



european network against racism

# ENAR Shadow Report 2009-2010

## ENAR SHADOW REPORT 2009/2010

### **Racism and Discrimination in Malta**

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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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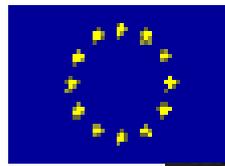
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3. promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
4. relaying the views of the stakeholders and society at large

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## I. Executive summary

Although immigration to Malta has been consistent throughout history, “illegal immigration” from Africa has turned migration into one of the most debated issues across all levels of Maltese society. Malta hosts about 11.7 thousand migrants (2.9% of the total population) and only about 3,500 of these are from sub-Saharan Africa.

The 2009 EU-MIDIS survey identified the African minority group as the group most vulnerable to racism and claimed that discrimination against this group had the highest incidence rate of discrimination when compared to the other EU countries. The EU-MIDIS Focus Report on Muslims revealed that 64% of Muslims interviewed had been discriminated against. However, most of these attributed the reason for their discrimination to the colour of their skin and not their religion.

Discrimination in employment against Africans and Muslims was pervasive both when seeking employment and in terms of the conditions of work that were offered by employers. Migrants felt obliged to accept these conditions lest failing to do so would mean having no source of income whatsoever.

Irregular migrants are sheltered in detention centres upon arrival in Malta and generally move on to open centres. Open centres are thought of as a temporary arrangement until migrants move to independent accommodation. However, with difficulty to enter into stable employment, inability to get a loan, high rental prices, and discrimination in the rental market, this goal is only seldom actualized.

State schools in Malta are free of charge to Maltese citizens and foreigners alike and children are not required to take any tests for entry into these schools. Most migrants can enter post-secondary education (including University) on the basis of the maturity clause, which exempts them from needing any qualifications to enter. Furthermore fees for asylum seekers are generally waived. Students are sometimes discriminated against by other students for having a different skin-colour. Migrants’ education and training that took place prior to entering Malta is seldom recognised and migrants are thus only able to access low-skilled jobs, which many consider to be unchallenging and unfulfilling

Clearly-defined policies surrounding health-service provision to migrants are lacking and thus service providers and migrants alike are not always certain about what the entitlements are. Access to medical care is also problematic because of communication difficulties, with language being a major barrier between patients and medical professionals. To facilitate this, cultural mediators are starting to be employed by MSF and Primary Health Care. According to the EU Midis report, Africans in Malta were less likely to be stopped by police than ethnic minorities in other EU states. However, ethnic

profiling in accessing services (particularly accessing places of entertainment and public transport) is widespread.

Racist violence is quite common, with the majority of Africans being harassed verbally or physically on the basis of their perceived ethnicity. The types of harassment vary, ranging from avoidance or sniggering, to serious mutilation and even death.

The media has facilitated discussion about migration though it generally depicts African migrants in a negative light. Journalists' conflation of legal terms and the use of words with very negative connotations when referencing Africans contribute to nurturing stigma against this population. The media acted as a contributor to the fear of Malta being invaded (and conquered) by Africans by focusing on the number of irregular arrivals. The internet has also given small groups an affordable means through which to pass on their messages and has been avidly used by both budding far-right political parties and NGOs which support migrants.

By 2010, Malta had made the relevant amendments to bring its legislation in line with the requirements of the Race Equality Directive whilst the reason for the banking exception was satisfactorily explained by the authorities.

Within the realm of integration, the most notable development was the enactment of the Agency for the Welfare of Asylum Seekers Regulations (AWAS). The regulation formally set up the agency that replaced the Organization for the Integration and Welfare of Asylum Seekers (OIWAS). This shift created a clearer distinction of roles between those entrusted to the agency and those retained by the Ministry of Justice and Home Affairs. The overarching function of AWAS is to implement national legislation and policy concerning the welfare of refugees, persons enjoying international protection, and asylum seekers. However, integration is now no longer within the agency's remit.

The Criminal Law provisions relating to racist violence and crimes were amended considerably. The reference to 'racial hatred' was expanded to explicitly cover violence, meaning that it is now a criminal offence to incite violence based on racial grounds. Moreover, the same act also introduced a general provision that increases the punishment for any offence when this is racially or religiously aggravated or when it is motivated, wholly or partly by xenophobia. The established increase in punishment is of one or two degrees. This provision is considered to make prosecutions relatively easier. Only one person was found guilty of racial hatred in 2009.

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### III. Introduction

This report gives an overview of incidence of discrimination based on religion and ethnicity in Malta during the period between the 1<sup>st</sup> of January 2009 and the 31<sup>st</sup> of March 2010, inclusive. During this period, Malta hosted an average of 11,700 migrants from all corners of the globe. The EU MIDIS identified African migrants as the most discriminated-against ethnic minority in Malta and, indeed Africans are negatively discriminated in most realms of their lives despite this being punishable by law.

The report starts out by outlining the communities which are generally the victims of discriminatory treatment. It then moves on to describe the incidence of ethnic and religious discrimination in various contexts, namely employment, housing, education, health, policing and racial profiling, racist violence and crime, access to goods and services in the public and private sector and media, including the internet. The third part of the report focuses on developments in the political and legal contexts in relation to anti-discrimination, integration, criminal justice and social inclusion. The report then puts forward a number of recommendations in relation to anti-discrimination, integration, criminal justice and social inclusion. Finally, the report ends with a conclusion which ties together the four preceding sections.

## IV. Communities vulnerable to racism and discrimination

Historically Malta has hosted people from a variety of nationalities. For centuries Malta was colonised by populations ranging from the Phoenicians, the Arabs, the Spanish, the Knights of St. John, the French, and finally, the British. All in all, Malta's history depicts most populations as having lived in Malta with locals quite harmoniously despite their different races, customs and religions. In fact, a number of foreigners who came to the island through colonisation stayed on for a period beyond that of their political requirement. Immigration into Malta has not been uncommon since Malta became a republic, and for a time did not cause any major alert. The tables turned with entry into the new millennium, when the new phenomenon of "illegal immigration" from Africa put migration high on the Maltese agenda.

Malta hosts about 11.7 thousand migrants (2.9% of the total population)<sup>1</sup>. These include migrants from every corner of the globe. Unfortunately questions on nationality, race and religion are not asked in the census or any other national survey and thus it is impossible to determine the population distribution along these grounds accurately.

However, not all migrant populations are vulnerable to racism and discrimination. Furthermore, in respect to those which are the contexts in which discrimination occurs and in the extent to which they are vulnerable differs. The 2009 European Union Minorities and Discrimination Survey (EU-MIDIS)<sup>2</sup> identified the African immigrant group as the group most vulnerable to racism. 66% of Africans in Malta who participated in the survey experienced discrimination during the 12 months prior to the research, while 52% of respondents felt that discrimination was widespread in Malta<sup>3</sup>. This was the highest incidence rate of discrimination when compared to the other EU countries participating in the survey. This population is broadly referred to as "irregular immigrants" or "boat people", but includes refugees, persons enjoying subsidiary protection, asylum seekers and rejected asylum seekers. Nearly half of the migrants and asylum seekers come from Somalia, while other major groups include Eritreans and Sudanese<sup>4</sup>. Thus, almost 60% of these come from countries at war or where human rights are regularly violated<sup>5</sup>.

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<sup>1</sup>United Nation Development Programme, *Human Development Report 2009*, [http://hdrstats.undp.org/en/countries/country\\_fact\\_sheets/cty\\_fs\\_MLT.html](http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_MLT.html)

<sup>2</sup>European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009.

<sup>3</sup>European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009: 89.

<sup>4</sup>RefComm statistics accessed from [http://www.mjha.gov.mt/MediaCenter/PDFs/3\\_Statistical%20Information.pdf](http://www.mjha.gov.mt/MediaCenter/PDFs/3_Statistical%20Information.pdf)

<sup>5</sup>Médecins sans frontières, *Migrants, refugees and asylum seekers: Vulnerable people at Europe's doorstep*, <http://www.doctorswithoutborders.org/publications/reports/2009/MSF-Migrants-Refugees-AssylumSeekers.pdf>, p. 3;

Table 1: Outcome of Asylum claims in 2009 by Nationality distribution<sup>6</sup>

Status	Country of Origin	Number
Refugee	Eritrea	5
	Ethiopia	3
	Somalia	3
	Sudan	1
	Syria	7
	Kazakistan	1
Humanitarian/ Subsidiary Protection	Eritrea	193
	Iraq	1
	Morocco	1
	Palestine	1
	Somalia	1445
	Sudan	23
	Libya	1
	Togo	1
Rejected		895
<b>Total processed cases in 2009</b>		<b>2581</b>

However, a number of Africans who came to Malta legally (through applying and receiving a residence permit and an employment license prior to arriving in Malta) and Maltese nationals who are adoptees from Africa are also assumed as falling into this group. Thus, in public discourse a distinction between the different statuses is lacking, despite the legal definitions and different entitlements.

Although the Maltese Constitution allows freedom of practice of all forms of religious denominations, it identifies the Roman Catholic religion as the predominant one in Malta. In fact, it is the most widespread religion on the island, with 94%<sup>7</sup> of the population claiming to be Roman Catholic. Having such a predominant religion puts people from other religious denominations in a vulnerable position. The EU Midis focus report on Muslims revealed that 64% of Muslims that were interviewed had been discriminated against.

Issues of multiple grounds of discrimination also surfaced during the year. This highlighted the need for a more integrated approach to anti-

<sup>6</sup> Office of the Refugee Commissioner February 2010:  
[http://www.mjha.gov.mt/MediaCenter/PDFs/3\\_Statistical%20Information.pdf](http://www.mjha.gov.mt/MediaCenter/PDFs/3_Statistical%20Information.pdf)

<sup>7</sup> US Department of State. Bureau of Democracy, Human Rights, and Labor International Religious Freedom Report 2009:  
<http://www.state.gov/g/drl/rls/irf/2009/127324.htm>

discrimination. Quite often, one is not only discriminated on the basis of ethnicity, but also for their gender, sexual orientation or for having a disability. Identifying the ground on the basis of which one is being discriminated is not always easy, and things can be especially blurry when trying to distinguish between discrimination on the basis of ethnicity and/or religion. This lack of clarity is sometimes felt by both the perpetrator of the discriminatory incident and the victim, and this may also be vague to the authorities entrusted with preventing discrimination and/or promoting equality.

The National Commission for the Promotion of Equality (NCPE) identified four areas where racial discrimination was prevalent in 2009, namely unfair treatment at work and in recruitment, discrimination in the access to housing, access to Visas and the access to goods and services. The NCPE also outlined unfair treatment at work and in recruitment and discrimination in the provision of goods and services as fields in which discrimination on the basis of nationality was widespread in 2009.

## V. Manifestations of racism and religious discrimination

67% of Africans interviewed for EU Midis claimed that someone was likely to face discrimination in Malta on the basis of one or more of the 6 grounds of discrimination.<sup>8</sup> 46% of Africans claimed that people were more likely to face discrimination in Malta on the basis of ethnicity.<sup>9</sup> Similarly, only 22% claimed that people were likely to face discrimination on religious grounds. 18% of interviewees claimed that they have reported incidents of discrimination to official bodies<sup>10</sup>. However, 93% of interviewees could not mention an organisation responsible for reporting experiences of discrimination.<sup>11</sup> Only 11% named the *National Commission for the Promotion of Equality*.<sup>12</sup> Filing a complaint to official bodies was considered futile by the almost 75% of Africans.<sup>13</sup> while a number of people (39%) did not know how to file a complaint. Language barriers, fears of negative consequences and fears of being threatened or intimidated by perpetrators kept 18%, 23% and 33% (respectively) of respondents from reporting.<sup>14</sup> 25% of the interviewees who participated in the EU Midis survey were aware of laws prohibiting discrimination in access to the labour market.<sup>15</sup> 24% knew that equal treatment in housing had a legal basis.<sup>16</sup> 13% knew about antidiscrimination in the provision of goods and services and 17% were aware of the Charter of Fundamental Rights of the European Union.<sup>17</sup>

The EU Midis Focus Report on Muslims reported that 64% of Muslims claimed they felt discriminated against in the 12 months prior to the interview, putting Malta the EU country where Muslims are most frequently discriminated against.<sup>18</sup> However, most Muslims participating in this study believed that this discrimination was not attributed to religion but to colour.<sup>19</sup>

<sup>8</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 88

<sup>9</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 88

<sup>10</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 83

<sup>11</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 86

<sup>12</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 86

<sup>13</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 91

<sup>14</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 93

<sup>15</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 87

<sup>16</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 87

<sup>17</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 87

<sup>18</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Data in Focus report, muslims, 2009, p.5

[http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS\\_MUSLIMS\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_MUSLIMS_EN.pdf)

<sup>19</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Data in Focus report, muslims, 2009, [http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS\\_MUSLIMS\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_MUSLIMS_EN.pdf)

Migration was cited as one of the top two social concerns in Malta in 2008 and 2009, according to Eurobarometer surveys conducted with the Maltese population. In Autumn 2008<sup>20</sup> migration was identified as the primary concern, cited by 48% of respondents. In Autumn 2009<sup>21</sup> this went down by 14%, making it the second most prevalent concern in Malta, as 34% of respondents claimed it was one of Malta's two main concerns.

