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Committee on the Elimination of Racial Discrimination**Seventy-ninth session**

8 August – 2 September 2011

**Consideration of reports submitted by States parties under
article 9 of the convention****Concluding observations of the Committee on the Elimination of Racial
Discrimination****Malta**

1. The Committee considered the fifteenth to twentieth periodic reports of the Malta (CERD/C/MLT/15-20), submitted in one document, at its 2114th and 2115th meetings (CERD/C/SR. 2114 and CERD/C/SR. 2115), held on 24 and 25 August 2011. At its 2126th meeting (CERD/C/SR. 2126), held on 1st September 2011, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission by the State of its fifteenth to twentieth periodic reports drafted in accordance with the Committee's guidelines for the preparation of reports, despite the long delay. The Committee appreciates the resumption of dialogue with the State party.

3. The Committee welcomes the frank and open dialogue held with the delegation of the State party as well as its efforts to provide comprehensive responses to issues raised by Committee members during the dialogue.

B. Positive aspects

4. The Committee welcomes the efforts made by the State party to address the continuing flows of irregular immigrants into its territory due to the upheavals in the region notwithstanding its limited financial and human resources.

5. The Committee notes with appreciation the various legislative, institutional and policy developments which have taken place in the State party to combat racial discrimination, including:

(a) Amendments to the Criminal Code in 2002 and 2009, by means of Act No. III of 2002 and Act No. XI of 2009 which respectively introduced the offence of incitement to racial hatred and racial violence into the Criminal Code, as well as offences of condoning or trivializing genocide, crimes against humanity, war crimes and crimes against peace directed against a group defined by reference to race, colour, religion, descent or national or ethnic origin; and liability of corporate bodies for such offences;

(b) Article 141 of the Criminal Code, which increases by one degree the punishment of a public officer for an offence relating to racism;

(c) Act No. XI of 2009, which introduces into the legislative framework the concept of an aggravation of an offence whenever this is motivated by xenophobia and also makes possible for any offence to be considered as racially or religiously aggravated or motivated by xenophobia;

(d) The reversal of the burden of proof in civil proceedings involving racial discrimination, by means of the Equal Treatment of Persons Order (LN 85 of 2007);

(e) The introduction of the Immigration Appeals Board in the Immigration Act by means of Act XXIII of 2002, which enables migrants to appeal decisions taken by the Principal Immigration Officer;

(f) The withdrawal, in 2001, of the geographical reservation to the 1951 Geneva Convention of Refugees and the operationalization of the Office of the Refugee Commissioner, in 2002;

(g) The role of the Parliamentary Ombudsman and the National Commission for the Promotion of Equality (NCPE);

(h) The various programmes and initiatives aimed at raising the awareness of the population with regard to racial discrimination, integration and tolerance.

C. Concerns and Recommendations

6. The Committee regrets that the State party has not provided reliable and comprehensive statistical data on the composition of its population including economic and social indicators disaggregated by ethnicity, in particular on immigrants living in its territory, to enable it to better evaluate their enjoyment of civil and political, economic, social and cultural rights in the State party.

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party collect and publicize reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by ethnicity, including on immigrants, from national census or surveys which include the ethnic and racial dimension based on self-identification, to enable the Committee to better evaluate their enjoyment of civil and political, economic, social and cultural rights. The Committee requests the State party to provide the Committee with such disaggregated data in its next report.

7. While noting explanations provided by the State party, in particular, about the integration of the European Convention on Human Rights and Fundamental Freedoms and the European directive 2000/43 to its domestic legal order, the Committee is concerned that the Convention has not yet fully been incorporated in the domestic legal order of the State party. (art.2).

The Committee recommends that the State party take appropriate measures to incorporate all provisions of the Convention in its domestic legal order.

