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*INPUT TO THE  
CONSULTATION ON THE  
NATIONAL ACTION PLAN AGAINST  
RACISM AND XENOPHOBIA*

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November 2020

# T A B L E O F C O N T E N T S

<b>TABLE OF CONTENTS</b>	<b>2</b>
<b>INTRODUCTION</b>	<b>3</b>
<b>NOTE ON THESE SUBMISSIONS</b>	<b>4</b>
<b>ADITUS FOUNDATION PROFILE</b>	<b>6</b>
<b>ADITUS FOUNDATION RECOMMENDATIONS</b>	<b>7</b>
<b>COUNCIL OF EUROPE BODIES</b>	<b>8</b>
<b>EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI), COUNTRY REPORT RECOMMENDATIONS (2018)</b>	<b>8</b>
<b>EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT (CPT), REPORT RECOMMENDATIONS (2015)</b>	<b>9</b>
<b>COMMITTEE OF THE PARTIES TO THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS, RECOMMENDATION CP (2017)3 (2017)</b>	<b>10</b>
<b>UNITED NATIONS BODIES</b>	<b>11</b>
<b>UNIVERSAL PERIODIC REVIEW, RECOMMENDATIONS MADE IN THE THIRD CYCLE OF REVIEW (2018)</b>	<b>11</b>
<b>SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS, RECOMMENDATIONS MADE IN THE REPORT FOLLOWING A MISSION TO MALTA (2015)</b>	<b>11</b>
<b>COMMITTEE ON THE RIGHTS OF THE CHILD, CONCLUDING OBSERVATIONS ON THE COMBINED THIRD TO SIXTH PERIODIC REPORTS OF MALTA (2019)</b>	<b>13</b>
<b>COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES, CONCLUDING OBSERVATIONS ON THE INITIAL REPORT OF MALTA (2018)</b>	<b>13</b>
<b>CONTACT DETAILS</b>	<b>14</b>

## I N T R O D U C T I O N

aditus foundation enthusiastically welcomes Malta's commitment towards establishing a national action plan to combat racism and xenophobia. This step has the potential of dramatically improving the well-being of thousands of persons living in Malta, whilst simultaneously confirming that Malta is truly committed to upholding the inherent dignity and equality of all persons.

It has always been a key concern of aditus foundation that a country becoming increasingly diverse has failed to muster the courage to engage with this sensitive theme. There is no excuse for the inaction of successive Governments. Year after year, hate speech against racial minorities has grown in volumes and intensity, with social media platforms now entirely dedicated to promoting – directly or indirectly – racial superiority, Nazism, fascism and the suppression of minority groups. The incidence of racially-motivated hate crimes is also of serious concern, the 2019 brutal murder of Lassana Cisse a stark wake-up call for the entire nation. Whilst these incidents have generally targeted the African migrant population, several other communities suffer discrimination on the basis of their membership – or attributed membership – to an ethnic or racial minority, including Maltese nationals.

Together with the above, it is our view that racism is not limited to a group of people active in dark corners of the web. On the contrary, whilst the promulgation of far-right groups is by no means surprising in a polarised and troubled global context, we are concerned that popular expressions of racism and the nonchalance with which these are externalised are symptoms of a nation that has been through a learning process of dehumanisation vis-à-vis non-Maltese persons living in Malta. The impact of the constant negative political discourse on migration, with intentional use of derogatory, inflammatory and offensive language, may not be underestimated and must be taken into account in any honest anti-racism action plan.

*“He is a guest in our country and is receiving our help, you cannot attack and beat up people who are helping you.”<sup>1</sup>*

Yet the action plan's major challenge will undoubtedly be efforts at reconciling its goals with laws, policies and practices that are themselves racist in the way they (ill-)treat non-Maltese persons in Malta. Research worldwide has shown the direct link between immigration detention policies and the stigmatisation of migrants, and findings from [our own research](#) confirm that Malta's choices in relation to migrants and the justice system (arrest, bringing to court, judicial process, etc.) have a clear impact on their enjoyment of fair trial rights.