## V.i Employment

People from ethnic minorities, particularly asylum seekers, have faced discrimination both while accessing employment as well as while being employed in Malta.<sup>22</sup> 45% of Africans who participated in the EU Midis study claimed that ethnic difference can be a factor for discrimination in the labour market and at work. Religion was considered to be a barrier to the workplace by 33%.<sup>23</sup> The EU Midis Focus Report on Muslims reported that 43% of Muslims claimed they had been discriminated against while seeking employment. 25% said they were actually discriminated at work.<sup>24</sup>

Asylum seekers and Third Country Nationals (TCNs) find it difficult to gain stable employment, substantiated by a contract and, thus, resort to working in the informal economy, many with poor working terms and conditions. 42% of Africans claimed that they had been discriminated on the basis of race when seeking work.<sup>25</sup> For fear of being fired and unable to find another job, or of not begin hired to begin with, such migrants often settle for less pay<sup>26</sup> (sometimes as little as €2 a day<sup>27</sup>) and accept to work longer hours than their Maltese counterparts. Additionally, they may have to work in conditions that do not meet the general health and safety regulations. These conditions may have real risks on the employee's psychological and physical health,<sup>28</sup> both short- and long-term, and provide little prospect of career progression. Moreover, many migrants are not paid regularly for their work and often have to chase

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<sup>20</sup> Kummissjoni Ewropea, *Ewrobarometru 70, Opinjoni Pubblika FI-Unjoni Ewropea*, 2010, No 70. [http://ec.europa.eu/public\\_opinion/archives/eb/eb70/eb70\\_mt\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb70/eb70_mt_nat.pdf).

<sup>21</sup> Kummissjoni Ewropea, *Ewrobarometru 70, Opinjoni Pubblika FI-Unjoni Ewropea*, 2010, No 72. [http://ec.europa.eu/public\\_opinion/archives/eb/eb72/eb72\\_mt\\_mt\\_nat.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb72/eb72_mt_mt_nat.pdf) accessed 16 August 2010.

<sup>22</sup> Council of Europe, *The European Commission against Racism and Intolerance (ECRI) publishes new reports on Liechtenstein, Malta, Moldova, San Marino and Serbia*, retrieved 29 April 2008, [http://www.coe.int/t/dghl/monitoring/ecri/library/PressReleases/51-29\\_04\\_2008\\_en.asp#TopOfPage](http://www.coe.int/t/dghl/monitoring/ecri/library/PressReleases/51-29_04_2008_en.asp#TopOfPage)

<sup>23</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 85.

<sup>24</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Data in Focus report, muslims, 2009, p.6 [http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS\\_MUSLIMS\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_MUSLIMS_EN.pdf)

<sup>25</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 42.

<sup>26</sup> In 2009 Malta's minimum wage was stipulated (in Legal Notice 339 of 2008) at €136.85 a week for people under 17 years of age and €139.69 for 17 year olds and €146.47 for people over 18.

<sup>27</sup> Times of Malta, *Immigrant construction workers paid €2 a day. GWU boss proposes name and shame policy*, retrieved 3 May 2009, <http://stocks.timesofmalta.com/articles/view/20090503/local/immigrant-construction-workers-paid-euro-2-a-day>.

<sup>28</sup> Occupational Health and Safety Authority, *Report of Activities for the period 1st January 2009 – 31st December 2009*, 2010 [http://www.ohsa.org.mt/docs/activity\\_report%202010.pdf](http://www.ohsa.org.mt/docs/activity_report%202010.pdf)

their employers for their wage. 27% of Africans interviewed for the EU-Midis study claimed that they had been discriminated at work.<sup>29</sup> 27% of these claimed that they report this discrimination to third parties<sup>30</sup>.

In May 2009, the General Workers' Union (GWU), Malta's largest labour union, issued a document aimed at MEP candidates. The Union Irregular immigrants promised to keep on defending these workers' rights. Additionally, the Union stated that no workers should be discriminated against or offered working conditions that go against the conditions stipulated by Maltese legislation.<sup>31</sup>

The ETC reported 7,433<sup>32</sup> non-Maltese<sup>33</sup> work permit holders. 54% of Africans in Malta interviewed for the EU-Midis survey claimed to be unemployed at the time of the interview.<sup>34</sup> Unlike Maltese, third country nationals are not entitled to social protection coverage in the form of an unemployment benefit (even if they would have paid national insurance for 52 weeks obligatory to Maltese nationals) or retirement pension. Moreover, it is not uncommon for initial employment conditions, generally communicated only verbally, to change at the employer's discretion, leaving the employee little bargaining power or means of redress. In short, the informal nature of the job disempowers workers, making it impossible to seek support from official bodies due to fear of having to expose their informal work, lack of proof of initial working agreements and/or current working conditions and fear of being fired from their job and not being able to find a new one.

The informal economy has always thrived in Malta, with Maltese nationals and foreigners similarly engaging actively therein. The participation of migrants in this aspect of the economy makes it impossible to calculate the exact number of migrants who work in Malta. In May 2009, the Social Policy Minister John Dalli claimed that 240 foreigners (he does not specify their status or nationality, but stated that nationalities included persons from both EU and non-EU states) were caught working illegally in 2008.<sup>35</sup> The exact number of people working illegally is, therefore, impossible to calculate.

New migration regulations were approved by the EU with the scope of making it easier for member states to attract highly-qualified migrants.<sup>36</sup> Additionally, the regulations strengthen sanctions against employers who abuse migrants, and further oblige the employers to prove that they are not abusing migrants

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<sup>29</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p.10.

<sup>30</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 43.

<sup>31</sup> <http://sitestudio.altanova.com.mt/library/images/gwu/vacancies%20pdf's/parlament%20ewrope w%20ghal-ewropa%20socjali.pdf> page 9

<sup>32</sup> Analysis of Labour Market Integration Policy (unpublished) p. 21

<sup>33</sup> This includes people of all nationalities other than Maltese and thus includes EU citizens, protected persons and TCNs.

<sup>34</sup> European Union Agency for Fundamental Rights, 2009, p. 9.

<sup>35</sup> Times of Malta, *240 foreigners working illegally*, retrieved 12 May 2009, <http://stocks.timesofmalta.com/articles/view/20090512/local/240-foreigners-working-illegally>.

<sup>36</sup> Times of Malta, *EU approves new migration rules*, retrieved 1 June 2009

<http://www.timesofmalta.com/articles/view/20090601/local/eu-approves-new-migration-rules>

rather than leaving the burden on migrants to prove that they have been abused<sup>37</sup>. Furthermore, the sanctions impose penalties on employers and ensure the automatic recovery of unpaid wages.<sup>38</sup> The directives encourage the development of entities and mechanisms that facilitate the reporting of such abuses.<sup>39</sup>

According to the Occupational Health and Safety Act<sup>40</sup> employers must prevent physical and psychological occupational ill-health, injury or death. A contravention of this act renders a person liable to imprisonment for a period of not more than two years and/or to a fine of between 465.87 and 11,646.85 euro. The court can also cancel licences, warrants or permits issued to or in the name of the person found guilty in connection with the work place where the offence was committed. The Occupational Health and Safety Authority is responsible for ensuring that the physical, psychological and social well being of all workers in all work places are promoted and also for ensuring that workers' wellbeing is safeguarded by whoever is so obliged to do.<sup>41</sup> However, anecdotal evidence shows that TCNs, asylum seekers and protected persons (whether employed legally or illegally) are not likely to report instances of abuse for fear of losing their job.

Asylum seekers and TCNs are generally channelled into certain industries, particularly those that require low-skills and which are less sought after by the Maltese workforce. According to the Employment and Training Corporation, the most popular industries among migrants are the construction and catering industries, wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods and real estate, and renting and business activities<sup>42</sup>. Most Africans, however, work in the construction and catering industries. Asylum seekers and TCNs are channelled into such industries by both official and unofficial forces. Unofficially, employers may feel less eager to employ such migrants and may be further discouraged by the migrant's inability to produce official certificates for qualifications and language boundaries. Similarly, official regulations such as lack of recognition of foreign qualifications and/or warrants further inhibit migrant entry into higher-level jobs.<sup>43</sup> Third country nationals must meet the labour market test to ensure that they only enter the labour market through industries that are not saturated by Maltese or EU nationals. Asylum seekers are exempt from this test.

Racial discrimination at the workplace is not within the remit of the National Commission for the Promotion of Equality (NCPE) but of the Department of

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<sup>37</sup> Times of Malta, *EU approves new migration rules*, retrieved 1 June 2009

<http://www.timesofmalta.com/articles/view/20090601/local/eu-approves-new-migration-rules>

<sup>38</sup> Times of Malta, *EU approves new migration rules*, retrieved 1 June 2009

<http://www.timesofmalta.com/articles/view/20090601/local/eu-approves-new-migration-rules>

<sup>39</sup> Times of Malta, *EU approves new migration rules*, retrieved 1 June 2009

<http://www.timesofmalta.com/articles/view/20090601/local/eu-approves-new-migration-rules>

<sup>40</sup> Accessible from [http://www.msp.gov.mt/documents/laws/ohs/ohs\\_chp\\_424.pdf](http://www.msp.gov.mt/documents/laws/ohs/ohs_chp_424.pdf)

<sup>41</sup> Article 4 (2).

<sup>42</sup> Analysis of Labour Market Integration Policy (unpublished) p. 42-43

<sup>43</sup> One must be a Maltese citizen in order to receive a warrant to work as a Notary Public or a lawyer. Additionally, lawyers must have studied law in Malta or another EU member state. Other professions, such as a medical doctor, require a professional and linguistic proficiency test and housemanship in a hospital recognised by the Medical Council within two years of the issuance of the warrant.

Industrial and Employment Relations (DIER). Thus, issues of equality surrounding ethnicity are fragmented. The CEO of the NCPE claimed that this arrangement does not help any of the bodies to address issues of ethnic discrimination adequately.<sup>44</sup> Most trade unions have taken an active role in urging employers to engage migrants as formal workers with equal pay, arguing that informal or unequal engagement of such workers is detrimental to both migrant and Maltese workers.<sup>45</sup> According to a representative of the Malta Employers Association (MEA), lack of information on discrimination and the size of many companies in Malta (most being SMEs or Micro-enterprises) contributes to many employers unawareness of what constitutes discrimination<sup>46</sup>.

The Employment and Training Corporation (ETC) held information sessions about the rights and process associated with getting a work permit and legal employment in detention centres for migrants.<sup>47</sup> The Centre for Labour Studies highlighted the need for further efforts to help migrants integrate into the labour market.<sup>48</sup>

## V.ii Housing

Housing is another major problem that migrants in Malta face. Upon arriving in Malta, irregular migrants are housed in detention centres on the basis of Article 11 of the Immigration Act<sup>49</sup>. Detention is seen as a matter of national policy: “in the interest of national security and public order”. Detention Centres are run by Detention Services under the responsibility of the Ministry for Justice and Home Affairs. They are manned by personnel seconded from the Police Force and the Armed Forces under one command. The detention period in Malta is longer than most countries in the EU<sup>50</sup>: it may last up to 12 months for people pending a decision regarding protection and although a fast-track process is available for vulnerable people, including families with children, the elderly, unaccompanied minors, pregnant and breast-feeding women, people suffering from disabilities and serious physical or mental illness, detention may still take a few months.

Whilst in detention, people may apply for asylum, though this does not exempt them from the detention requirement. Since their inception, Detention centres have attracted a lot of criticism from NGOs, journalists, the Church<sup>51</sup> and politicians alike, both for their philosophy and for the poor conditions that they offer residents. Detention centres treat migrants as criminals, despite the fact

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<sup>44</sup> Borg (2009) *Race Equality Directive Malta* p. 5

<sup>45</sup> *ibid.* 5-6

<sup>46</sup> *ibid.* 6

<sup>47</sup> UNHCR The UN refugee Agency, *Trafficking in Persons Report 2009 – Malta*, retrieved 16 June 2009, <http://www.unhcr.org/refworld/docid/4a4214a5c.html>.

<sup>48</sup> <http://www.eurofound.europa.eu/ewco/studies/tn0807038s/mt0807039q.htm>

<sup>49</sup> Article 11 of the Immigration Act

<sup>50</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p. 34.

<sup>51</sup> The Times of Malta, *Detention failing the test of faith*, retrieved 4 April 2009, <http://www.timesofmalta.com/articles/view/20090404/local/detention-failing-the-test-of-faith>, p. 3.

that they have not violated the criminal code. A report entitled “Becoming Vulnerable in Detention”<sup>52</sup> (BViD) found that many migrants in detention were not aware of the reason for their detention (58%). Only 13% of participants in this study considered themselves to have been properly informed and almost 80% expressed their need to get more information on procedures and/or on the duration of detention. Most respondents were also discontent with the conditions of the detention centres, with over 75% of respondents complaining about their room and almost 73% criticising the public areas. A third of respondents lamented about hygiene. 83% highlighted the lack of privacy, stating that with up to 370 people living in one warehouse, there is no space to ever be alone in detention.

