to 20 years to obtain naturalisation.	ECRI gives no indication whatsoever of the source of the statement, or who it means by "civil society".
9. ECRI recommends that the Maltese authorities amend the Citizenship Act so as to: introduce clear, objective and measurable requirements in connection with the acquisition of citizenship through naturalisation; ensure that decisions relating to the acquisition, retention, loss, recovery or certification of nationality are open to review ; and, as far as cases of loss of citizenship are concerned, remove any less favourable treatment afforded to persons who have acquired their citizenship through naturalisation or registration – particularly where fundamental rights are concerned.	The Maltese authorities have taken note of ECRI's recommendation.
Criminal law provisions	

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
14. ECRI recommends that the Maltese authorities complement the existing criminal law provisions against racism by expressly prohibiting: the creation or leadership of a group which promotes racism; and racial discrimination in the exercise of one's public office as per ECRI's GPR No. 7 paragraph 18 (g) and (h). Furthermore, ECRI strongly recommends that the Maltese authorities maintain national origin and citizenship as grounds under which racist conduct and racial discrimination are prohibited.	The Maltese Criminal Code provides for an increase in the punishment if the intention behind the particular offence is racially motivated. To this effect, article 83B of the Maltese Criminal Code (Cap 9 of the Laws of Malta) provides for an aggravation of punishment by one to two degrees in respect of all offences which are racially motivated. With regard to racial discrimination in the exercise of one's public office, such conduct would definitely fall under the articles of the Criminal Code carrying also the aggravation of punishment. Moreover, other disciplinary and administrative measures may also be applied under the Public Administration Act (Cap 497 of the Laws of Malta) as well as under the Public Service Management Code.
16. ...many of ECRI's interlocutors have highlighted that most racist comments made online, particularly comments to news articles, go unpunished. Moreover, ECRI expresses its concern that the investigations opened in 2005 and 2006, in connection with the arson attacks committed against anti-racist organisations and persons who had spoken out against racism (see paragraph 114 of ECRI's third report), have not identified any culprits. The authorities have explained that the investigations were hampered by the refusal of the telephone company concerned by the investigation to provide location data for certain mobile phones. Notably, according to the telephone company, because the data requested did not concern a specific subject, granting access to such data would breach the privacy of an undetermined number of persons.	ECRI is citing anonymous "interlocutors" who complain that online comments to news articles go "unpunished". The news articles are public and published and so are the allegedly "racist comments". This notwithstanding, the ECRI report does not give a single example of "most racist comments made online" that should be punished. In any case the Maltese Constitution protects freedom of speech, as does the European Convention on Human Rights. The record of the Maltese Police Force in solving crimes compares well with that of any police force in any European country. In carrying out its investigations the Maltese Police Force abides by the rule of law.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
17. ECRI has been informed by legal practitioners that neither lawyers nor judges are provided with specific training on criminal law provisions in force against racism. However, ECRI was informed by representatives of vulnerable groups and NGOs that police frequently do not follow up on complaints lodged by migrants on grounds of racism or racial discrimination (see the subsection of this report on access to public places and services) and that, for this reason, few report them. Such state of underreporting and the underlying reasons are confirmed by the 2009 EU-MIDIS Minorities and Discrimination Survey....	As is the case throughout the report, ECRI does not identify its anonymous informants. The 2009 EU-MIDIS survey is based on very dubious methodology.
18. ECRI reiterates its recommendation to the Maltese authorities to provide regular training to all those involved in the criminal justice system on criminal law provisions in force against racism and racial discrimination and sensitise the same on the importance of: countering manifestations of racist expression and racially motivated conduct; as well of acknowledging racist bias, if and when it is present.	The Judicial Studies Committee, catering for training for members of the Judiciary, had organized a seminar on 'Asylum Seekers in Malta: Key Legal Issues'. Issues relating to racism were discussed during these sessions. Speakers included an official from the Ministry for Home Affairs, two legal officers from the UNHCR Office in Geneva, a representative of the local UNHCR office, a Magistrate and a speaker from the Agency for Welfare Asylum Seekers (AWAS). Moreover, two members of the Judiciary participated in a conference on Anti-Discrimination in Trier. The topics covered in this seminar treated a wide area of discrimination such as sexual orientation, age, disability, as well as the treatment of minority groups. With regard to the Police, ongoing lectures take place at the Police Academy for all new recruits as well as in-service professional development courses for all serving members of the Police Force, including lectures on criminal law vis-à-vis racism and racial discrimination.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
21. ECRI recommends that the Maltese authorities collect data on the application of criminal law provisions against racism in a systematic way so that their effectiveness can be assessed, notably by breaking down the information, per reference year, by the: number of opened investigations, number of cases referred to court, number of discontinued pre-trial investigations and the outcome of the trials.	Human and financial resources put a limit on the amount of data and statistics that can and should be collected. The Maltese authorities collect data on serious criminal offences, including racism. The collection of additional data depends on the competing demands on limited resources.
Administration of justice	
23. ECRI strongly recommends that the Maltese authorities abrogate the provisions of the law which provide that the only victims of crime who may apply for compensation before a criminal court are Maltese, EU nationals or habitual residents of Malta.	In the view of the Maltese authorities, current legislation does not amount to differential treatment.
24. In addition, ECRI has received information indicating that the rules of release on bail are not applied equally to Maltese nationals and non-nationals and that, for the latter, bail is set extremely high. In this connection, ECRI refers to its considerations on the importance of training all those involved in the criminal justice system	The Maltese authorities cannot take cognizance of this anonymous and gratuitous information.
Civil and administrative law provisions	
29. ECRI recommends that the Maltese authorities include citizenship, language and religion as prohibited grounds of discrimination under the anti-discrimination legal framework in place.	This is already regulated by the Maltese Constitution which provides that no law shall make any provision that is discriminatory on the basis of race, place of origin, political opinions, colour, creed or sex, either of itself or in its effect.