*“I don't know what you do in your country, but here we dress properly in Court.”*

We have repeatedly flagged our concern that leaving migrants at sea for days indicates a clear hierarchal approach to human life, one entirely contrary to the core principles of anti-racism and equality.

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<sup>1</sup> The quotes reproduced in this section are taken directly from judgements delivered by the Maltese Courts in relation to migrants or refugees. All references are available.

*“Quoting from Pope Francis, the Magistrate highlighted the importance of Christians and Muslims working together to achieve peace and justice. The accused's attitude, he said, was not striving to achieve this goal and such actions caused unnecessary tensions in society and cast a dark shadow over the Muslim community.”*

Our work with various migrant communities, including non-black communities, talks about a learned fear of those entities mandated to protect them: police, correctional services, armed forces, judiciary. Racist online comments, dismissive or degrading treatment, verbal and physical violence at the hand of such forces are some of the experiences our beneficiaries bring to our office in the hope to secure justice or comfort.

A glance at Malta's quasi-judicial tribunals reveals a stark lack of human, financial and capacity investment in those entities processing claims brought by migrants and asylum-seekers, resulting in a racist approach to justice and the right to an effective remedy. Additionally, as the quotes in this Section indicate, Malta's justice system is often unfriendly to migrants and refugees: sentencing practices, dismissive or disparaging statements, lack of interpreters, questionable legal aid service are but some examples of observed issues.

*“A process should be kickstarted whereby people who are a threat to the security of our country and our citizens should have their residence permits revoked and be deported back to their own countries.”*

Under these circumstances, a national action plan to combat racism is sorely needed and will face challenges of mammoth proportions. aditus foundation is committed to supporting this timely initiative in a spirit of dialogue and trust, wherein we will advocate for the highest possible levels of protection and human rights enjoyment. We are looking forward to engaging with the Parliamentary Secretariat for Equality and Reforms to see the action plan realised, implemented and monitored. Essentially, we hope that Malta moves towards adopting a clear and unequivocal stand against populism, intolerance and racial hatred.

*“The court will rule with an iron fist with these few, and encourage the authorities to use the power granted by law to take drastic steps, including their removal from the country.”*

## Note on these Submissions

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Together with our input, these submissions are, in their substance, based on recommendations provided by international and regional human rights bodies, for various reasons.

Firstly, it is imperative that the national action plan to combat racism adopts a rights-based approach. Adopting a rights-based approach to anti-racism means placing the dignity of the person at the heart of the framework, within the tripartite State duties to respect, protect and fulfil the human rights of all persons within Malta's jurisdiction. In practice, this means ensuring compliance of the action plan with Malta's international/regional human rights obligations as contained in various treaties and conventions.

The [Legal Brief](#) accompanying the Consultation Document is an excellent starting point yet it fails to appreciate the intersectional dimension of anti-racism as well as the broader legal and policy context that

fuels racism. For example, important elements from the Convention on the Rights of the Child (CRC) and from the Covenant on the Elimination of All Forms of Discrimination Against Women (CEDAW) are missing. In this regard, we underline the importance of going beyond the text of the Conventions and including the pronouncements and statements of the relevant Treaty-Bodies.

Secondly, the national action plan need not operate within a legal and policy vacuum. The framework and recommendations provided by the international/regional human rights systems, particularly those provided within the Universal Periodic Review process, provide measurable targets against which Malta is regularly monitored, assessed and ranked. We underline that it would be in Malta's interests to establish a national action plan that not only meets substantive targets on anti-racism but that also elevates Malta's rankings in these significant human rights procedures.

This document readily presents the key recommendations made to Malta by international/regional human rights bodies in the past five years. We emphasised those elements we feel are most pertinent to the national context.