**JRS lament against Malta’s detention policy and call for more humane treatment of migrants**

As part of its speech for World Refugee Day 2009, the Jesuit Refugee Service (Malta) advocated for an alternative to the detention system in favour of procedures that would “respect asylum seekers as people”.<sup>53</sup> Migrants who arrive in Malta are met with “harsh conditions” of detention, and once they leave detention are often discriminated against.<sup>54</sup> JRS highlighted the fact that “[f]ar from being a burden, well integrated refugees become net contributors to their host countries”<sup>55</sup>.

This speech resonated ideas put forward in the “Recommendations for the Migration and Asylum Policies in the EU Stockholm Programme” (2010 – 2015)<sup>56</sup> The recommendations urged that the respect for the dignity of human beings (regardless of migration status) to be the underlying factor of policies and practices, which should be common for all EU countries. Migration policy should go beyond matters strictly related to migration, but must be integrated into other policies such as family policy. Additionally, the recommendations called for the benefits of migration to be acknowledged.

On a similar note, Medecins sans Frontieres (MSF) claimed that there was a direct link between the living conditions in detention centres and the degradation to migrants’ health as living conditions are considerably substandard.<sup>57</sup> In Hermes Block, a detention centre for migrants awaiting their asylum claim to be processed, there are less than 3m<sup>2</sup> per detainee. Additionally, there are more detainees than beds, so sharing a mattress or sleeping on mattresses on the floor is not uncommon.<sup>58</sup> Toilets and shower facilities are also lacking, with Safi detention centre offering one toilet for an average of 40 people and Hermes Block offering one shower for over a

<sup>52</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010.

<sup>53</sup> Jesuit Refugee Service Malta <http://www.jrsmalta.org/pdf/Press%20Release%2020090619.pdf>

<sup>57</sup> Médecins sans Frontières, *Not Criminals – Médecins sans frontières exposes conditions for undocumented migrants and asylum seekers in maltese detention centres*, 2009, p. 16-17.

<sup>58</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrofrontiere.it/Immagine/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrofrontiere.it/Immagine/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.5.

hundred people<sup>59</sup>. Many living areas are permanently flooded with wastewater, which sometimes includes urine and faeces, from broken sinks and toilets.<sup>60</sup> Most detention centres have no gender segregation and detainees cannot go outdoors freely.<sup>61</sup>

There have been some improvements to migrant housing following MSF's report entitled 'Not Criminals': some of the tents in Hal Far were replaced by trailers and the kitchen and bathroom facilities at Lyster Barracks were improved<sup>62</sup>.

These living conditions have pushed a number of migrants to take Maltese authorities to Court. Four migrants (three from Nigeria and one from Gambia) filed a case (case 53/2008<sup>63</sup>) against the Commissioner of Police and the Ministry for Justice and Home Affairs, claiming that the detention system was an infringement to their human right to freedom and that the living conditions in the detention centre were not adequate. However, on the 16th of December 2009 the First Hall of the Civil Court concluded that the period of time they spent in detention was reasonable since it was within the limit stipulated by law and because their application for asylum was still under consideration. Additionally, it stated that the conditions within the centre were not inhuman and degrading as would be the case if it was intended to cause intense physical and mental suffering or if it led a victim to act against his or her will or if its object was to humiliate and debase the person concerned.<sup>64</sup> A number of cases filed with the ECHR are still pending.

Once out of detention, migrants move to open centres, which aim to provide temporary lodging: a transition between the detention centre and independent accommodation in the community, resettlement or repatriation. In the Open Centres, residents are provided with shelter and social welfare support. Living conditions are not ideal, with most centres being overcrowded and lacking adequate facilities. Most open centres consist of makeshift homes, which were originally hangars (now severely dilapidated) or tents. Areas surrounding the large open centres have taken on a ghetto feel, making integration with non-residents difficult. Upon entering an open centre, residents sign an *Integration and Service Agreement* with the Agency for the Welfare of Asylum Seekers (AWAS), which is valid for six months. Accommodation and

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<sup>59</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.5.

<sup>60</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.5.

<sup>61</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.5.

<sup>62</sup> <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136045.htm>

<sup>63</sup> Accessible from: [http://www.justiceservices.gov.mt/courtservices/Judgements/script\\_get\\_judgement\\_document.aspx?CaseJudgementID=58377](http://www.justiceservices.gov.mt/courtservices/Judgements/script_get_judgement_document.aspx?CaseJudgementID=58377)

<sup>64</sup> Times of Malta, *Migrants lose human rights case*, retrieved 18 December 2009, <http://www.timesofmalta.com/articles/view/20091218/local/migrants-lose-human-rights-case> Di-ve, 4 *migrants lose human rights case*, retrieved 17 December 2009, <http://www.di-ve.com/Default.aspx?ID=72&Action=1&NewsId=67693>.

allowance may be retracted upon expiry of this agreement, or if a resident fails to register at the relevant centre for 3 weeks, does not pay the contribution for 3 weeks or if the resident does not abide by the centre's rules. However, a study issued by the Jesuit Refugee Service (JRS) found that reasons for termination of the services agreement are not always explicitly communicated to the migrants. Additionally, different open centres apply different criteria to terminating the service agreement, with some centres being far more restrictive than others. Furthermore, residents' vulnerability is not always taken into account. In fact, some single mothers with young children were temporarily homeless.<sup>65</sup> In 2009 rejected asylum seekers were particularly encouraged to leave the open centres.<sup>66</sup>

As previously stated, open centres are considered a temporary living arrangement. However, many migrants do live there for quite a long time despite their desire to leave. Independent accommodation is the ultimate goal for most migrants, but with difficulty to get a stable job, inability to get a loan in order to purchase a house, high rental prices, and discrimination in the rental market, this goal is seldom actualized. Many landlords are reluctant to rent out their houses to foreigners for fear of damage being made to the property due to neglect.<sup>67</sup> Only 24% of Africans responding to the EU Midis survey were aware of laws surrounding equal treatment in access to housing.<sup>68</sup>

The Housing Authority in Malta provides accommodation to those without housing by renting out property owned by the Government at reduced prices or by subsidizing privately-rented premises. Unfortunately, however, these schemes are unavailable to irregular migrants, apart from those granted refugee status. Additionally, the migrant allowance is only available to those living in open centres; there is no form of financial assistance for those in independent accommodation. This keeps many migrants from leaving open centres. Additionally, migrants who leave open centres for independent accommodation, generally after entering in stable employment, are at high risk of becoming poor or even destitute if they were to lose their job or if their work contract expires. This is because re-entry into open centres is only allowed in exceptional circumstances.

Furthermore, it has been noted that some migrants living in independent accommodation are also faced with various problems. Among these is the fact that they are not generally given a contract which clearly stipulates their rights and often live in less than adequate accommodation. Furthermore, there are certain areas which are highly populated by migrants, largely due to cheap prices and the fact that they are outside traditional old city centres and, therefore, the constant attention of the population. This further reduces opportunities of integration and increases isolation

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<sup>65</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010.

<sup>66</sup> Joseph M. Sammut, *Immigrants in Malta – National Report*, Social Watch Malta, 2009, p. 67.

<sup>67</sup> Housing Asylum Seekers, 2009:38.

<sup>68</sup> [http://fra.europa.eu/fraWebsite/attachments/eumidis\\_mainreport\\_conference-edition\\_en\\_.pdf](http://fra.europa.eu/fraWebsite/attachments/eumidis_mainreport_conference-edition_en_.pdf) page 87

### V.iii Education

Education is paramount for the integration of migrants, particularly those who are still children. State schools in Malta are free of charge to Maltese citizens and foreigners alike.<sup>69</sup> Although children are not required to take any tests for entry into these schools, children do need to have a good grasp of both English and Maltese to be able to follow classes and integrate well with other students. Post-secondary education requires migrants to have good knowledge of English and although fees are sometimes associated with such courses (for Maltese students too), such fees are often waived to enable migrants to follow the course. Most asylum seekers can enter such institutions through the maturity clause, which allows people over 21 or 23 (depending on the course) to access higher education without having to meet the entry requirements applicable to younger people. This has enabled a number of migrants to follow courses offered by the University of Malta, the Malta College of Arts, Science and Technology (MCAST), and the Malta Institute of Computer Science, amongst others.

#### **Get Up Stand Up collect books for Library at Marsa Open Centre**

Get Up Stand Up, a student voluntary organization, collected books with the scope of setting up a library at Marsa Open Centre. The initiative gathered a large number of books on various subjects. The project also involves restructuring and refurbishing a room in Marsa Open Centre from a restaurant into a library, which is planned for the later months of 2010. The library should open in early 2011.

Maltese classrooms are increasingly becoming multicultural and a number of initiatives have been initiated to provide educators with the right tools to address the new classroom dynamics. One such initiative is “The Colours of Malta”,<sup>70</sup> a research report on multiculturalism in classrooms and an online toolkit for teachers. This report points out that “multiculturalism” was often negatively perceived and defined as a “problem” rather than an opportunity, with the authors stating that this could be due to the fact that multiculturalism and notions of illegal immigration have been conflated.<sup>71</sup> Additionally, notions of cultural exchange and celebrating cultural differences were not mentioned by the teachers that the authors interviewed.<sup>72</sup> Moreover, many students were excluded from religion and social studies lessons by either being put at the back of the class and ignored, or by being given the option not to attend class at all and left unsupervised.<sup>73</sup>

Students are also discriminated against by other students, and this is not so much a matter of being foreign than having a different skin-tone.<sup>74</sup> Children

<sup>69</sup> Subsidiary Legislation 327.220(3)

<sup>70</sup> The Colours of Malta is a project by Juniper Francalanza and Brian Gauci in part fulfilment of a Post-Graduate Certificate in Education and can be accessed on <http://www.thecoloursofmalta.com/index.html>.

<sup>71</sup> Francalanza and Gauci 2009:34.

<sup>72</sup> Ibid. 35.

<sup>73</sup> Ibid. 36.

<sup>74</sup> Francalanza and Gauci 2009:41.

with a dark skin-tone are often teased and called “klandesini” (clandestine persons) at school.

Recognising migrants’ education and training that took place prior to entering Malta is an important aspect to utilising all the skills currently available on the island. Unfortunately, this education is not currently recognised and migrants are thus only able to access low-skilled jobs, which many consider to be unchallenging and unfulfilling. Several NGOs working in the migration field claim that there is a large mismatch between migrant skills and jobs available to them in Malta. However, during a press briefing the Refugee Commissioner stated that only 39 out of the 1308 immigrants applied for protection in 2009 were professionals.<sup>75</sup> 485 were skilled workers and the rest were unemployed or unskilled.

### **Red Cross Malta and Migrant Solidarity Movement English Language Lessons**

Malta Red Cross started giving English language lessons at Marsa Open Centre and Hal Far Tent Village. Similarly Migrant Solidarity Movement, in collaboration with the Reggie Miller Foundation, started giving English language lessons at the General Workers’ Union headquarters in Valletta. Although the two NGOs ran classes separately, they coordinated their efforts so that classes were held on different days, providing more options for people wishing to attend. Classes were well-received and 35-50 people attended each session.

Foreign qualifications are assessed and recognised by the Malta Qualification Recognition Information Centre<sup>76</sup> (MQRIC).<sup>77</sup> However, most migrants from Africa come to Malta without the necessary accreditation. Additionally, this does not recognise non-formal learning. A framework for the assessment, certification and accreditation of non-formal learning has been set-up by the Malta Qualifications Council (MQC). This will facilitate the integration of previously uncertified skilled migrants in the Maltese labour market, reducing underemployment.

Most migrants have little to show as evidence of their education and training as most enter Malta without any documents or certificates. In 2009 the Employment and Training Centre (ETC) started offering the service of having migrants’ skills listed and recognised in a certificate. However, this initiative was not well-received by migrants, possibly because of lack of knowledge about it.

### **Organisation for Friendship in Diversity Summer School**

2009 saw the beginning of a new NGO, Organisation for Friendship in Diversity. The highlight of OFD’s work was the summer camp for children

<sup>75</sup> The Malta Independent on-line, Refugee commission busts myths on illegal immigration in Malta, retrieved <http://www.independent.com.mt/news.asp?newsitemid=105659>.

<sup>76</sup> <http://www.mqc.gov.mt/home?l=1>

<sup>77</sup> Although the MQRIC does not distinguish between EU and non-EU nationally, certificates that are not in the Maltese, English or Italian language must be accompanied by an authenticated translation, which migrants are not always able to produce.

between the ages of 5 and 12. The two-week summer camp brought together children of different nationalities and migrant status with the scope of challenging existing social stigmas, particularly those surrounding migrant and refugee communities.