31. ECRI recommends that the authorities collect systematically and make available to the public information on the application of anti-discrimination legislation, including the number and nature of the civil and administrative complaints/actions filed per reference year, the decisions rendered and the redress or compensation awarded, so that the effectiveness of these provisions can be assessed.	The National Commission for the Promotion of Equality already collects and publishes statistics in relation to the complaints it receives and this is done on a yearly basis in NCPE's annual report.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
35. ECRI recommends that the Maltese authorities continue to raise awareness on the provisions in force against racial discrimination and the existing remedies to seek redress among the general public and, in particular, among potential victims of racial discrimination. The information sessions organised by the National Commission for the Promotion of Equality should be replicated and extended to all groups of concern to ECRI.	NCPE confirms that such information sessions have already taken place and since the writing of the report, further sessions have been held for the African Community on how to advocate for their rights, through a project entitled '<i>I'm not racist, but...</i>'
Anti-discrimination bodies and other institutions	
37. As already observed in the subsection on civil and administrative law provisions of this report, some discrimination complaints on grounds of racial and ethnic origin have been lodged before the NCPE since 2008. The limited number of complaints received has been ascribed by civil society to the limited powers attributed to this body. A study carried out by the NCPE on racial discrimination in Malta also shows that 70% of the interviewees belonging to a minority ethnic group had no knowledge of the NCPE's existence and role. ECRI therefore recommends that greater resources be spent in raising vulnerable groups' awareness of the NCPE and other authorities competent to receive discrimination complaints.	The ECRI report refers to an anonymous "civil society" and then ascribes to it arguments that it supports. The way resources are spent is decided by the House of Representatives.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
39. ECRI recommends that the Maltese authorities ensure that the national specialised body for combating racism and racial discrimination is entirely independent and is responsible, inter alia, for: hearing and considering complaints in all fields of life (both private and public) on grounds of “race”, colour, language, religion, citizenship or national/ethnic origin; providing assistance to victims; initiating and participating in court proceedings; monitoring legislation and providing advice to legislative and executive authorities; raising awareness on issues of racism and racial discrimination among society and promoting policies and practices to ensure equal treatment, as per ECRI’s GPR No. 2.	The Maltese authorities take note of ECRI’s recommendation. The NCPE already functions independently.
42. ECRI recommends that the Maltese authorities use the National Action Plan against Racism and Xenophobia designed by the National Commission for the Promotion of Equality in order to devise an anti-discrimination policy.	The Maltese authorities take note of ECRI’s recommendation.
Employment	
44. Moreover, ECRI has been informed by representatives of migrants and of civil society that, in practice, the allowance is not always granted even though the applicant satisfies the requirements.	Again, the ECRI report cites anonymous sources.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
45. ECRI recommends that the Maltese authorities provide, by law, that persons who have been granted subsidiary protection be entitled to receive social assistance, when specific requirements are met.	The rights pertaining to beneficiaries of subsidiary protection are already set out in Subsidiary Legislation 420.07, on Procedural Standards in Examining Applications for Refugee Status Regulations. The legislation in question provides that a beneficiary of subsidiary protection shall be entitled: <i>(i) to remain in Malta with freedom of movement and to be granted personal documents, including a residence permit for a period of one year, which shall be renewable,</i> <i>(ii) to be provided with documents which enable him to travel especially when serious humanitarian reasons arise that require his presence in another State, unless compelling reasons of national security or public order otherwise require; and,</i> <i>(iii) to have access to employment, subject to labour market considerations, core social welfare benefits, appropriate accommodation, integration programmes, State education and training, and to receive core State medical care, especially in the case of vulnerable groups of persons.</i> It is therefore considered that this recommendation is already being implemented.
47. ECRI's attention has been drawn in particular to cases of persons residing in the open reception centres (mostly Africans with varying types of statuses) who loiter in the streets and in the roundabouts, waiting to be offered work. In one case for example, representatives of civil society informed ECRI that after a day of hard labour, several of these workers were paid 25 cents, instead of 25 Euros as they had been promised.	Again, the ECRI report cites anonymous sources.
48. ECRI reiterates its recommendation to the Maltese authorities to take steps to counter the labour exploitation of refugees, persons granted humanitarian protection and immigrants by addressing their over-representation in undeclared employment. It urges the authorities to monitor and ensure the application of Legal Notice 432 of 2011.	The Immigration Police carry out checks in places of employment in order to verify that all Third Country nationals found working, are properly documented and are in possession of all the required permits. Moreover, places of employment are being monitored in accordance with Legal Notice 432 of 2011 on Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations, 2011. In case of an infringement, proper action is taken in line with Legal Notice 432 of 2011.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
Access to public places and services	
52. Despite the fact that the Equal Treatment of Persons Order prohibits discrimination on grounds of racial or ethnic origin in the provision of goods and services, 35% of Africans who participated in the 2009 EU-MIDIS survey claimed they had faced discrimination in cafés, restaurants, nightclubs or shops in the 12 months prior to the research. ECRI's sources have confirmed, in fact, that it is not uncommon for drivers of public transportation to refuse persons considered to be migrants to board the bus or to refrain from stopping at bus stops located in areas in which refugees, asylum seekers and migrants live.	The 2009 EU-MIDI survey is based on a dubious methodology. Again, the ECRI report cites anonymous sources.
54. ECRI strongly recommends that the Maltese authorities extend the initiatives launched by the National Commission for the Promotion of Equality in the field of housing (notably the commissioning of studies and the awareness raising campaigns on racial discrimination), to access to public places and services in general and, more specifically, to the entertainment and public transportation sectors.	The initiatives launched by NCPE in the field of housing are constantly being extended by NCPE. NCPE has just closed a project entitled 'I'm not racist, but'. This project looked into discriminatory issues with regard to the housing sector.