# A D I T U S F O U N D A T I O N P R O F I L E

aditus foundation is a non-governmental organisation established in 2011 by a group of lawyers dedicated to promoting human rights access in Malta. aditus' Director is Dr. Neil Falzon, and the current board is composed of Dr. Nicola Mallia (Chairperson), Dr. Michael Camilleri and Dr. Michael Ellul Sullivan. Named for the Latin word meaning 'access', aditus foundation's mission is the attentive analysis of access in Malta to human rights recognition and enjoyment.

In practical terms, aditus was established to [monitor, report and act](#) on issues of fundamental human rights access for individuals and groups.

aditus foundation is founded on the principles of the universality, interdependence and indivisibility of all fundamental human rights, and we strive to promote their understanding and application. We work to adopt a broad perspective for human rights in Malta, promoting a society where all members of Malta's communities are equally able to enjoy all their fundamental human rights. Our work prioritises the structural aspects of human rights, looking at the existence and quality of legislation and policy and how these are impacting people's lives. While focused on Malta, we work towards highlighting the regional and international implications of local obstacles to human rights access.

Our main activities include the identification of priority areas, formulating advocacy strategies and working towards improvement in legal and administrative standards. This includes offering pro bono legal information, advice and interventions, prioritising beneficiaries who are ineligible for public legal aid services and who are unable to secure private legal assistance.

We endorse and practice a collaborative approach with all our partners, engaging in honest dialogue with Maltese and other State entities, EU institutions, the UN, the Council of Europe and non-governmental entities.

We are also committed to engaging the general public in a human rights discourse that is well informed, unbiased and effective. To do this, we maintain a regular public presence through press statements, television and radio appearances, and our website and social media pages.

Furthermore, we have an extensive list of [publications](#) covering the range of themes we have bene or are actively engaged in, including research reports, submissions to public consultations, commentaries of draft legislation, training materials and many more.

Together with being registered with the Malta Commissioner for Voluntary Organisations (VO/0512), aditus has affiliations and memberships with the [International Detention Coalition](#) (IDC), [Voice for Choice Malta](#), the [Platform for International Cooperation on Undocumented Migrants](#) (PICUM), the [European Council on Refugees and Exiles](#) (ECRE), the [European Network on Statelessness](#) and the [Anna Lindh Foundation](#).

We are also members of the [Consultative Forum of the European Asylum Support Office](#), and of the [Fundamental Rights Platform of the European Union Agency for Fundamental Rights](#).

## A D I T U S F O U N D A T I O N R E C O M M E N D A T I O N S

Whilst we endorse the vast majority of the below recommendations from the Council of Europe and United Nations bodies, we urge the inclusion of the following in the national action plan to combat racism and xenophobia:

1. Streamline the national action plan with the Convention on the Elimination of All Forms of Racial Discrimination and the pronouncements of the United Nations monitoring Committee. This would enable Malta to merge reporting and monitoring of the action plan's implementation with its reporting obligations under the Convention. In this regard, we urge Malta to ensure compliance with its outstanding Convention reporting duties.
2. Include within the action plan, a mid-term goal to adopt a Code of Conduct for the Public Sector to establish the public sector standards and values in relation to racism, lay down enforcement procedures in cases of breaches, and provide guidance on complex situations.
3. Undertake an independent and comprehensive research to explore those areas of law, policy and practice that endorse, foster, or fuel racism.
4. In view of its significance for upholding fundamental rights, the judicial system requires effective and constant monitoring to ensure it is fair and just to all persons engaging with it.

European Commission against Racism and Intolerance (ECRI), Country Report Recommendations (2018)

**Our Comments**

ECRI's recommendations are here classified as those where priority implementation is urged by ECRI itself (**numbers 5 and 6**), and the broader recommendations immediately after.

All highlights are our own.

The number in parentheses indicates the position of the recommendations in the ECRI report text.