#### V.iv Health

The mental and physical health of migrants is heavily discussed both in terms of health promotion and illness prevention. Upon arrival in Malta, irregular migrants undergo an obligatory medical examination, conducted by Port Health Services in a police station, as a procedure for public health stipulated in the immigration legislation<sup>78</sup>. Migrants requiring medical attention are taken to Mater Dei Hospital, Malta's state general hospital. Other migrants are taken to the detention centres. It is acknowledged that these medical tests are necessary and some NGOs have emphasised that even more tests should be carried out on arrival. However, Médecins sans Frontières (MSF) described the checks as "superficial" and offered to support initial screening. This proposal was not taken up.<sup>79</sup> Upon arrival, morbidities are often a consequence of the long and harsh journey Africans endure when crossing to Malta, where they are exposed to the elements on a boat with limited space, food and water. Thus the most common ailments were musculoskeletal, dermatological, urinary, and gastrointestinal problems<sup>80</sup>.

Asylum seekers are entitled to free state medical care under article 10(1) of the Refugees Act<sup>81</sup>. However, it is not specified in the law whether asylum seekers are eligible to access healthcare under the same conditions as Maltese nationals or whether they are covered by a specific set of rights. Migrants in regular long-term employment or with sufficient means may be required to cover or contribute to the cost of material reception conditions<sup>82</sup>. Thus, many migrants, including those with refugee or subsidiary protection status, may not have access to free medical care.<sup>83</sup> Additionally, there is a lack of consistency surrounding migrant entitlement to free medication.

Migrants in detention centres are also entitled to free medical care according to the 2005 policy document.<sup>84</sup> Medical care in detention is provided by two private medical companies, but doctors and nurses' availability is restricted

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<sup>78</sup> Article 8 of S.L. 420.06(8)

<sup>79</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.3

<sup>80</sup> Médecins sans Frontières, *Migrants, Refugees and Asylum seeker: vulnerable people at Europe's doorstep*, retrieved 2009, <http://www.doctorswithoutborders.org/publications/reports/2009/MSF-Migrants-Refugees-AsslymSeekers.pdf> p. 3.

<sup>81</sup> Chapter 420, Refugees Act.

<sup>82</sup> S.L. 420.06(11)

<sup>83</sup> ANDES pilot-study 2009:9.

<sup>84</sup> Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, *Irregular Immigrants, Refugees and Integration – Policy Document*, 2005, p. 12. 8. Those undocumented migrants who are rejected asylum seekers are released after eighteen months of detention and placed in an open centre. 9. Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, *Policy Document*, p. 24.

and largely inadequate to meet the needs of all detainees.<sup>85</sup> In fact, only two thirds of the detainee population who participated in the BViD project reported medical presence in detention.<sup>86</sup> The project found that there was lack of consistency regarding medical care across detention centres, with significant differences between the proportions of detainees in each centre who were aware of medical presence in the detention centre.<sup>87</sup> The fact that medical professionals are not found in any of the migrants' living areas<sup>88</sup> may contribute to this. Additionally, doctors and nurses working in detention have no written protocols to abide by and no supervision.<sup>89</sup> MSF started offering medical services within detention centres in 2008: all new migrants and asylum seekers were examined (by a doctor accompanied by a cultural mediator) soon after they arrived in the centre. This consultation served to open a medical file, containing medical history, current ailments and arrangements for further care.<sup>90</sup> These services were suspended in March 2009 because a more holistic approach to healthcare was needed for MSF's work to bear fruit. According to Gabriele Santi (MSF coordinator in Malta at the time), "it was impossible to offer adequate medical care in the circumstances. We could not dispense medication to treat our patients or isolate patients with infectious diseases. Because of the appalling living conditions, migrants often required repeated consultations for the same complaints as symptoms persisted".<sup>91</sup>

As there is no pharmacy in detention centres and because medicines must be dispensed by a pharmacist<sup>92</sup> several days elapse between the day migrants in detention are prescribed medication and the day they start administering the drugs.<sup>93</sup> Moreover, some medicines are not delivered at all, therefore, some diagnosed ailments go untreated<sup>94</sup>. In fact, the BViD quotes a Nigerian woman in detention claiming "I have a lot of prescriptions but I don't have the

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<sup>85</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.3.

<sup>86</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BViD Project)*, Philip Amaral editor, 2010.

<sup>87</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BViD Project)*, Philip Amaral editor, 2010.

<sup>88</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.3.

<sup>89</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.3.

<sup>90</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.3.

<sup>91</sup> Médecins sans Frontières, *MSF resumes activities in detention centre for migrants in Malta*, retrieved 13 July 2009, [http://www.msf.org/msfinternational/invoke.cfm?objectid=72A73E2D-15C5-F00A-25E412F4C31E1AFD&component=toolkit.article&method=full\\_html](http://www.msf.org/msfinternational/invoke.cfm?objectid=72A73E2D-15C5-F00A-25E412F4C31E1AFD&component=toolkit.article&method=full_html)

<sup>92</sup> Jesuit Refugee Service, 2010; see S.L. 458.45 Articles 2 and 6.

<sup>93</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.4.

<sup>94</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.4.

medicines<sup>95</sup> and a Nigerian man in detention stating that the medical care in Malta is “worse than at home. Only paracetamol is given to us, for everything”.<sup>96</sup> To make up for this, MSF proposed to set up a pharmacy in detention centres and cover human resource costs for the initial six months, but the proposal was rejected by the Maltese authorities.<sup>97</sup>

### **Medcins Sans Frontieres employs cultural mediators**

Medcins Sans Frontieres employed cultural mediators to assist its doctors and psychologists when working in migrant centres (both open and closed centres) in understanding cultural issues that feature in migrants’ illness narratives. These cultural mediators have also been attending to migrants in hospital.

The majority of participants in the BViD project (62%) claimed that their physical health was negatively affected by being in detention. Living facilities, psychological issues and medical facilities were the main reasons migrants believed their physical health was deteriorating (69%, 18% and 11% respectively). Likewise MSF states that 60 people who were healthy on arrival in Malta had contracted 65 illnesses between them within 5 months of being detained.<sup>98</sup> MSF claimed that current inadequate living conditions are directly linked to morbidities most frequently observed during medical consultations<sup>99</sup> and that, consequently, MSF’s efforts could not have the desired impact.<sup>100</sup> In fact, most conditions diagnosed by MSF staff in detention were respiratory problems linked to exposure to cold and lack of treatment for infections, and skin infections due to overcrowding and poor hygiene.<sup>101</sup> MSF also proposed that a board of health professionals should be appointed to monitor living conditions in detention centres and ensure that these conditions do not impact negatively on migrants’ health.<sup>102</sup>

<sup>95</sup> Jesuit Refugee Service, *Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project)*, 2010, p.60.

<sup>96</sup> Jesuit Refugee Service, *Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project)*, 2010, p.58.

<sup>97</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.4.

<sup>98</sup> Médecins sans Frontières, *Not Criminals – Médecins sans frontières exposes conditions for undocumented migrants and asylum seekers in maltese detention centres*, 2009, p. 17; Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.2.

<sup>99</sup> Médecins sans Frontières, Médecins sans Frontières, *Migrants, Refugees and Asylum seeker: vulnerable people at Europe's doorstep*, retrieved 2009, <http://www.doctorswithoutborders.org/publications/reports/2009/MSF-Migrants-Refugees-AsslymSeekers.pdf> p.3;

Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.2.

<sup>100</sup> Médecins sans Frontières, *Migrants, Refugees and Asylum seeker: vulnerable people at Europe's doorstep*, retrieved 2009, <http://www.doctorswithoutborders.org/publications/reports/2009/MSF-Migrants-Refugees-AsslymSeekers.pdf> p.3;

<sup>101</sup> Médecins sans Frontières, *Migrants, Refugees and Asylum seeker: vulnerable people at Europe's doorstep*, retrieved 2009, <http://www.doctorswithoutborders.org/publications/reports/2009/MSF-Migrants-Refugees-AsslymSeekers.pdf> p.3;

<sup>102</sup> Médecins sans Frontières, 2009: 13.

Communal living, namely in detention centres and open centres, makes migrants subject to contagious illnesses. MSF claimed that 35% of consultations in detention regarded infectious diseases like chicken pox, respiratory and skin infections and gastroenteritis<sup>103</sup>. Alarm bells surrounding contagious diseases rang in 2009 when one migrant was diagnosed with swine flu.<sup>104</sup> MSF has stated that “there is no appropriate system for isolation...of patients with infectious diseases in the detention centres. Procedures for isolation are unclear and guards may isolate a person at their discretion... Isolation protocols which were introduced by the Maltese Disease Prevention Department are not being implemented consistently”.<sup>105</sup> Furthermore, healthy people were disciplined by being isolated alongside people isolated due to illness.<sup>106</sup> Isolation rooms, when available,<sup>107</sup> are inadequate: the two isolation rooms in “Hermes Block” have broken windows and wet floors due to leakage of nearby toilets; people in isolation only have access to the bathroom through the guards, so they often spend days without having a shower and sometimes have to urinate or defecate in empty food containers inside their room if the guards cannot be reached.<sup>108</sup> Knowing this, some detainees conceal their symptoms to avoid being put in isolation, causing a risk to themselves and others.<sup>109</sup>

Mental health is also a significant problem among asylum seekers and third country nationals. Almost 80% of people in detention who participated in the BVID project reported that their mental health has been affected by being detained, mainly because of being locked up, isolated from the world, worried, living in substandard conditions, being separated from their loved ones, past traumas and other mental health problems. Lack of activities in detention, dependence on other people’s decisions and the length and uncertainty of the detention period also contributed to feelings of defeat and hopelessness.<sup>110</sup> Living conditions and stress were the main contributors to the insomnia which 75% of respondents in the BVID project claimed to be suffering from at the time of the research. Feeling unwelcome by the Maltese population and being

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<sup>103</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p.2.

<sup>104</sup> Times of Malta, *Illegal immigrant contracts swine flu*, retrieved 17 July 2009, National; <http://www.timesofmalta.com/articles/view/20090717/local/illegal-immigrant-contracts-swine-flu>, p. 15.

<sup>105</sup> Médecins sans Frontières, *Not Criminals – Médecins sans frontières exposes conditions for undocumented migrants and asylum seekers in maltese detention centres*, 2009, p. 17.

<sup>106</sup> Médecins sans Frontières, 2009: 17.; Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p. 4.

<sup>107</sup> Isolation rooms are not available in all detention centres: Ta’ Kandja, an open centre opened in February 2009, has no such rooms.

<sup>108</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p. 4.

<sup>109</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p. 4.

<sup>110</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrontiere.it/Immagini/file/comunicati\\_stampa/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrontiere.it/Immagini/file/comunicati_stampa/MSF_malta_marzo_2009.pdf), p. 3.

“stuck in one place”<sup>111</sup> with little hope for the future<sup>112</sup> due to limited opportunities available in Malta and meagre chances of migration also adversely affected migrants’ mental health.

MSF also provided psychological services for people in open and closed centres. MSF claimed that 30% of their patients showed symptoms of depression, 25% were suffering from anxiety and 9% were suffering from post-traumatic stress disorder.<sup>113</sup> 65% of participants in the BVID project said that their needs are not being met, especially with regard to adequate treatment. Such is the acuteness of migrants’ mental health problems in detention that a number of detainees have attempted suicide.<sup>114</sup> 94% of patients who revealed suicidal tendencies had been in the centres for more than four months<sup>115</sup>. However, the existence of mental health problems within detention centres is denied by the Maltese government: “*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 1,400 immigrants*”.<sup>116</sup>

Medical services in open centres were deemed important to “reduce the dependency in the public clinics”. Although delivering such services at close proximity to migrant locations is deemed important, a balance needs to be struck between offering services to migrants and mainstreaming migrants into services already in existence. 17% of the migrants interviewed for EU Midis claimed that they had been discriminated against by healthcare personnel.<sup>117</sup>

Access to medical care is also problematic because of communication difficulties, with language being a major barrier between patients and medical professionals.<sup>118</sup> In detention, other patients are used as translators when the need arises. This compromises doctor-patient confidentiality.<sup>119</sup> However, cultural mediators started to be employed by MSF to assist in healthcare delivery in detention centres and in Mater Dei (Malta’s only state general hospital). These have subsequently been employed by Primary Health care to

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<sup>111</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p. 85.

<sup>112</sup> Jesuit Refugee Service, 2010: 348.

<sup>113</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrofrontiere.it/Immagini/file/comunicati\\_stamp/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrofrontiere.it/Immagini/file/comunicati_stamp/MSF_malta_marzo_2009.pdf), p. 3.

<sup>114</sup> Médecins sans Frontières, *Not Criminals – Médecins sans frontières exposes conditions for undocumented migrants and asylum seekers in maltese detention centres*, 2009, p. 7-21.