8. While noting the various legislative (in particular the amended Criminal Code in 2002 and 2009) and institutional developments adopted to combat racial discrimination, the Committee is concerned about the absence of information about the practical impact on the ground of such measures and their effectiveness. (art.2)

The Committee recommends that the State party take concrete measures to effectively implement its legislation and other institutional and policy measures taken to combat racial discrimination, to allocate them sufficient resources and to periodically evaluate their effectiveness for the persons or groups particularly targeted. The Committee also recommends that the State party provide it with comprehensive data on the achievements of such measures, and information on the practical application of its legislation, in its next periodic report.

9. While noting that the State party has created a National Commission for the Promotion of Equality and the Office of the Parliamentary Ombudsman, the Committee is concerned that the State party has not yet established a national human rights institution in full compliance with the Paris Principles (art. 2).

The Committee recommends that the State party consider establishing a National Human Rights Institution, in full compliance with the Paris Principles, or consider expanding the mandate governing structures and procedures of the National Commission for the Promotion of Equality in order to provide it with a broader mandate, in full compliance with the Paris principles.

10. While noting that the Parliamentary Ombudsman has a mandate to address cases relating to racial discrimination involving governmental and State's party entities, the Committee regrets that his limited powers do not allow the Parliamentary Ombudsman to address issues relating to racial discrimination in the private sphere, as indicated by the Parliamentary Ombudsman in the State party's report (Report of the State party (CERD/C/MLT/15-20), Annex, paras. 3-5). (art. 2).

The Committee recommends that the State party revise the mandate of the Parliamentary Ombudsman in order to enable him to address issues related to racial discrimination in the private sphere.

11. The Committee is concerned at the lack of sufficient information on complaints, prosecutions, convictions and sentences handed down by national courts and tribunals, by the National Commission for the Promotion of Equality and the Parliamentary Ombudsman for acts of racial discrimination, as well as reparation granted, including with regard to the application of article 4. The Committee reiterates its view that the lack of any complaints is not proof of the absence of racial discrimination and may be the result of the victim's lack of awareness of their rights, the lack of confidence on the part of individuals in the police and judicial authorities or authorities' lack of attention or sensitivity to cases of racial discrimination. (art. 4, 6)

In light of its General recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party continue to disseminate its legislation on this matter and inform the public, in particular immigrants, on all available remedies, on the legal assistance which can be provided, as well as on the reversal of the proof in civil proceedings. It also recommends that the State party provide training to its prosecutors, judges, lawyers, police officers and other law enforcement officials on how to detect and provide redress for acts of racial discrimination. The Committee requests the State party to provide in its next periodic report comprehensive information on complaints, proceedings, convictions, sentences, and reparation provided for acts of racial discrimination.

12. The Committee is concerned about discriminatory discourse and hate speech by some politicians in the State party. It is also concerned about the phenomenon of dissemination of racism and racial discourse in media, including through Internet (art. 2, 4).

The Committee recommends that the State party take appropriate means to counter and strongly condemn racism and hate speech by politicians, as well as manifestations of racism in the media, including through internet, in particular by effectively prosecuting those responsible whatever their status. The Committee also recommends that the State party promote tolerance, understanding and friendship between various ethnic groups living in its territory.

13. While noting the large flow of immigrants and efforts made by the State party in dealing with it, the Committee is concerned about reports according to which their legal safeguards are not always guaranteed in practice. It is also concerned about the detention and living conditions of immigrants in irregular situation in detention centres, in particular of women and families with children. (art. 5).

The Committee recommends that the State party strengthen its efforts to effectively guarantee the legal safeguards for all immigrants detained, in particular to inform them about their rights, including the legal assistance and to provide assistance to those who seek asylum. The Committee also recommends that the State party continue its efforts aimed at improving the living and conditions of detention of immigrants and thus comply with international standards, in particular the modernization of detention centres and the placement of families with children in alternative open accommodation centres. The Committee further recommends that the State party adopt the project conducted by the Refugee Commissioner in order to improve the refugee system.