Health	

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
55. ECRI is pleased to note that in August 2008, a Migrant Health Unit was set up within the Department of Primary Health in order to address and respond to the specific needs of migrants (lack of knowledge about the health care system of the host country; language barriers etc.), in light in particular of the heavy influx of migrants registered in recent years. The objectives of this unit are to: provide community based health education to migrants in their mother tongue (addressing issues such as access to the Maltese health care system, nutrition, food and kitchen safety, H1N1 - Swine flu, sexual & reproductive health); help migrants access health care services; provide translated material; train health care professionals and students on culture and diversity issues in health care; and train cultural mediators. The services provided are free of charge.	Whilst the Maltese authorities provide these services free of charge to the clients, their cost is very significant. Services provided include treatment for disease that had previously been eradicated from Malta. In addition the NGO Health Consumer Powerhouse has written. See: http://www.healthpowerhouse.com/files/EHIV1%202009%20Press%20release%20Malta.pdf “The care and conditions for people living with HIV/AIDS in Malta are very good ... The total number of HIV/AIDS cases is still small compared to other countries, but growing fast... in recent years the number of people on the island infected with HIV has quadrupled; half of the cases being treated in Malta involve African immigrants.” In another extract it adds: “Most of the increase in HIV diagnoses among heterosexuals is among persons originating from infected high-prevalence countries outside Europe, primarily in sub-Saharan Africa. Data from several countries suggest that the majority of these persons have been infected in their country of origin, although transmission within the host EU country does occur.”
Racist Violence	
57. According to the 2009 EU-MIDIS survey, 29% of the respondents of the survey (immigrants from Africa) claimed that they had been victims of racially motivated assault, threat or serious harassment. The report further shows that over 50% of the racially motivated assaults had not been reported to the police, on the most part, for lack of confidence in the authorities. ECRI has received some reports of violent attacks on migrants, particularly of African origin, which were allegedly ignored by the police. Furthermore, it has been informed of violent offences having been committed against migrants near the Hal Far and Marsa open reception centres for asylum seekers and refugees, such as, for instance, the throwing of bags of urine and pepper spraying.	Again, the ECRI report cites the 2009 EU-MIDI survey, which relies on dubious methodology, and on anonymous sources.
Climate of opinion and racism in public discourse	

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
61. ECRI reiterates its recommendation to the Maltese authorities to promote a public debate and raise awareness on the issues of immigration and asylum that reflects the human rights dimension of these phenomena, providing more information on the circumstances from which immigrants and asylum seekers are fleeing and clearly explaining the difference between persons with a protection status and irregular migrants.	In their interventions relating to migration and asylum, Government officials already raise awareness in relation to the human rights dimension. Moreover, information is provided on the circumstances leading to the arrival of asylum seekers in Malta and other countries.
63. ...ECRI regrets that no specific debate has been held by Parliament... on immigration and asylum that reflect the human rights dimension of these phenomena....	The House of Representatives determines its programme and procedure without interference from outside bodies.
64. ECRI furthermore urges the authorities to introduce legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist acts, as well as provisions within the Parliament's Code of Ethics which sanction racist speech or conduct.	The House of Representatives determines its programme and procedure without interference from outside bodies.
The media	
66. At the same time, ECRI has been informed that certain media, most notably the Times of Malta, have started to reverse this trend and are increasingly careful in using the correct terminology. At the same time, there have also been examples of more balanced reporting and cases in which migrants have been cast in a positive light. For example, an Eritrean refugee who lost his life while trying to rescue a tourist who was drowning was portrayed by the media as a national hero.	Again, the ECRI report cites anonymous sources. Pending the publication of the report by the enquiring magistrate, the facts of this case have not been authoritatively established.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
67. ECRI recommends that the authorities, through the National Commission for the Promotion of Equality or the Broadcasting Authority, launch initiatives aimed at offering journalists training in issues concerning the fight against racism and racial discrimination and on ways in which the latter can contribute to promoting acceptance of different vulnerable groups.	Training in relation to racism and racial discrimination has already taken place.
69. As concerns the prosecution of cases of incitement to hatred, including when committed through the Internet.... Furthermore, ECRI notes that in the present day there is no authority which monitors comments on newspaper websites made in reaction to their articles. In this connection, as confirmed by representatives of civil society, it is not infrequent that comments to articles reporting on migrants, asylum seekers and refugees express racist views or use racist discourse.	Again, the ECRI report cites anonymous sources.
70. ECRI recommends that the Maltese authorities set up a law-enforcement unit tasked with monitoring continuously the Internet for instances of racism or racial discrimination and empowered to act <i>ex officio</i> in case of breach of the anti-discrimination legislation or the provisions against incitement to hatred.	The Maltese authorities are not in agreement with this recommendation insofar as it involves the setting up of a unit tasked specifically with monitoring the Internet for instances of racism or racial discrimination. Whilst monitoring of the internet is carried out by the Police authorities as required, be it in the case of racism or other crimes, the setting up of a monitoring unit specifically for cases of racism or racial discrimination is not necessary. The Police authorities may already act <i>ex officio</i> in cases of breach of anti-discrimination legislation or incitement to hatred.
72. In addition, representatives of civil society have informed ECRI that this Commission is not well known by migrants, refugees and asylum seekers.	Again, the ECRI report cites anonymous sources.
73. ECRI recommends that the Maltese authorities ensure that an independent body be mandated to receive complaints (or to raise cases <i>ex officio</i>) for breach of the Press Act and that it be empowered to inflict sanctions. This body's mandate should then be publicised as widely as possible.	The Maltese authorities consider that current arrangements relating to the enforcement of the Press Act are adequate. They do not intend to introduce press censorship.