<sup>115</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009, [http://www.medicisenzafrofrontiere.it/Immagini/file/comunicati\\_stamp/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrofrontiere.it/Immagini/file/comunicati_stamp/MSF_malta_marzo_2009.pdf), p. 3.

<sup>116</sup> Ministry for Justice and Home Affairs’ note on the entitlements, responsibilities and obligations while in detention, Paragraph 39 quoted in MSF 2009:18.

<sup>117</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p.45.

<sup>118</sup> “To explain my problems ... I can’t do that in English or Maltese”. “Nobody [of the medical staff] spoke to me”, “There was no interpreter. I wish he [the interpreter] were there. I wish I [could] understand”, Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p. 58.

<sup>119</sup> Médecins sans Frontières, *I never thought I could be imprisoned in Europe too*, retrieved March 2009 [http://www.medicisenzafrofrontiere.it/Immagini/file/comunicati\\_stamp/MSF\\_malta\\_marzo\\_2009.pdf](http://www.medicisenzafrofrontiere.it/Immagini/file/comunicati_stamp/MSF_malta_marzo_2009.pdf), p. 3.

provide their services at one of the Health Centres most frequented by Africans.

Following its inception in 2008, the Migrant Health Unit (MHU) within Primary Health Care organised a number of activities to help migrants access healthcare and to help healthcare professionals deliver services more effectively with migrants. The MHU produced a poster with guidelines about 'Working Effectively with Cultural Mediators'. In collaboration with MSF, the MHU held a month-long training programme for cultural mediators in healthcare (June-July 2009) and a morning seminar for social workers and cultural mediators entitled "Promoting Breast Feeding among Migrant Mothers" (January 2010). The MHU, in collaboration with MSF, published a Health Education Booklet for migrants, which covered nutrition, personal hygiene and disease prevention, infectious diseases, sexual health, emotional health, child health and navigating through the healthcare system. 17 migrants were consulted throughout the drawing up of this booklet. The MHU conducted a needs assessment about overcoming language barriers at Mater Dei Hospital. In a separate research project, undertaken in collaboration with MSF, the MHU conducted focus groups with African women about female genital mutilation. A report entitled "Female Genital Mutilation: Capacity building & knowledge sharing; Focus groups with migrant women in Malta" was published.

Migrants are often associated with illnesses and with the idea that migrants bring illnesses with them which have never been identified in Malta or have been eradicated from the island years ago. This discourse is frequent among politicians and featured explicitly in a parliamentary question asking how many people residing in Malta have "rare illnesses" and, specifically, how many of these are foreign nationals.<sup>120</sup> The reply claimed that such information is still being collated) and in the election campaigns prior to the MEP elections (see section on political discourse below..

There are no official statistics regarding deaths of asylum seekers and illegal immigrants.<sup>121</sup>

## V.v Policing and ethnic profiling

It is difficult to assess the extent to which law enforcement officials employ ethnic profiling. The EU Midis survey report revealed that only 8% of Africans had been stopped by the police in Malta.<sup>122</sup> 60% of these stops occurred on

<sup>120</sup> Parliamentary Question by Hon. Noel Farrugia to Hon. John Dalli, Minister for Social Policy January 2009; Malta Government, *Jista' l-Ministru jgħid kemm kien in-numru ta' persuni li daħlu l-isptar kawża ta' mard rari matul l-2009? Kemm minnhom kienu ta' nazzjonalità barranija ?*, retrieved 20 January 2010, <http://www.pq.gov.mt/PQWeb.nsf/10491c99ee75af51c12568730034d5ee/c1256e7b003e1c2dc12576b10042e74f?OpenDocument>.

<sup>121</sup> Parliamentary Question from Hon. Stefan Buontempo to Hon. Austin Gatt. Malta Government, *Jista' l-Ministru jgħid kemm mietu persuni sena b'sena mis-sena 2000 li kienu immigranti illegali?*, retrieved 17 March 2009, <http://www.pq.gov.mt/PQweb.nsf/247dc4b4152d8f92c12568730034d5ef/c1256e7b003e1c2dc1257586004053c2?OpenDocument>

<sup>122</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p.102

the streets.<sup>123</sup> The incidence of stops for Africans in Malta was 13 stops for each 100 respondents,<sup>124</sup> making the frequency of police stops among the lowest in Europe. Police asked to see ID cards or Passports of the person stopped in 83% of cases.<sup>125</sup> 53% of interviewees who had been stopped by police claimed that they had been stopped because of their ethnicity.<sup>126</sup> 65% claimed that the police had been very or fairly respectful.<sup>127</sup> However, 18% claimed that police were disrespectful in such encounters, making Malta the country where such disrespectful encounters were most prevalent.<sup>128</sup>

The Code of Ethics of the Maltese Police force<sup>129</sup> highlights the need to foster relationships of trust and reciprocal respect within the community and with individual citizens irrespective of, *inter alia*, nationality, race, colour or religion. Additionally, harassment of any form and words or gestures which are demeaning and racially-oriented are considered unacceptable and subject to disciplinary proceedings. The Police Force receives a one hour training session on racial equality as part of the training provided at the Police Academy. This training is deemed to be too short to cover all aspects of racial equality and to have any positive long-term results. Compared to other EU nationalities, Africans in Malta were among the least likely to be stopped (13%)<sup>130</sup> or checked (less than 10%)<sup>131</sup> by the police.

The *Becoming Vulnerable in Detention* report reveals that 28% of respondents claimed to have been physically assaulted while in detention. 68% of these claimed to have been assaulted by other detainees and 32% by the staff.<sup>132</sup> Only 18% of these reported that they filed a complaint in case of physical assault, but none reported to have resulted in any consequence.<sup>133</sup> Verbal abuse occurred more frequently, with 40% of respondents claiming to have been verbally abused.<sup>134</sup> 58% of these claimed to have been mocked by

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[http://fra.europa.eu/fraWebsite/attachments/eumidis\\_mainreport\\_conference-edition\\_en\\_.pdf](http://fra.europa.eu/fraWebsite/attachments/eumidis_mainreport_conference-edition_en_.pdf)

<sup>123</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p.102

<sup>124</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p.77

<sup>125</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p 102

<sup>126</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p 103

<sup>127</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p 104

<sup>128</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p 105

<sup>129</sup> Pulizjia ta' Malta, *introduzzjoni mill-kummissarju tal-pulizija*, retrieved April 2005, <http://police.gov.mt/download/KodiciEtika.pdf>.

<sup>130</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p.77.

<sup>131</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p 83.

<sup>132</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p.276.

<sup>133</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p. 276.

<sup>134</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p.277.

staff. Verbal abuse was reported by 42% of respondents.<sup>135</sup> The project report also quotes a number of men detained in Malta: “the detention staff are soldiers and I don’t feel safe due to this”,<sup>136</sup> “soldiers can come in when they want and beat us”,<sup>137</sup> “whenever I try to speak to [staff], they tell me that I am a black animal and to go away from them. They also keep telling us that we are illegal immigrants and Malta is going to deport us back to our countries of origin”.<sup>138</sup>

## V.vi Racist violence and crime

Racist violence is a serious threat to Africans in Malta and a number of cases of racist violence occurred in 2009, some of which had tragic consequences. The EU Midis report revealed that 30% of Africans in Malta felt likely to be victims of crime<sup>139</sup> and 32% of African respondents had actually been victims of crime.<sup>140</sup> 57% of incidents involved physical violence, 85% of which were accompanied by verbal abuse. 26% of interviewees had experienced serious harassment in the 12 months preceding the research.<sup>141</sup> Of these, 99% attributed a racial or ethnic motivation with the incident (87% thereof attributed such motivation including the most recent incident whilst the other 12% attributed the motivation but not to the most recent incident). 29% of respondents claimed that they had been victims of racially motivated assault or threat and serious harassment.<sup>142</sup> 7% of respondents had been victimised in the 12 months prior to the research.<sup>143</sup> 92% of these attributed a racial motivation to the incident.<sup>144</sup> Most victims of such racist violence (63%) classified the incident as very or fairly serious, while 37% claimed that it was not very serious.

The People for Change Foundation conducted 32 interviews with African immigrants who had suffered verbal discrimination in Malta. Migrants regularly got called words like “xadin” (monkey), “iswed” (black) or “klandestin”

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<sup>135</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p277.

<sup>136</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p48.

<sup>137</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p49.

<sup>138</sup> Jesuit Refugee Service, *Becoming vulnerable in detention, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The BVID Project)*, Philip Amaral editor, 2010, p276-277.

<sup>139</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p 65.

<sup>140</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p 82

<sup>141</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p.65.

<sup>142</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p: 65.

<sup>143</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p 65.

<sup>144</sup> 89% thereof stated that their last incident was racially motivated while 3% claimed that they had been involved in racially-motivated incidents, but this was not the reason behind the most recent incident

(clandestine), “wirdiena” (cockroach) and “imbarazz” (trash), which were followed by warnings to leave Malta or threats of physical violence. This research indicates that verbal abuse is generally perpetrated by children (under 16 years old), middle-aged people (over 35) and elders. For instance, while on a flight to Malta from Brussels Ahmed Bugri, a man of African origin who entered Malta legally over 15 years ago and who has Maltese citizenship was told “Inti klandestin [*You are a clandestine*]...You have no right to laugh.” Mr Bugri is, in fact, a Maltese citizen, but this explanation only angered the aggressor further<sup>145</sup>.

African migrants, irrespective of gender, are susceptible to verbal abuse and harassment, whilst male immigrants are more likely to be subjected to physical violence. According to the interviewees, all the offenders in these incidents were Maltese.<sup>146</sup> Experience of property crimes against Africans in Malta only featured in 4% of the people interviewed for EU Midis, but this may be because most Africans are materially poor.<sup>147</sup> Incidents of physical violence tend to occur in the areas around the open centres for Migrants and entertainment districts. Perpetrators are usually aged between 16 and 40. For instance, in July Abditafah Mohamed was cycling with a friend when three men in a car stopped beside them and attacked them. While his friend managed to run away, Mr Mohammed was beaten and had his wallet, mobile phone and ID card stolen.<sup>148</sup> Many similar incidents were reported in research conducted by The People for Change Foundation.

However, the research conducted by the People for Change Foundation reveals that racially-motivated physical abuse can take several forms, many of which do not get publicity in the media. For instance, a 22-year old Somali claimed that he had been attacked by a Maltese woman when grocery shopping. The woman pinched him, threw half-rotten vegetables in his basket and then pushed him away. While doing so, she told him that Maltese leftovers were all he deserved. In a separate incident a 23 year old Ghanaian man was on duty cleaning the streets in Gzira, when a Maltese man threw a wet towel to his face. The Ghanaian could not identify the fluid in which the towel was drenched, but claimed that it was not water. A 30 year old Eritrean man was cycling to Marsa Open Centre through St. Venera High Road when a Maltese man tried to run him over, injuring his leg and leaving him in a severe state of shock. A 30 year old Sudanese man living in the Hal Far Open Centre was walking in the area in the late afternoon when a Maltese man of about 30 years old called him from his car. When the Sudanese man went closer to the driver, as he was asked to do, the driver sprayed pepper spray in his eyes and made several insulting comments. This sometimes happened when Africans approached cars driving up to them near the Marsa Open Centre in the hope of being picked up to work. As the migrants looked in to

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<sup>145</sup> Times of Malta, *I'm black, and I am Maltese*, retrieved 28 April 2009, <http://www.timesofmalta.com/articles/view/20090628/interview/im-black-and-i-am-maltese>, p. 10-11.

<sup>146</sup> [http://fra.europa.eu/fraWebsite/attachments/eumidis\\_mainreport\\_conference-edition\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/eumidis_mainreport_conference-edition_en.pdf) pg 98

<sup>147</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009 p 65.

<sup>148</sup> Times of Malta, *I feel that my life is in danger*, retrieved 12 July 2009, National; <http://www.timesofmalta.com/articles/view/20090712/local/i-feel-that-my-life-is-in-danger>, p. 9.

see if their labour was required, somebody would spray pepper spray into their eyes and then drive off before the vehicle details could be noted.<sup>149</sup>

Perhaps the most shocking incident of racial violence was the incident that led to the death of Mr Suleiman Abubaker, a 28 year old from Sudan. Mr Abubaker was refused entry into a bar because he was drunk, although his French friends, who were also drunk, were allowed into the bar. The bouncer punched Mr Abubaker, causing him to fall to the ground and hit his head against the pavement. When he managed to stand up again and hold on to a signpost, Mr Abubaker was kicked by a passerby. Mr Abubaker was taken to hospital in critical condition due to fractures in his skull, where he died a few days later<sup>150</sup>.

Unfortunately the EU Midis report shows that only over half the racially-motivated incidents of physical assault had not been reported to the police (51%). A lack of confidence in the police was quoted as the reason for not reporting in 44% of the cases, while in 33%, the feeling that the incident was trivial/not worth reporting. In another question dealing with verbal abuse, it was determined that 88% of incidents were not reported to the police, with respondents in 54% of the cases considering that the case was too trivial and not worth reporting, 2% claiming to have dealt with the problem themselves and 38% quoting no confidence in the police for not reporting.