Due to the large flows of migrants into the territory of Malta, the Committee recommends that the State party continue to seek assistance from the international community and in particular from European Union partners as well as bilateral cooperation.

14. The Committee is concerned about the recurrence of riots against conditions of their detention (2005, 2008 and 2011) by detained immigrants in detention centres, for example at Safi Barracks, and about the reported excessive use of force to counter them (art.5).

The Committee recommends that the State party take appropriate measures to improve conditions of detention and refrain of resorting to excessive use of force to counter riots by immigrants in detention centres, and to avoid such riots. In that regard, the Committee recommends that the State party pursue the implementation of the recommendations made in the Pasquale report on events occurred in the detention centre Safi Barracks, in 2005.

15. While noting different measures taken by the State party to facilitate the integration of immigrants in the Maltese society, such as the establishment of the Welfare Agency, the vocational and language training, the Committee is concerned about difficulties faced by immigrant women, in particular refugees and asylum-seekers, in effectively accessing to education, to social services and to the labour market. (art. 5)

In light of its General recommendations No. 25(2000) on gender-related dimensions of racial discrimination; No. 30 (2005) on discrimination against non-citizens and No. 32 (2009) on the meaning and scope of special measures in the International Convention of All Forms of Racial Discrimination, the Committee recommends that the State party to:

(a) undertake focused measures to favour immigrant women and to integrate the racial dimension in all policies related to enhanced opportunities for women in the State party;

(b) carefully monitor the impact of its laws and policies on immigrant women, in particular refugees and asylum-seekers, in order to protect them against double discrimination and marginalization. In that regard, the Committee recommends that the Employment and Training Corporation also include in its initiatives the situation of immigrant women;

(c) provide the Committee with information in that regard in its next periodic report.

16. While noting measures taken by the State party to combat racial discrimination, the Committee is concerned that immigrants, in particular refugees, asylum-seekers and irregular migrants continue to face discrimination in the enjoyment of their economic, social and cultural rights, in particular with regard to access to housing and employment. (art.5)

In light of its General recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State strengthen its efforts to apply its legislation to combat racial discrimination direct or indirect, with regard to the enjoyment of economic, social and cultural rights by immigrants, in particular refugees and asylum-seekers, including access to the private rental housing and to the labour market. The Committee recalls that, under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of that aim. The Committee requests that the State party provide it with information on the outcome of the case pending before the National Commission for the Promotion of Equality with regard to racial discrimination in renting private accommodation. The Committee also requests the State party to provide it with comprehensive data on economic, social and cultural situation of immigrants in its next periodic report.

17. While noting measures taken to promote diversity, tolerance and understanding between different ethnic groups, including through various trainings in schools and awareness-raising campaigns, the Committee is concerned about the absence of information on achievements and practical impact of such measures. (art.7).

The Committee recommends that the State party strengthen its efforts to eliminate stereotypes of immigrants, in particular refugees and asylum seekers and pursue its awareness-campaigns on equality, inter-cultural dialogue, tolerance, in particular by including in the school curricula and the media. In that regard, the Committee encourages the State party to foster an effective multicultural learning environment, and to take into account the provisions of the Convention in the draft national minimum curriculum for early education and care and compulsory education.

18. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and members of Their Families.

19. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.
20. The Committee recommends that the State Party undertake with adequate media projection an appropriate programme of activities to commemorate 2011 as the International Year for People of African Descent, as proclaimed by the General Assembly at its sixty-fourth session (A/Res/64/169 of 18 December 2009).
21. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.
22. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148 and 63/243, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.
23. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.
24. Noting that the State Party has not yet submitted its Core Document, the Committee encourages the State Party to submit its Core Document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).
25. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12, 13 and 14 above.
26. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 6, 9 and 17 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.
27. The Committee recommends that the State party submit its twenty-first and twenty-second periodic reports in a single document, due on 26 June 2014, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document

(see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).