Migrants	

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
84. ECRI recommends that the Maltese authorities amend their legislation in order to ensure that all persons held in the detention centres are provided with a speedy and effective judicial remedy to challenge the lawfulness of their detention.	The procedure for detention is prescribed by Article 5 of the Immigration Act (Cap. 217, Laws of Malta). Once a removal order is served, the person is detained pending his/her removal. A person who has been detained is given a pamphlet informing him/her of his/her rights. The person is also informed that he/she has a right to appeal from the removal order and from his/her detention and that he/she is entitled to apply for international protection. Article 25A (9) of the Immigration Act (Cap. 217 of the Laws of Malta) stipulates that: “The [Immigration Appeals] Board shall also have jurisdiction to hear and determine applications made by persons in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation....” The Immigration Appeals Board is a judicial body. The Board members enjoy security of tenure. They are appointed for a period of 3 years and are eligible for reappointment. They may only be removed from office by the President acting on the advice of the Prime Minister, on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Board. Furthermore, the same disqualifications and reasons for removal from office that are applicable to the Judiciary also apply to the members of the Immigration Appeals Board. In practice, sittings before the Board are conducted in a similar manner to those before the Courts. Individuals may be assisted by a legal representative, evidence is heard by the Board and submissions are made by the parties. Article 11(10) of the Common Standards and Procedures for Returning Illegally-Staying Third-Country Nationals Regulations stipulates that: “The third-country national subject to the provisions of subregulation (8) [detained for the purpose of removal] shall be entitled to institute proceedings before the [Immigration Appeals] Board to contest the lawfulness of detention and such proceedings shall be subject to a speedy judicial review.” The provisions of Article 11 of the aforementioned Regulations do not apply to third country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by sea or air of the external border of Malta and who have not subsequently obtained an authorisation or a right to stay in Malta. In view of the above considerations the Maltese authorities consider that Malta is already in compliance with ECRI’s recommendation.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
89. ECRI strongly recommends that the Maltese authorities provide non-custodial alternatives to detention and refrain from resorting to the detention of migrants and asylum seekers unless it is strictly necessary in the particular circumstances of an individual case.	Detention as practised in Malta is fully compliant with Council of Europe recommendations (Recommendation 2003(5)) on the detention of asylum seekers. In fact, the Recommendation outlines that detention is justified: - <i>when their identity, including nationality, has in case of doubt to be verified, in particular when asylum seekers have destroyed their travel or identity documents or used fraudulent documents in order to mislead the authorities of the host state;</i> - <i>when elements on which the asylum claim is based have to be determined which, in the absence of detention, could not be obtained;</i> - <i>when a decision needs to be taken on their right to enter the territory of the state concerned; or</i> -when protection of national security and public order so requires. Malta's detention policy is also in line with the first limb of Article 5 (1)(f) of the European Convention on Human Rights (ECHR), that is, detention for the purposes of preventing unauthorised entry into the country, as well as the second limb, that is detention for the purposes of removal. In Malta the detention requirement is not applied indiscriminately. In fact, vulnerable persons are not subject to the detention requirement. Hence, not all migrants and asylum seekers are detained. Also, detention as prescribed in the context of the Common Standards and Procedures for Returning Illegally-Staying Third-Country Nationals Regulations is to be applied "<i>unless other sufficient and less coercive measures are applicable</i>".
90. ECRI also recommends that third-country nationals who are detained with a view to deportation should be freed when it is clear that it is no longer possible to effect the deportation.	The authorities pursue efforts to make the necessary arrangements to remove irregular migrants throughout the entire period of detention; provided that return is not pursued whilst asylum applications are pending. Contacts are maintained with countries of origin to acquire any necessary documentation in order to effect removal. Moreover, the persons concerned are given the opportunity to return to their respective countries voluntarily. In addition, Article 11(8) of the Common Standards and Procedures for Returning Illegally-Staying Third-Country Nationals Regulations provides, in the case of detention for the purpose of removal, that detention shall be for a short period and shall subsist as long as the removal procedure is in progress and is executed with due diligence. It is therefore considered that this recommendation is already being implemented.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
91. It further recommends that the Maltese authorities provide under Maltese law a limit to the duration of the detention of migrants in an irregular situation, in line with Directive 2008/115/EC on common standards and procedures in member States for returning illegally staying third-country nationals.	Such limit has been transposed in Article 11(14) of the Common Standards and Procedures for Returning Illegally-Staying Third-Country Nationals Regulations.
93. ECRI acknowledges the fact that the European Committee for the Prevention of Torture (the CPT) is the monitoring body of the Council of Europe which is best placed for assessing the material conditions of places of detention, including the detention centres for migrants, as well as the treatment of persons detained therein ¹ . ECRI, nevertheless, takes note of the information it has received by the authorities that on 31 March 2012, two out of the three detention centres were in use (Safi Barracks and Lyster Barracks) and held 543 migrants and asylum seekers. The authorities have also informed ECRI that they have successfully replaced many army and police staff with civilian personnel in the detention centres. Whereas in 2005 there were, respectively, 122 and 54 army and police personnel, in 2012 the staff included 40 army, one police and 140 civilian officers. ECRI commends the authorities' efforts and encourages them to complete the transition to staffing composed solely of civilian personnel.	The report of the CPT's visit to Malta of 26-30 th September 2011 is unpublished and it is therefore not clear how ECRI, in footnote 53 of its report (reproduced in this document as footnote 1), states what the CPT did during that visit.
94. Nonetheless, many representatives of civil society have pointed out that there is an extremely limited array of meaningful activities available to detained migrants and that in many cases their mental health deteriorates.	Again, the ECRI report cites anonymous sources.