This lack of confidence in authorities, quoted by 82% of respondents as the reason for not reporting their incident of racial violence, is fuelled by stories of fellow migrants who reported but the incident was not followed-up or by those who tried to report but were sent away. The Malta Police Force can investigate racially-motivated discrimination perpetrated by its members. In reality, though, most victims felt that they were not in a position to take on a police officer in such a situation. However, a number of respondents were anxious as they felt that they were not duly protected in Malta:

“I go to the police and they tell me go away. They don’t want to take my report. They are supposed to protect everyone. But not us. They are police. If they don’t protect me, who will?” - respondent from Sierra Leone.

## **V.vii Access to goods and services in the public and private sector**

Migrants, especially asylum seekers and protected persons, face discrimination when trying to access goods and services.<sup>151</sup> 35% of Africans who participated in the EU Midis survey claimed that they had faced

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<sup>149</sup> Times of Malta, *Urine bags thrown at Migrants as Racism Grows* – NGO, <http://www.timesofmalta.com/articles/view/20090718/local/urine-bags-thrown-at-migrants-as-racism-grows-ngos>

<sup>150</sup> Times of Malta, *Migrant dies after Paceville incident*, retrieved 11 April 2009, [http://www.timesofmalta.com/articles/view/20090611/local/migrant-dies-after-paceville-incident\\_p.1](http://www.timesofmalta.com/articles/view/20090611/local/migrant-dies-after-paceville-incident_p.1)

<sup>151</sup> Council of Europe, *The European Commission against Racism and Intolerance (ECRI) publishes new reports on Liechtenstein, Malta, Moldova, San Marino and Serbia*, retrieved 29 April 2008, [http://www.coe.int/t/dghl/monitoring/ecri/library/PressReleases/51-29\\_04\\_2008\\_en.asp#TopOfPage](http://www.coe.int/t/dghl/monitoring/ecri/library/PressReleases/51-29_04_2008_en.asp#TopOfPage).

discrimination in cafés, restaurants, nightclubs or shops in the 12 months prior to the research.<sup>152</sup>

This is despite the fact that Maltese law clearly prohibits racial discrimination in the provision of goods and services. The Equal Treatment of Persons Order<sup>153</sup> defines “discrimination” as “direct or indirect discrimination based on racial or ethnic origin”. Discrimination in relation to social protection, including social security and healthcare, social advantages, education, access to and supply of goods and services which are available to the public, and any other service is categorically banned.<sup>154</sup> Discrimination by any bank, financial institution or insurance company in relation to granting any services is also banned according to the said legislation.<sup>155</sup> Legal persons found guilty of such discrimination are liable on conviction to a fine of up to two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) and/or up to six months imprisonment.<sup>156</sup>

However, ethnic profiling can be witnessed when people who are black or Arabs try to access bars or clubs. In fact, 35% of Africans claimed to have faced discrimination in cafés, restaurants or bars.<sup>157</sup> The assumption that these people are trouble-makers often leads to arguments between bouncers (who implement this profiling, thus denying access to the bar or club) and would-be patrons. Such incidents are not uncommon when black people or people from the MENA region try to board public transport, with bus drivers refusing entry to the bus.

Although these incidents may seem small, they have a severe impact when trying to ban third-country nationals from public areas and generate a sense of lack of belonging among minority populations. Some migrants are giving up trying to access public services altogether. As in other spheres, most cases remain unreported due to a lack of trust in the authorities involved and belief, based on previous incidents narrated by friends or acquaintances, that nothing will come out of reporting. Another reason for underreporting may be the lack of knowledge that discrimination when accessing goods and services is illegal. Only 13% of Africans interviewed for the EU Midis survey knew about such laws.<sup>158</sup>

## V.viii Media, including the internet

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<sup>152</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p.10.

<sup>153</sup> Chapter 460 of the Laws of Malta accessible at <http://www.equality.gov.mt/filebank/LN%2085%20of%202007.pdf>

<sup>154</sup> Article 4(1)

<sup>155</sup> Article 5(1)

<sup>156</sup> Article 6(1)

<sup>157</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p 46.

<sup>158</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, Main result report, Conference Edition, 2009, p. 87

### **The People for Change Foundation Media Coverage of Asylum**

In 2009 PFC launched the Media Coverage of Asylum Project, which covered newspaper articles, features on the radio and on television relating to migration that were published/broadcast between July and September 2009. This report is accompanied by a manual and a number of training sessions that aim at making journalists more sensitive to the reality of migration. This project was supported by the British High Commission and the Public Broadcasting Authority.

Irregular immigration features extensively in the Maltese media and plays a large part in formulating public knowledge and facilitating discussion on the topic. Most people fully depend on the television, radio and newspaper for information on such matters. Additionally, the commenting facility available on certain online newspapers enables discussion among readers. Discriminatory or racist comments are not infrequent on such fora.

An in-depth content analysis of the local media showed that indirect racism is common in Maltese media. The terms “illegal immigrants” and “illegal immigration” are the terms of choice when describing matters relating to migration, with journalists making little distinction between the terms “illegal immigrants”, “irregular immigrants”, “asylum seekers” and “refugees” despite their differing legal definitions. Additionally, derogatory terms such as “clandestines”, “parasites”, and “scroungers” were also employed at times.

Despite such insulting descriptions of migrants, the author is not aware of any cases of racist attack in word or deed against Maltese journalists and media organisations being brought forward to Maltese courts in 2009. The report also shows that most features in the media depict migrants in a negative light, with most features representing migrants as trouble-makers or criminals as opposed to hard-workers, family-members and church-goers, which would be considered pious in Maltese society. Additionally, very few features narrated migrants’ experiences, putting forward the migration issue through the eyes of the journalists rather than the actors.

Figure 2: Distribution of Referents used in the media between July and September 2009 to discuss migration issues by Media source.<sup>159</sup>

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<sup>159</sup> 2010 People for Change Foundation, Media coverage of Asylum research report

Referent	Newspapers (articles)	Television (number of broadcasts)	Radio (number of broadcasts)	Total number of articles/broadcasts
Migrant/s	278	52	86	416
Economic migrant/s	1	0	0	0
Irregular immigrant/s	31	4	20	55
Illegal immigrant/s	137	44	50	231
Nationality	39	8	23	70
Person	10	12	16	38
Clandestine/s	36	1	2	39
Undocumented migrant/s	1	0	0	1
Displaced persons	1	0	0	1
Boat people	2	0	0	2
Illegals	4	0	1	5
Refugee	103	16	13	132
Asylum seeker	38	1	0	39
African	4	0	0	4
Third country national	1	0	0	1
Non EU nationals	1	0	0	1
Non British	1	0	0	1
Scroungers	1	0	0	1
Parasites	1	0	0	1
Migration	102	36	21	159
Clandestine journey	5	3	0	8
Clandestine immigration	1	0	0	1
Illegal migration	69	21	23	113
Irregular migration	29	1	2	32
Illegal departure	2	0	0	2
Invasion	1	0	0	1
Asylum	26	0	0	26
Relocation	8	2	3	13
Repatriation	5	1	1	7
Deportation	2	0	2	4
Resettlement	0	0	4	4

The media acted as a contributor to the fear of Malta being invaded (and conquered) by Africans, a fear which is commonly expressed in Maltese popular discourse. In April 2009 Home Affairs Minister Carmelo Mifsud Bonnici claimed that such fears are "totally unfounded". He claimed that while the media gives prominence to the number of migrant arrivals, in reality most of them want to leave Malta and, through several relocation and repatriation programmes, many of them do.<sup>160</sup> UNHCR head in Malta Jon Hoisaeter described the language used on such online fora as "rather

<sup>160</sup> The Times of Malta, *Fears of migrant invasion 'totally unfounded'*, retrieved 4 April 2009 <http://www.timesofmalta.com/articles/view/20090404/local/fears-of-migrant-invasion-totally-unfounded>

aggressive towards immigrants” which is “very discouraging”. MEP Simon Busuttil reiterated such concerns.<sup>161</sup>

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The internet is an anonymous low-cost means of communication that is accessed by a majority of Maltese citizens, particularly the younger generations. As previously stated, online fora, such as those made available by online newspapers, are used extensively to discuss migration issues. Being the only medium readily available without restrictions, the internet is widely used by NGOs and political parties alike (albeit for different ends). By setting up websites with online fora, accessing social networking sites such as Facebook and Twitter and posting videos on YouTube, far-right groups aim to get their message across and enable discussion among followers.

#### **PeaceLab opens Internet Café**

PeaceLab opened an internet café on their premises in Hal Far with the scope of bringing means of communication closer to migrants living in the area. This is thought of as a means of alleviating stress caused by not knowing about the well-being of family members living overseas.

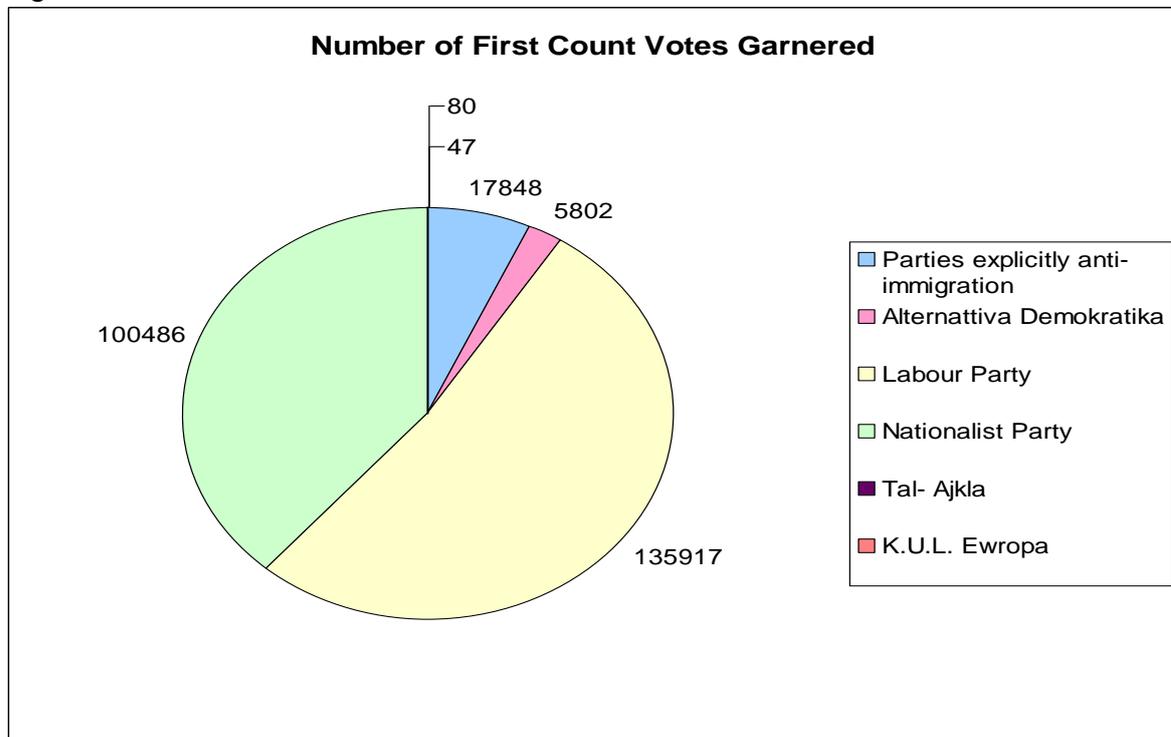
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<sup>161</sup> Times of Malta, Local, *Low racist crime figures 'shocking'*, retrieved 28 March 2010, <http://www.timesofmalta.com/articles/view/20100328/local/low-racist-crime-figures-shocking>

## VI. Political and legal context

The political highlight of 2009 was the election for the Members of the European Parliament (MEP), preceded by a vociferous campaign by all parties. Apart from the two main parties (the Nationalist Party, PN, and the Labour Party, LP) and the long-standing smaller Alternattiva Demokratika, the MEP election attracted a number of new small parties, many of which are extreme right-winged. Five MEPs were elected: three pertaining to the Labour Party and two from the Nationalist Party. Thus, the LP is represented through John Attard Montalto (who garnered 12,880 first-count votes), Louis Grech (27,753 first-count votes) and Edward Scicluna (24,574 first-count votes). PN is represented through Simon Busuttil (68,782 first-count votes) and David Casa (6,539 first-count votes). A breakdown of electoral results shows that small extreme-right-wing parties garnered a considerable number of votes, particularly in relation to Alternattiva Demokratika and other small parties and when considering Malta's bipartisan political following. Visual inspection of Figure 1 (below) reveals that the PL garnered the largest number of votes, with 135,917 first-count votes. This was followed by the PN, who garnered 100,486 first-count votes. An aggregate count of first-count votes pertaining to extreme-right-wing parties shows that these parties garnered 17,848 votes between them: over tripple the number of first-count votes garnered by Alternattiva Demokratika. Other new small parties, namely K.U.L. Ewropa and Tal-Ajkla, only garnered a handful of votes.