5. ECRI strongly reiterates its recommendation to ensure that a **mechanism for collecting disaggregated data** on hate crime incidents, including hate speech, on grounds of race, colour, language, religion, ethnic origin, citizenship, sexual orientation and gender identity, is put in place, recording the specific bias motivation as well as the criminal justice response, and that this data is made available to the public.
6. ECRI strongly recommends that the authorities continue to allow persons who cannot be returned to their country of origin to stay legally in Malta. For those who have resided in Malta for more than ten years, the authorities should consider **a more permanent form of regularisation**.
7. (§ 15) ECRI strongly recommends the enactment of **a single Equality Act** including the following essential elements: the grounds of citizenship and language. as forms of discrimination, segregation, discrimination by association, and instructing, inciting or aiding another to discriminate. a duty for public authorities to promote equality and prevent discrimination. a duty of public authorities to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination. the necessary legal tools to review, on an on-going basis, the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions, and to amend or abrogate those found not to be in conformity. and the suppression of public financing of organisations which promote racism and the possibility of dissolution of such organisations.
8. (§ 19) ECRI recommends granting the **National Commission for the Promotion of Equality** (or its successor institution) the competence to initiate, and participate in, court proceedings as well as to monitor legislation for compliance with the prohibition of discrimination and make proposals for modification where necessary.
9. (§ 21) ECRI strongly reiterates its recommendation to ensure that a **mechanism for collecting disaggregated data** on hate crime incidents, including hate speech, on grounds of race, colour, language, religion, ethnic origin, citizenship, sexual orientation and gender identity, is put in place,



recording the specific bias motivation as well as the criminal justice response, and that this data is made available to the public.

10. (§ 24) ECRI recommends setting up **alternative mechanisms to encourage victims to report hate crime** and hate speech incidents, such as third-party reporting systems or dedicated telephone lines.
11. (§ 52) ECRI strongly recommends the authorities to press ahead with and intensify **training for police, prosecutors and judges** in order to ensure a more effective fight against racist and homo/transphobic hate crime, including violence.
12. (§ 58) ECRI recommends that the unnecessarily harsh conditions for **long-term residence status** are removed, in particular evidence of accommodation that is not shared with non-family members.
13. (§ 60) ECRI recommends that the authorities broaden the list of **persons eligible for family reunification** in order to facilitate successful integration of third country nationals in Malta.
14. (§ 77) ECRI recommends that the authorities intensify their efforts to prevent labour exploitation by systematically providing refugees with **information on their rights in employment and on how to report abuses**.
15. (§ 84) ECRI strongly recommends that the authorities organise a campaign to raise awareness among the public about the need for international protection and promoting a **positive image of refugees**.

## [European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment \(CPT\), Report Recommendations \(2015\)](#)

### **Our Comments**

Although the CPT's remit is not directly focused on anti-racism measures, many of their recommendations are relevant for a national anti-racism action plan as they talk about the institutional approach to migrants.

As mentioned in above introduction, this institutional approach, and its visibility, is key to how the nation perceives, treats and engages with a population that is extremely different to the larger part of the Maltese one, and in so many ways: ethnically, socially, linguistically, religiously, etc.

For the purposes of this submission, we are selecting the most salient recommendations.

16. The CPT once again calls upon the Maltese authorities to ensure that **detained persons are addressed by their name and not by a number**.

17. The CPT has repeatedly stressed that persons detained under aliens' legislation should be **accommodated in centres specifically designed for that purpose**, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment.
18. The CPT recommends that every detained person be systematically provided with **written information**, in a language they understand, on the house rules immediately upon their arrival in the facility.
19. The CPT recommends that the Maltese authorities introduce the right for detained persons to **receive visits on a regular basis in an appropriate setting**. Further, they should be allowed to have access to their **mobile phones** at set times.

## Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, Recommendation CP (2017)3 (2017)

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### **Our Comments**

As with the CPT, this Committee's remit is also not the promotion of anti-racism measures. We nonetheless assess that some specific recommendations would certainly have an impact on Malta's efforts at combating racism, highlighted below.