¹ In its visit to Malta of 26 to 30 September 2011, the CPT reviewed the conditions in the detention centres for immigrants at Lyster and Safi Barracks.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
98. ECRI recommends that the Maltese authorities conclude as soon as possible all the inquiries and the criminal investigations opened further to the deaths of a Nigerian and a Malian national in 2011 and 2012, while in the custody of detention personnel and give the public full access to the results.	Efforts are being made by the authorities concerned to finalise such investigations as soon as possible.
99. ECRI strongly recommends the Maltese authorities to provide detention personnel with training on human rights, including provisions against racial discrimination. ECRI further recommends that the authorities raise the detention personnel's awareness of the fact that abuse of power and the use of excessive force will be severely punished.	Since 2008 the Detention Service embarked on a tailor-made yearly training programme for detention officers and other personnel involved in giving a service in the Closed Centres. The training is organized by UNHCR and is supported by Detention Service and other organizations. The programme sees the participation of NGOs as partners as well as persons directly involved in providing services to irregular immigrants. The programme is aimed at providing job specific training for all Detention Service personnel. The recommendation is therefore being implemented.
104. ECRI strongly recommends that the Maltese authorities ensure that all unaccompanied minors and persons suffering from serious physical or mental conditions are promptly identified and transferred to an appropriate, non custodial setting, suitable for their vulnerable condition.	The detention requirement does not apply across the board, as vulnerable persons, including unaccompanied minors, women with children, families and disabled persons are not subject to detention. Vulnerable persons are not kept in detention and transferred to apposite centres to cater for their specific needs. In the case of the more dubious cases the freedom of such persons is restricted only until such time as the necessary medical clearances are obtained. These situations may be rendered more difficult because of the unavailability of documents certifying a person's age and dubious and sometimes shifting statements regarding age.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
106. ECRI acknowledges Malta's merit in carrying out rescue operations in its search and rescue zone (SAR zone). Nonetheless, there have been reports according to which some migrants at sea were not rescued, even though they had been spotted by a Maltese military patrol or had been located in Malta's SAR zone. According to the Council of Europe Commissioner of Human Rights, in one incident in 2009, a boat from Libya was adrift in the Mediterranean sea for twenty days. The persons aboard were reportedly not rescued by the Maltese military patrol which had approached the boat and had offered food, water and fuel. As a result, only 5 out of more than 70 people (mainly Eritreans) survived. The UNHCR has also expressed concern about a rescue operation in June 2010. It noted that Malta had relied on Libyan vessels to conduct the rescue operation inside Malta's SAR zone. The migrants (including three women and an eight year old child), almost all Eritreans, were taken to Libya. According to the Council of Europe Commissioner of Human Rights, a similar incident happened in July 2010, whereby 55 Somali nationals travelling from Libya were intercepted at sea by a Maltese military vessel in its SAR zone. 28 were allowed on board and were taken to Malta; the remaining 27 boarded another ship and were returned to Libya, where they were reportedly beaten and tortured. Although the authorities have stated that the 27 migrants returned to Libya voluntarily, this has been contested. In this connection, ECRI reminds the Maltese authorities that the prohibition of torture and inhuman or degrading treatment is a human right which admits no derogation and that Parties to the ECHR must ensure that their actions do not expose people to such treatment. Furthermore, Libya is not a party to the 1951 Convention on the Status of Refugees and does not have asylum legislation or procedures in place to allow asylum seekers to lodge asylum requests. Therefore, relinquishing responsibility for rescue operations to Libya implies accepting the possibility that persons will be subject to ill-treatment or torture, or will be sent back to a country where they are at risk of persecution on account of their race, religion, nationality, membership of a particular social group or political opinion.	In the last 10 years, the Armed Forces of Malta (AFM) have saved thousands of lives, often risking the lives of Maltese personnel. The AFM never failed to respond to a potential distress situation within the Malta SRR and have often intervened in cases within the SRR of a third country. In addition Malta cooperates closely with Italy to ensure that lives are not lost at sea. As regards an incident referred to, the migrant craft in question had only five persons on board when approached by Maltese units; they all refused assistance and insisted on proceeding to Lampedusa. The Maltese unit remained in the vicinity of the migrant craft to provide assistance, should it be required. The information or allegation that originally there had been up to 70 persons on board was transmitted by the migrants following disembarkation in Lampedusa. ECRI also refers to a rescue operation in June 2010, in which Malta had relied on Libyan vessels to conduct the rescue operation inside Malta's SRR. The AFM has no knowledge of any such case. However, there was a particular case where four migrants (including three women and an eight year old child), almost all Eritreans, were taken to Libya. A similar incident happened in July 2010, when 55 Somali nationals travelling from Libya were intercepted at sea by a Maltese military vessel in its SRR. 28 were allowed on board and were taken to Malta; the remaining 27 boarded another ship and were returned to Libya, where they were reportedly beaten and tortured. In this particular case, a Maltese unit was already engaged in conducting the rescue at which point a Libyan unit appeared on scene and began to undertake rescue operations simultaneously. No coercion of any sort was exercised by the Maltese Unit. In addition, Malta could not forbid the Libyan unit from providing assistance, in accordance with its international obligations.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
107. ECRI has also been informed that there are regular disputes between Italy and Malta concerning search and rescue operations, particularly in cases of boats located in Malta's SAR region which are physically closer to the Italian island of Lampedusa. Malta, on the one hand, claims that disembarkation should occur at the nearest port of call regardless of the SAR zone in which the boat is located. Italy, on the other hand, claims that responsibility over the SAR zone takes precedence. ECRI considers that it is unacceptable that legal disputes of this nature result in failure to rescue persons in distress, or worse in loss of lives.	The different interpretation of the law by Italy and Malta has never resulted in the failure to rescue persons or to any loss of life. Both the Maltese and Italian authorities have always conducted rescues first and only then addressed the issues regarding disembarkation.