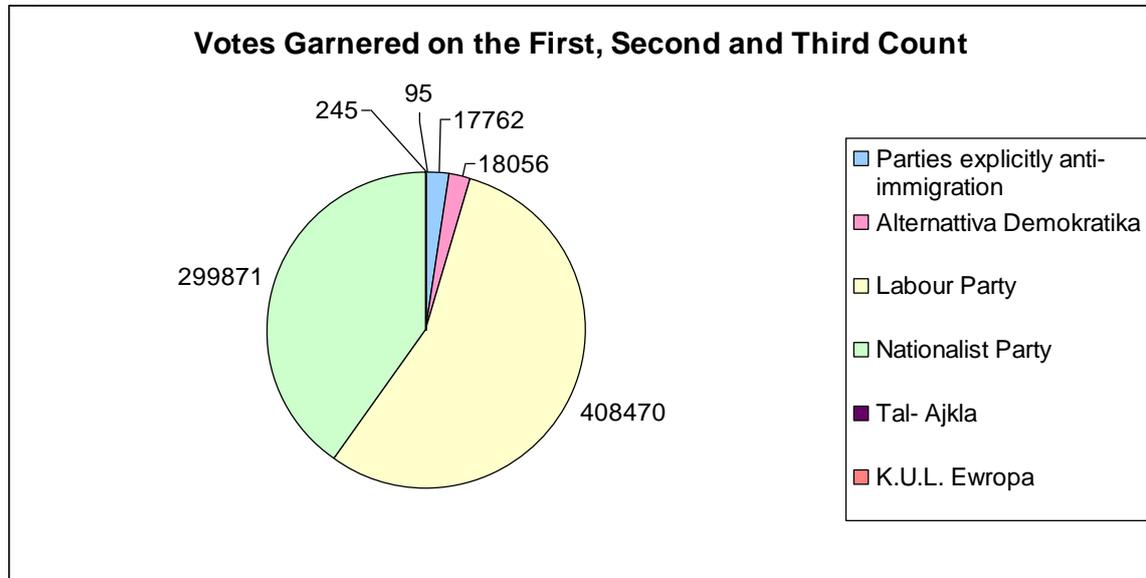
Figure 3<sup>162</sup>:



<sup>162</sup> <http://www.doi.gov.mt/EN/elections/default.asp>

A look at the number of votes garnered from the first to the third count reveals a similar picture regarding the PL and PN, but extreme-right-wing parties are overtaken by Alternattiva Demokratika by a marginal number of votes (n=294). This can be seen in Figure 2 below. No far-right politicians were elected in these MEP elections.

Figure 4:



### VI.i Anti discrimination

Improvements to the transposition of the Race Directive resulted in the closing of infringement proceedings against Malta over the period under review. The proceedings related to three main concerns. The first was an apparent exception relating to banks and financial institutions, the second related to the fact that the independence of the equality body was not mentioned, and the third related to the fact that the reference to 'determining' was omitted from the exception relating to genuine and determining occupational requirements. By 2010, Malta had made the relevant amendments to bring its legislation in line with the requirements of the Directive whilst the banking exception was satisfactorily explained by Malta.

### VI.ii Migration and integration

Within the realm of integration, the most notable development over the period under review was the enactment of the Agency for the Welfare of Asylum Seekers Regulations.<sup>163</sup> The regulation formally set up the agency that replaced the organization for the integration and welfare of asylum seekers set up in 2007.<sup>164</sup>

<sup>163</sup>Subsidiary Legislation 217.11 available at: <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/217/11.pdf>

<sup>164</sup> Ibid.

Unlike its predecessor (OIWAS), that was a department within the Ministry, the agency was set up as a body corporate with a distinct legal personality that performs the tasks as per the agency performance agreement entered into with the Ministry for Justice and Home Affairs.<sup>165</sup> This creates a clearer distinction of roles between those entrusted to the agency and those retained by the Ministry directly. The enactment of the regulations also makes the agency a legal person increasing both its profile and its accountability, giving it the same standing as other welfare offering entities including APPOGG.

The term integration was taken out of the name of the agency and the promotion of this goal is not listed as a specific aim, purpose or task of the agency. This is a matter of concern, especially when seen in contrast with the promotion of resettlement and assisted voluntary return which are specifically outlined as tasks of the agency.<sup>166</sup> NGOs argue that this indicates that integration is not a priority for the administration and services are offered on a timescale based on the understanding that service users are on their way out of the country. Little or no emphasis is being placed on those who will remain in Malta. This reflects a general attitude that sees migrants as persons in transit and fails to acknowledge that a number of persons will remain and settle in the country.

The overarching function of the agency is to implement national legislation and policy concerning the welfare of refugees, persons enjoying international protection, and asylum seekers.<sup>167</sup> This provision fails to mention rejected asylum seekers despite the fact that some 15%<sup>168</sup> of the residents in open centres (which are the main responsibility of the agency) fall within this category. Moreover, whilst the national legal framework has now developed considerably, the policy framework remains critically weak and fragmented. In this respect, there are very few areas of concern which are actually being adequately covered in formal policies. The proper implementation of this provision therefore requires that emphasis is placed on policy development, aiming at achieving a comprehensive policy framework on welfare issues for people who have been through the asylum system.

The list of tasks set for the agency includes the overseeing of the daily management of accommodation facilities, provision of services to vulnerable migrants and the provision of information programmes to clients. Another important responsibility is that of acting as a facilitator with all public entities responsible for providing services to ensure that national obligations to refugees and asylum seekers are accessible.<sup>169</sup> The wording of these provisions would tend to suggest that the aim is to have services offered to migrants mainstreamed into public services with the agency acting as a facilitator in between public services. It has been noted, however, that the realisation of such mainstreaming is still not the case and that entities

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<sup>165</sup> See in this regard Article 4

<sup>166</sup> Subsidiary Legislation 217.11 available at: <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/217/11.pdf>

<sup>167</sup> Article 6(1)

<sup>168</sup> Based on data as at August 2010.

<sup>169</sup> Article 6(2)(d).

consider the agency to be a service provider. It is, therefore, felt that that clients from a migrant background should go to the agency for the services, thereby evading their own responsibility. A clearer understanding between the various relevant agencies, possibly through the adoption of Memoranda of understanding is, therefore, urgently required.

Whilst being, primarily, an operational entity, the agency is also tasked with advising the Minister with new developments in its field of operation and with proposing policies or legislation required for improving the service given and fulfilling any legal obligation towards the service users.<sup>170</sup> Furthermore, the agency is to encourage networking with voluntary organizations so as to increase the standard of service and academic research. This is in line with previous acknowledgments of the important role that NGOs play within this field.<sup>171</sup> In this regard, the agency took over the running of the NGO Forum, a consultation platform which meets regularly and brings together representatives of the Agency and NGO representatives. The forum met regularly over the period under review, however, many NGOs complained that the forum was not reaching its potential in the sense that the forum was not being given the opportunity to really influence policy and practical developments and had become more of an information exchange and update scenario than a consultation process.

The agency is to be financed by the government according to the yearly estimates it provides and upon the approval of the Parliament. Moreover, the agency is authorised to levy fees for services related to the on-going upkeep and maintenance of centres under its responsibilities. Furthermore, whilst this is not specifically stated, it is presumed that the agency will continue to benefit from co-funding opportunities under the European Refugee Fund and other funds available to it. The regulations imposed on the agency the obligation to produce annual reports that are to become public through presentation to parliament. At the time of writing, no such reports had yet been presented.

Integration was largely excluded from the MEP election campaigns, with Alternattiva Demokratika (AD, the Green party) being the only party to mention it. Arnold Cassola claimed that AD believes that humanitarian realities of immigrants must be given their due weight and that an integration policy should be drawn up.<sup>172</sup> He accused PN for “sowing the seeds of racial hatred” and of “playing with fire when undermining the general unity shown by democratic parties with regards to the immigration problem, while showing itself ready to sacrifice our country's social stability to the egoistic needs of the party”.<sup>173</sup> Yvonne Ebejer Arqueros,<sup>174</sup> an MEP candidate for AD called for the

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<sup>170</sup> Most notably obligations arising from EU Legislation

<sup>171</sup> See for instance Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity, *Irregular Immigrants, Refugees and Integration – Policy Document*, 2005, p. 12.

<sup>172</sup> Arnold Cassola, *Alternattiva demokratika manifesto for european elections*, retrieved 8 April 2009, <http://arnoldcassola.wordpress.com/2009/04/08/alternattiva-demokratika-manifesto-for-europeanelections/>.

<sup>173</sup> Arnold Cassola, *Campaigning by Confusion*, retrieved 12 May 2009, <http://arnoldcassola.wordpress.com/2009/05/12/campaigning-by-confusion/>

better treatment of migrants, proposing that centres must be tailor-made for migrants' needs and integration should be aided through education. However, Ebejer Arqueros suggested this alongside the need to strengthen Malta's defense system. Candidates from other parties who did speak about migration in their campaigns generally identified it as a problem, which may only be overcome with aid from the EU.

### **VI.iii Criminal justice**

#### **VI.iii.i Racism as a crime**

The Criminal Law<sup>175</sup> provisions relating to racist violence and crimes were amended considerably by virtue of Act XI of 2009,<sup>176</sup> which developed and expanded the provisions that were first introduced in 2007. However, despite the high density of occurrences of racial violence, only 4 people have been charged in court for racist crimes in the last 10 years, only 1 of whom was charged in 2009.<sup>177</sup> This fact was described as "shocking" by Nationalist MEP Simon Busuttil.<sup>178</sup> A statement given by a spokesperson of the National Commission for the Promotion of Equality (NCPE), claimed that the number of court cases did not seem to reflect the actual state of affairs.<sup>179</sup>

#### **Incitement to Racial Hatred**

Within the context of the crime of incitement to racial hatred, the reference to 'racial hatred' was expanded to explicitly cover violence meaning that it is now a criminal offence to incite violence based on racial grounds and not only 'racial hatred'. This provision is considered to make prosecutions relatively easier as proving actual violence is easier to prove than hatred per se. The means for the commission of the offence may be the use of threatening, abusive or insulting words or behaviour, the display of any written or printed material of the same nature or other behaviour which is intended, or considering all the circumstances likely to stir up violence or hatred. The reference to the general circumstances is important as it reduces the requirements of evidence of intent by the individual and takes into consideration general and widespread feelings of xenophobia within the country or within the particular audience being addressed. The definition of race within this context is generally broad covering colour, race, religion, descent, nationality (including citizenship), or ethnic or national origins or against members of such groups. Moreover, religious group is defined by reference to religious belief or lack thereof. Such a broad definition is important for the relevance of the provisions especially when one notes that the main targets of racist violence in Malta have tended to be African

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<sup>174</sup>Yvonne Ebejer Arqueros, *Making the Lisbon Treaty work for all of us*, retrieved 25 May 2009, <http://yvonneebejerarqueros.wordpress.com/>.

<sup>175</sup>Criminal Code; Chapter 9 of the Laws of Malta

<sup>176</sup>Available at: <http://www.doi.gov.mt/EN/parliamentacts/2009/Act%20XI%20Criminal%20Code.pdf>

<sup>177</sup>Times of Malta, Local, *Low racist crime figures 'shocking'*, retrieved 28 March 2010

, <http://www.timesofmalta.com/articles/view/20100328/local/low-racist-crime-figures-shocking>

<sup>178</sup>Supra note 163

<sup>179</sup>Times of Malta, Local, *Low racist crime figures 'shocking'*, retrieved 28 March 2010, <http://www.timesofmalta.com/articles/view/20100328/local/low-racist-crime-figures-shocking>

immigrants.<sup>180</sup> The penalty established for this crime is of between six to eighteen months, which is considered to be commensurate for the offence especially when one considers that incitement for unlawful assembly and to disobey the law is punishable by imprisonment not exceeding 3 months.

In this regard, it is also noteworthy that the Courts decided against an appeal by Mr. Norman Lowell regarding the decision of the Court of Magistrates in which he had been convicted of incitement to racial hatred. That decision provided some guidance on the interpretation of the legal provisions. The Court acknowledged that the Criminal Code does not provide a definition of what is meant by the term racial hatred and referred to the definition of 'racial discrimination' and 'racism' provided in Article 1 of the ICERD as a guideline. Going through the various speeches of which he stood accused, the Court concluded that there was no doubt that in the view of the individual of 'normal and ordinary' intellect, the words and reference amounted to threatening behaviour, abusive and insulting which results in racial hatred. Moreover, the court clearly held the accusations as ones of a very serious nature and that the Court felt that it ought to protect all race's present in Malta, including those who are in a minority. The Court found that this was because it ought to protect every citizen of the country, irrespective of colour, race, or religion. Whilst the maximum penalty provided by law was 4 years (when one considers the continuing nature of the accusations and other circumstances) the court gave a 2 year imprisonment suspended sentence for a period of 4 years. The Court said that this should have the effect of forcing the accused to consider his words carefully before expressing himself in the future. It further provided that the accused was to pay a fine of 500 Euros.