108. ECRI recommends that the Maltese authorities fully respect the principles laid down by international law with respect to rescue at sea.	Malta already fully respects its obligations under international legal instruments. This was confirmed by IMO auditors in 2011. The disembarkation regime applicable within the Malta SRR is that of disembarkation in the nearest place of safety in accordance with the principles of international law.
109. ECRI's attention has also been drawn to the refusal of the Public Registry to allow migrants who have not qualified for refugee status or subsidiary protection to get married.	Again, the ECRI report cites anonymous sources.
110. ECRI recommends that the Maltese authorities ensure that the right to marry is enjoyed by all persons present in Malta.	The grounds for a marriage to be registered at the Public Registry in Malta are : • if the said marriage is celebrated in Malta in terms of the Marriage Act (Cap 255 of the Laws of Malta); and • if a citizen of Malta marries abroad and at the request of any person interested, the act of marriage of the said citizen of Malta drawn up or registered in a foreign country by a competent authority in that country, is registered in Malta in terms of Article 244 of the Civil Code (Cap 16 of the Laws of Malta). Third Country Nationals would not qualify for the latter as they are not Maltese citizens but do qualify for the former if the celebration of the marriage is preceded by a request for the publication of banns of matrimony according to the abovementioned law.
Refugees and asylum seekers	

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
112. ECRI has been informed that in the past, these had not been clearly defined by the law and that, in practice, persons with subsidiary protection did not receive them. However, in 2011, the authorities issued a policy clarification specifying that beneficiaries of subsidiary protection can receive certain forms of social assistance from the Department of Social Security, if for instance they cannot work.	Again, the ECRI report cites anonymous sources.
115. ECRI was informed by civil society that persons benefiting from THPN sign an informal agreement with the Refugee Commissioner that they will make efforts to integrate into society.	Again, the ECRI report cites anonymous sources.
116. ECRI recommends that the Maltese authorities ensure that the rights attached to temporary humanitarian protection and temporary humanitarian protection for former applicants for international protection, are laid down by statute.	The Maltese authorities consider that the policy currently in place, which has been adopted on Malta's own initiative, provides sufficient guarantees to the persons concerned.
117. ECRI recommends that the Maltese authorities provide persons who have been granted temporary humanitarian protection for former applicants for international protection and have lived in the country for a number of years, a permit to stay which offers a longer-term perspective, particularly when their level of integration in Maltese society has already been positively assessed.	The current provisions are considered adequate, particularly as the permit to stay may be renewed.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
122. ECRI encourages the Maltese authorities in their efforts to ensure that all persons entitled to refugee status actually secure this status.	The Office of the Refugee Commissioner notes that all asylum claims are considered on their individual merit. All the asylum-seekers are given an opportunity for a personal interview during which they are given ample time to explain in detail the reasons for seeking asylum. The evidence presented by the asylum-seeker, including verbal as well as other documentary evidence is examined thoroughly. When assessing an asylum claim, the Office of the Refugee Commissioner starts by examining whether the applicant satisfies the criteria to be recognised as a refugee in terms of Article 1A of the 1951 Geneva Convention. Failing this, the Office proceeds to examine whether the asylum seeker risks facing serious harm as defined in Article 15 of the Council Directive 2005/85/EC, if s/he had to be returned to his/her home country. The Office of the Refugee Commissioner has introduced a number of measures to ensure efficiency and to retain a high level of quality in the decisions issued. In fact, it is to be noted that the recognition rate in Malta at the end of December 2012 stood at 86 per cent. The European average is 25 per cent. To this effect, Malta has the highest recognition rate in Europe.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
126. ECRI recommends that the Maltese authorities provide at the earliest stages of the asylum procedure, during the information sessions and in the information booklet, a definition and an explanation of the concept of refugee; the persecution grounds should figure therein.	The Office of the Refugee Commissioner continued with its commitment to improve the services offered to asylum-seekers. In fact in 2009, through an ERF co-funded Project, the Office started providing information with respect to rights and obligations, to asylum seekers, applying for asylum in Malta. Through this ERF Project 2009-2011 <i>'Post Application client preparation and asylum determination interviewing centre for asylum seekers which aims to adequately prepare TCNs for their asylum determination process'</i>, this Office has invested in a new system for the delivery of information sessions to asylum seekers. Within one or two working days of the arrival of irregular migrants to Malta, staff from the Office of the Refugee Commissioner visit the closed centres (in the case of people arriving irregularly by boat/air and then detained) and deliver information about the asylum procedure in Malta. This Office makes sure that it caters for all levels of educational and cultural backgrounds of asylum applicants. The same procedure of information sessions is also adopted in case of persons who apply for asylum directly at this Office. Information is delivered using different means (a) by personnel of this Office explaining the purpose of the session with the help of an interpreter; (b) an audio visual presentation available in the most common (eleven) languages for our asylum population; and a booklet that contains a transcript of the audio-visual presentation also available in eleven different languages. The Office of the Refugee Commissioner further notes that those third country nationals that apply for protection are assigned an interpreter who helps them fill in a registration form known as a preliminary questionnaire. This good practice, to provide information to potential asylum-seekers, adopted by the Office of the Refugee Commissioner is in line with European as well as International legislation.