In April 2008, Mr. Lowell filed an appeal before the Court of Criminal Appeal. This was rejected on the basis that the application thereof did not conform with the requirements set out in the law. Mr. Lowell's interpretation of the Court's judgment is that his right to freedom of speech was jeopardized.

This judgment was flagged by a number of right-winged politicians during the MEP elections, such as Emmy Bezzina from the Alpha Party who claimed that most people speak diplomatically about the issue for fear of being "interpreted as being racist or xenophobic"<sup>181</sup>. Themes of invasion<sup>182</sup> and Fortress Europe were also prominent in MEP candidates' campaign speeches, with a strict border control being a priority for Cecil Herbert Jones, the sole member of Koerenza, Unita', Liberta' Ewropa (KULE) aka Jones Party<sup>183</sup> and turning

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<sup>180</sup> See in this regard pages 27-30 of this report and a report on this specific issue produced by The People for Change Foundation for the European Network Against Racism (unpublished)

<sup>181</sup> Emmy Bezzina, *illegality reigning supreme*, [http://www.emmybezzina.org/art\\_220209.html](http://www.emmybezzina.org/art_220209.html)

<sup>182</sup> Emmy Bezzina: "illegality is reigning supreme in this sphere of restless occupancy by these invaders"; ALDM: "MALTA IS BEING INVADED", it is now "FULL UP – NO MORE ILLEGAL IMMIGRANTS whether black or white, men, women or children" Alliance of Liberal Democrats Malta, <http://www.freewebs.com/liberalalliance/>; Josie Muscat (AN): "tsunami" of migrants which MEPs must tackle by "fight[ing] for the national interest." Mary Gauci from Libertas Malta calls for "zero tolerance": "Malta can take no more immigrants." Norman Lowell (Imperium Europa) Times of Malta, European Elections, *It's now or never!*, retrieved 12 May 2009, <http://www.timesofmalta.com/mep elections/blogs/norman-lowell/20090512/its-now-or-never>

<sup>183</sup> You tube, *Cecil Herbert Jones Interview Times of Malta MEP Elections 2009*, retrieved 28 May 2009, <http://www.youtube.com/watch?v=69vGsuydvQY&feature=related>

Frontex “from a sieve into a shield” so that “not one illegal immigrant will be allowed to set foot on this Sacred Island” being a solution proposed by Norman Lowell of Imperium Europa. A number of politicians proposed solutions to encourage burden-sharing, such as, following medical screening and verification of identity upon their arrival in Malta, migrants should be given a Maltese EU Passport and the facility to travel onwards to Europe<sup>184</sup> or an EU “blue card” system, which is administered by each member state to ensure that economic migration is allowed as long as it is beneficial to EU citizens.<sup>185</sup> Others, such as John Zammit from ALDN<sup>186</sup> or John Fredrick Spiteri Gingell from AN<sup>187</sup> proposed repatriation of migrants to Libya or their countries of origin.

## Racial Aggravations

The same act also introduced a general provision that increases the punishment for any offence when it is racially or religiously aggravated or when it is motivated, whether wholly or in part, by xenophobia. The established increase in punishment is of one or two degrees.<sup>188</sup> An offence is deemed to be racially or religiously aggravated or motivated by xenophobia when at the time when the offence is committed, or immediately before or after, the offender demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim’s membership (or presumed membership) of a racial or religious group or where the offence is motivated, wholly or in part, by such hostility aversion or contempt. It is not required that the offence be exclusively or even primarily motivated by such hostility. On the contrary, Article 222A(5) provides that it is immaterial whether or not the offender’s hostility is also based, to any extent, on any other factor not being one of those mentioned above. The reference to hostility was supplemented by the terms aversion and contempt that implies a lower threshold thereby extending the possible scope of application of these provisions and ensuring that the wording of the law does not restrict its possible use within the context of prosecution. No definition of the terms has been provided in the legislation; however, the ordinary meaning of the words implies a lower threshold and a broader scope of application of the provision within the context of prosecutions.

These provisions expanded considerably on the previous provisions that made racial or religious motivation an aggravating circumstance only with regard to crimes against the person. The amended provisions make such motivation an aggravating circumstance for all crimes. This expansion also

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<sup>184</sup> Times of Malta, European Elections, *Illegal immigration - a solution*, retrieved 30 May 2009, <http://www.timesofmalta.com/mepselections/blogs/cecil-herbert-jones/20090530/illegal-immigration-a-solution>

<sup>185</sup> Alliance of Liberal Democrats Malta, Manifesto, <http://www.freewebs.com/liberalalliance/epelection2009.html>.

<sup>186</sup> YouTube, *John Zammit Interview The Times of Malta MEP Elections 2009*, retrieved 26 May 2009, <http://www.youtube.com/watch?v=YBGINryq7II>

<sup>187</sup> Times of Malta, European Elections, *Malta needs conviction and not opportunism*, retrieved 2 May 2009, <http://www.timesofmalta.com/mepselections/blogs/john-spiteri/20090502/malta-needs-conviction-and-not-opportunism>.

<sup>188</sup> The degrees of punishment are established in Article 31 of the Criminal Code.

addressed the possibility of incidents such as those occurring in 2006<sup>189</sup> whereby the attacks were directed against properties and not against the targeted individuals.

#### **VI.iii.ii Counter terrorism**

Terrorism did not feature in any political or legal debates throughout the course of 2009.

#### **VI.iii.iii Ethnic profiling**

No information on ethnic profiling is available.

#### **VI.iv Social inclusion**

The National Report on Strategies for Social Protection and Social Inclusion (2008-2010)<sup>190</sup> has been discussed in previous shadow reports. While most MEP campaigners highlighted the negative aspects of migration and asylum, giving migrants the right to vote in local elections was a heavily debated topic in Malta. PN MEP Simon Busuttil described the issue as “a red line...which we were not prepared to cross”.<sup>191</sup>

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<sup>189</sup> [http://cms.horus.be/files/99935/MediaArchive/pdf/Malta\\_2006.pdf](http://cms.horus.be/files/99935/MediaArchive/pdf/Malta_2006.pdf)

<sup>190</sup> Accessible at [http://president.gov.mt/glieda\\_kontra\\_l-fagar](http://president.gov.mt/glieda_kontra_l-fagar)

<sup>191</sup> Times of Malta, Local, *MEPs seek voting rights for immigrants*, 1 april 2009

<http://www.timesofmalta.com/articles/view/20090401/local/meps-seek-voting-rights-for-immigrants>

## VII. National recommendations

### VII.i General

- Training about culturally sensitive issues needs to be provided to several bodies, ranging from service providers to policy-makers and journalists.
- Policies on all issues should undergo an equality audit prior to being implemented.
- The National Minimum Curriculum should be expanded to include human rights education and education that meets the needs of multicultural classrooms.
- NGOs and civil society should be strengthened and collaborations in the form of networks, platforms, or joint projects, should be encouraged.

### VII.ii Anti discrimination

- More positive action is needed to prevent discrimination. This could be in the form of anti-discrimination campaigns or training to service-providers and bodies. There need to be more campaigns that educate the population about the positive aspects of integration.
- Specific research and direct targeting of anti-discrimination in the services industry is desirable, particularly in areas where discrimination is more common, such as the entertainment industry and public transport.
- Best practice examples of inclusion and anti-discrimination should be acknowledged.
- The bodies responsible for receiving reports of discriminatory incidents should be strengthened both in terms of their ability to act effectively when they receive reports and also in terms of expanding their remit to cover discrimination on all six grounds and in any environment. Further collaboration or amalgamation between the NCPE and DIER will help in this regard.
- Campaigns specifically encouraging the reporting of discrimination by the general public also need to be carried out.
- In addition to the above, the mechanisms for reporting should be revised in order for them to be more easily accessible. Some examples can be reducing language barriers through translation.

- There is also a need for campaigns targeted at migrants in order to raise awareness about what constitutes discrimination and identify the responsible bodies for reporting discrimination incidences. Issues of multiple ground discrimination should also be tackled through such campaigns.

### **VII.iii Migration and integration**

- A sustainable integration policy needs to be developed in a way which is sensitive to age and gender.
- Specific campaigns aimed at integration could be carried out. Among the most important recipients of targeted campaigns are employers, educators and healthcare providers.
- Human news stories will help to portray migrants as people rather than numbers.
- Detention should be kept to a bare minimum, or abolished, especially with the more vulnerable sections of the migrant population.
- Small open centres should be encouraged rather than large ones to avoid ghettoisation.
- A revolving door policy for open centres should be in place to avoid destitution among migrants living in private accommodation who lose their jobs.
- Local councils could carry information and have trained staff to assist any migrants who would like to move into a locality. Many migrants at the moment feel that they are outsiders and generally tend to move into areas close to each other and to shy away from villages. Local initiatives could help to counter this and make the process less unappealing.

### **VII.iv Criminal justice**

#### **VII.iv.i Racism as a crime**

- The criminal aspect of racism must be enforced with harsher punishments to those who discriminate.
- Issues of racial discrimination should be included on all employees' code of ethics.
- Victims of discrimination should be encouraged to report their experiences.

#### **VII.iv.ii Counter terrorism**

- It would be desirable for there to be some accessible information made available to the public on counter-terrorism policy or measures which are being taken or formulated. Without this it is very difficult to assess the impact of these measures, which garner very little attention in political discourse.

#### **VII.iv.iii Ethnic profiling**

- A specific campaign targeted at ethnic profiling in specific sectors, including the police force should be carried out.
- Specific training programmes should be put into place. These will inform police on:
  - Ethnic profiling and the reasonable suspicion standard.
  - The ways in which to police a diverse society
- A campaign against ethnic profiling should be carried out at national level. This would make people aware of the problem, the fact that it is not sanctioned at state level and, therefore, more ready to report it when it occurs.
- An investigation into how to achieve the full potential of different anti-discrimination institutions in the investigation of claims of discrimination by the police.
- Encouraging investigation by the relevant authorities on the treatment of ethnic minorities within the law enforcement system.

#### **VII.v Social inclusion**

- Migrants should be empowered to participate in NGO decision-making and project planning as well as to take on their own initiatives.

## VIII. Conclusion

The European Union Minorities and Discrimination Survey (EU-MIDIS) identified the African immigrant group as that which is most vulnerable to racism. Although expected, the numbers nonetheless call for the attention of Maltese NGOs and policy-makers: 66% of Africans in Malta who participated in the survey experienced discrimination during the 12 months prior to the research, while 52% of respondents felt that discrimination was widespread in Malta.

According to the NCPE, four areas where racial discrimination was prevalent in 2009 were unfair treatment at work and in recruitment, discrimination in the access to housing, access to Visa and the access to goods and services. Other research indicated that racist violence and racist comments in the media are not uncommon. The media acted as a contributor to the fear of Malta being invaded (and conquered) by Africans, which is commonly expressed in Maltese popular discourse. Additionally, loosely-defined policies leave much uncertainty regarding service entitlements of foreign nationals, opening doors for discrimination.

There needs to be more campaigns that educate the population about the positive aspects of migration and integration. Additionally, there is also a need for campaigns to raise awareness about what constitutes discrimination (including discrimination on multiple grounds) and to identify the responsible bodies for reporting incidents of discrimination. Similarly, NGOs and Civil society organisation should be strengthened and collaboration between organisations encouraged in order to tackle discrimination more effectively.

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## **X. Annex 1: List of abbreviations and terminology**

AD: Alternativa Demokratika  
ALDM: Alleanza Liberali Demokratika Maltija  
AN: Azzjoni Nazzjonali  
AWAS: Agency for the welfare of asylum seekers regulations  
DEVAS: Becoming Vulnerable in Detention  
DIER: Departament of Industrial and Employment Relations  
ELDR: European Liberal Democrats  
ETC: Employment and training Corporation  
EU: European Union  
EUMIDIS: European Union Minorities and Discrimination Survey  
ICERD: International Convention on the Elimination of all forms of Racial  
IOM: International Organization for Migration  
Discrimination  
IE: Imperium Europa  
KUL: Koerenza, Unita', Liberta'  
LM: Libertas Malta  
LP: Labour Party  
MCAST: Malta College of Art, Science and Technology  
MEA: Malta Employers Association  
MEP: Member of the European Parliament  
MHU: Migrant Health Unit  
MQC: Malta Qualifications Council  
MQRIC: Malta Qualification Recognition Information Centre  
MSF: Médecins Sans Frontières  
NCPE: National Commission for the promotion of Equality  
NGO: Non-Governmental Organisation  
OFD: Organisation for friendship in Diversity  
OIWAS: Organization for the Integration and Welfare of Asylum Seekers.  
PfC: The People for Change Foundation  
PN: Nationalist Party  
TCN: Third Country National