129. ECRI has also received information indicating that, particularly when detained, asylum seekers have experienced difficulties in accessing their case files.	This is one of the many instances in the ECRI report of information attributed to anonymous sources. In fact, after the interview a copy of the application form is provided to the applicant and a copy of the decision is made available to the applicant as soon as the case is closed.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
130. ECRI notes that under Article 23 of the Refugee Act, decisions made concerning applications which have been examined under an accelerated procedure are not subject to appeal or judicial review. In this connection, ECRI notes that the above provision is at a variance with Directive 2005/85/EC, which provides for the right of asylum seekers to an effective remedy before a court or a tribunal against a decision taken on their application for asylum. Finally, as concerns the appeals phase of the asylum procedure, ECRI has been informed by the authorities that asylum seekers may be refused an oral hearing before the Refugee Appeals Board.	According to Article 23(2) and (3) of the Refugees Act, the Commissioner shall examine applications under the accelerated procedure within three working days. The recommendation shall immediately be referred to the Chairperson of the Refugee Appeals Board, who shall examine and review the recommendation of the Commissioner within three working days.
131. ECRI strongly recommends that the Maltese authorities amend the asylum procedure so as to ensure: free legal aid as from the outset of the asylum procedure, in particular at the time when the preliminary questionnaire is filled in; the asylum seeker's access to his/her case file; and a right to appear before the Refugee Appeals Board at the appeals stage.	Asylum seekers, whose application is being processed at first instance at the Office of the Refugee Commissioner, have the right to access legal assistance throughout the whole procedure. In this regard, reference is made to Article 15(1) of the EU Council Directive 2005/84/EC on the 'right to legal assistance and representation' which states that "<i>Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.</i>" This has been implemented by Maltese law through Legal Notice 243 of 2008. Paragraph 7(1) states that "<i>An applicant shall be allowed to consult, at his own expense, in an effective manner, a legal adviser in relation to his asylum application: Provided that in the event of a negative decision, free legal aid shall be granted under the same conditions applicable to Maltese nationals.</i>" At appeals stage, applicants are provided with free legal aid. With regard to having access to the information in the file of the applicant, it should be noted that prior to the personal interview, the applicant is given a copy of his/her formal application form. Moreover, the applicant is also given a copy of his/her interview notes (verbatim transcript of the interview) as well as a copy of the decision. In addition, the legal adviser representing the applicant at appeals stage is given access to the applicant's file, upon request. Finally, it is already possible for the applicant to appear before the Immigration Appeals Board.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
132. ECRI recommends that asylum seekers be granted an effective remedy before a court or a tribunal against a decision taken on their application for asylum, including when such decision has been taken further to the accelerated procedure.	All asylum applications are processed according to the normal asylum procedure. Accelerated procedures that process asylum applications at a significantly faster rate have never been used by the Office of the Refugee Commissioner. First instance decisions can be appealed from at the Refugee Appeals Board, which has the power to hear and determine appeals against the decisions taken by the Office of the Refugee Commissioner. The Board has the status of a judicial authority and therefore it is considered that this recommendation is already being implemented.
137. ECRI recommends that the Maltese authorities ensure that families with children who seek asylum, are recognised refugees or are otherwise entitled to be lodged in a reception centre, be accommodated in a family centre with appropriate living conditions.	This recommendation is already being met, as families are housed at apposite centres.
139. As regards the women's centre, representatives of civil society have informed ECRI that there had been problems related to hygiene and to the bathroom getting flooded. When ECRI visited the establishment, only few women were accommodated there. The conditions appeared to be adequate...	Again, the ECRI report cites anonymous sources.
140. ECRI encourages the authorities to proceed with the refurbishment of the women's open reception centre in Hal Far and to remove, in the process, bars or any other element which evokes a custodial setting.	As regards the women's open reception centre in Hal Far, extensive refurbishment took place and the bars were removed in the summer of 2012. AWAS has obtained ERF funds for refurbishment at this centre.
141. ECRI shares the view expressed by various representatives of civil society that most open reception centres are not fit for long-term stay, <i>inter alia</i> , for the reasons outlined in the paragraphs above.	Again, the ECRI report cites anonymous sources.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
142. ECRI recommends that the Maltese authorities provide accommodation to refugees and asylum seekers in open reception centres which meet adequate standards of living. In particular the authorities should address the problems relating to excessive heat, inclement weather and lack of privacy. It further encourages the authorities to ensure that persons with subsidiary protection and with other forms of “local” protection be granted social assistance so as to provide them with an incentive to find alternative accommodation suitable for long-term stay.	AWAS is making every effort possible to provide dignified reception conditions, within the constraints imposed by the available resources. In 2012, all tents were removed from Hal Far. Moreover, other works to improve the standard of living were undertaken in almost all Open Centres.
144. ECRI notes that Malta does not have a formal integration policy.	This statement is untrue. In 2005 the then Ministry for Justice and Home Affairs and the then Ministry for the Family and Social Solidarity published “Irregular Immigrants, Refugees and Integration: Policy Document.” In practice Malta finds considerable difficulties integrating all those whom it recognises as in need of international protection. For this reason Malta has promoted intra-EU relocation and resettlement, which offers better prospects for the beneficiaries. This would also indirectly assist those migrants who remain in Malta, as they would have better employment prospects. Some of the migrants who arrive in Malta irregularly and who are subsequently recognised as in need of international protection are not interested in long-term integration in Malta, as their aim remains to reach mainland Europe.
145. ECRI reiterates its recommendation to the Maltese authorities to devise a long-term integration strategy targeting refugees, asylum seekers, beneficiaries of “local” forms of protection and other migrants so as to ensure their integration into Maltese society in all areas of life.	It is a well-known fact that most irregular migrants arrive in Malta either as a result of a navigation error or because they rescued at sea by the Armed Forces of Malta. None of them have Malta as their intended destination. Once in Malta they regard the island as a point of transit to their desired destination in mainland Europe.
Conduct of Law Enforcement Officials	

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
147. Allegations of inhuman and degrading treatment of migrants by detention personnel have been described in other sections of this report and recommendations have accordingly been made. It is also worthwhile to note that the report Becoming Vulnerable in Detention of the Jesuit Refugee Service - Europe reveals that 32% of the detained migrants who had been interviewed claimed to have been assaulted by detention personnel. Moreover, 18% of the detained migrants reported to have filed a complaint on these grounds to no avail, as investigations had not been launched. Furthermore, 40% of the respondents claimed to have been verbally abused and 58% of these claimed to have been mocked by staff, including with racist slurs.	This paragraph is a witness to its own unreliability. It speaks of “allegations” and repeats “claimed”, “reported”, “claimed” and “claimed”. The ECRI report is expected to be reporting facts, not claims and allegations.
149. ECRI recommends that the authorities ensure that effective, proportionate and dissuasive sanctions are imposed in disciplinary cases involving proved racist conduct of law enforcement officials.	The Maltese authorities already adhere to this recommendation, as disciplinary action is taken as necessary in respect of such cases.
150. ECRI has been informed that the institution which is responsible for receiving complaints related to the police is the Police Board, an independent external mechanism provided for by Articles 48 to 60 of the Police Act. For instance, although ECRI has received numerous and consistent reports by a large number of sources, indicating that police officers often refuse to open an investigation when migrants report a crime, none of these sources seemed to be aware of the possibility to file a complaint before the Police Board.	Again, the ECRI report cites anonymous sources.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
151. ECRI recommends that the authorities publicise, including by putting up information at police stations, the existence of the Police Board, its functions and the modalities to file complaints before it.	The Maltese Authorities take note of ECRI's recommendation and are evaluating this recommendation on the ways how to publicise the existence and functions of the Police Board. Information, leaflets and other documentation with a view to file complaints are accessible to the public in every police station in Malta.
154. ECRI strongly recommends the authorities to intensify the training provided to law enforcement officials on the fight against racial discrimination and to sensitise them further on the sanctions for racist conduct.	In this regard, ongoing lectures are already taking place at the Police Academy for all new recruits as well as in-service professional development courses for all serving members of the Police Force which include lectures on criminal law provisions vis-à-vis racism and racial discrimination.
Monitoring Racism and Racial Discrimination	
159. ECRI reiterates its recommendation to the Maltese authorities to collect relevant information broken down according to categories such as ethnic/national origin, religion, citizenship and language, with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. It further recommends that the collection of such information should take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.	The Maltese authorities take note of ECRI's recommendation in relation to this matter and point out that statistics with respect to complaints in relation to racism and racial discrimination brought before NCPE are already being collected and published on a yearly basis. The collection of data and statistics requires human and financial resources and these are allocated in accordance with the needs of Maltese society.
Education and Awareness Raising	
163. Notwithstanding these positive initiatives, several of ECRI's interlocutors have highlighted that initiatives on intercultural dialogue and diversity are very much left to the initiatives of the single schools, whereas there would be the need to make such approach systematic.	Again, the ECRI report cites anonymous sources.

ECRI RECOMMENDATIONS AND COMMENTS	RESPONSE OF THE MALTESE AUTHORITIES
164. ECRI recommends that the new minimum curriculum include the subject of human rights for pupils of all ages and that diversity and intercultural education be mainstreamed therein.	The National Curriculum Framework (NCF) aims to promote initial teacher education and further opportunities for training and support in the use of pedagogies that are inclusive in nature and cater for diversity. The NCF acknowledges Malta's growing cultural diversity, and values the history and traditions of its people. It recognizes the heterogeneous nature of the community of learners, thereby acknowledging and respecting individual differences of age, gender, beliefs, personal development, socio-cultural background and geographical location. Learners' identities, their language competence, intellectual abilities, aptitudes, interests and talents are recognized and supported accordingly through appropriate learning and teaching approaches. The NCF affirms that all children can learn, grow and experience success by: • respecting diversity in all its forms; • promoting an inclusive environment; and • recommending policies and practices that address the individual and specific needs of the learners and learning community. The NCF aims to develop learners who are engaged citizens in constantly changing local, regional and global realities. They will need to: • respect diversity and value difference • respect and promote Maltese culture and heritage • develop intercultural competence and appreciate their heritage within the Mediterranean, European and global contexts • work towards strengthening social cohesion and ensuring social justice • uphold social justice and democratic principles The NCF identifies Intercultural education as one of the cross-curricular themes. Principles of diversity and inclusion underpin the NCF, which emphasizes student-centered learning and focuses on teaching methods that show learners how to learn. This approach implies that at all stages, learners of all aptitudes and competences should experience success as well as a level of challenge, and obtain the necessary support to sustain their effort. They need flexible learning programmes providing diverse learning experiences that cater for a wide spectrum of learners and allow for different rates of progression as children and young people work through their school years. While the NCF embraces diversity and requires that this can be promoted through an inclusive environment, it acknowledges that these obligations present challenges for the development of an appropriate curriculum and a classroom culture whereby all students are accepted and supported in achieving their full potential. The NCF acknowledges that every learner has diverse needs to be understood and addressed. In this context, the curriculum should address the needs of: - learners with special educational needs for whom the curriculum should be written in a way that allows the teachers to appreciate how every student can access the same curriculum in every learning area and allows for the assessment of a continuum of ability; - learners with severe disabilities for whom the curriculum should offer an education based on a continuum of abilities expressed in terms of developmental phases; - learners from disadvantaged social backgrounds for whom the school, in collaboration with key local and institutional stakeholders in the community, needs to up-skill and support families and the local community to provide an environment that is educationally rich and stable; - learners from diverse social, cultural and linguistic backgrounds including children of refugees and asylum seekers for whom the curriculum should include access to an educational programme which is embedded within an emotionally and psychologically supportive environment that respects their individual circumstances; - and- gifted and talented learners for whom the process of learning needs to be sufficiently challenging to engage and motivate them to develop their talents.