20. Examine the reasons for the absence of compensation claims and awards to victims of trafficking and make additional efforts to guarantee **effective access to compensation for victims of trafficking**, in line with Article 15 (4) of the Convention, including through the systematic provision of legal advice and information.
21. Take measures to ensure that **crimes related to human trafficking are investigated, prosecuted and adjudicated promptly and effectively**, including by providing regular training to judges and prosecutors on human trafficking and the rights of victims and encouraging the development of specialisation among judges and prosecutors.

## Universal Periodic Review, Recommendations made in the Third Cycle of Review (2018)

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22. Take further practical steps to ensure **full implementation of anti-discrimination legislation** and to combat all forms of discrimination, including on grounds of race, sexual orientation, gender identity and others (Czechia).
23. Intensify measures aimed at raising the awareness of the population in order to **eradicate stereotypes and discrimination** against migrants and refugees, and to investigate and sanction acts of discrimination against them (Argentina).
24. **Create campaigns that promote tolerance** and inclusion of migrants, refugees and asylum seekers, and apply legislation to combat all forms of discrimination (Mexico).
25. Implement legal instruments against hate crimes and awareness-raising campaigns to promote respect and tolerance, and ensure that victims of discrimination have access to all the necessary **legal remedies for expediting the investigation and punishment of those responsible** (Spain).
26. Continue to promote public awareness-raising campaigns and provide adequate **training for public officials** on the right to equality and non-discrimination (Bolivarian Republic of Venezuela).
27. Take effective measures to **prevent incitement to racial hatred in social networks** and bring those responsible to justice (Belarus).
28. Adopt specific measures to address reports of racism and xenophobia, including racially motivated violence and racial discrimination in access to **employment, housing and services** (Botswana).

## Special Rapporteur on the Human Rights of Migrants, Recommendations made in the Report following a Mission to Malta (2015)

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29. Implement the plans to establish a **national human rights institution** in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), ensuring that it is both functionally and financially independent of the Government and vested with the authority to investigate all issues relating to human rights, including those of migrants, regardless of their administrative status.
30. Ensure the establishment of a **fully independent national preventive mechanism**, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment, which is mandated to visit all places where migrants may be deprived of their liberty.

31. Ratify the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**.
32. Change laws and policies related to the **administrative detention of irregular migrants**, so that detention is decided upon on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation under which detention may be resorted to, rather than being the automatic legal consequence of a decision to refuse admission of entry or a removal order.
33. **Improve the management of government centres for irregular migrants**, drawing from the recommendations made in the 'Valenzia report', the best practices observed in the current network of reception centres and in other facilities in Europe and around the world, and in accordance with relevant standards espoused by international human rights law.
34. Ensure that all detained migrants have access to proper medical care, interpreters, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise.
35. Ensure **full and proper access to justice** for all detainees, including a more accountable system for lodging complaints within detention and reception centres.
36. Provide explicit training for the **Immigration Appeals Board and the Refugee Appeals Board** on international human rights law and international refugee law.
37. Provide unaccompanied children with free, competent and effective **guardianship** to ensure proper decision-making in all proceedings concerning such children, as well as free legal representation, to assist in all immigration and asylum proceedings.
38. Provide **access to basic services**, such as health care, to everyone living in Malta, regardless of their immigration status, in accordance with international human rights standards.
39. Reinforce the public awareness campaigns through effective enforcement of laws on prohibiting racist and xenophobic acts and on prohibiting hate speech and racially motivated violence against migrants and asylum seekers. **Ensure that any such cases are prosecuted and punished, and that appropriate compensation is awarded to the victims.**
40. Fully implement the **Employer Sanctions Directive**, including by developing comprehensive measures to penalize Maltese employers who abuse the vulnerability of migrants by paying them low or exploitative wages.
41. Avoid the **criminalization of irregular migrants in language**, policies and practice, and refrain from using incorrect terminology, such as "*illegal migrant*".

## Committee on the Rights of the Child, Concluding Observations on the Combined Third to Sixth Periodic Reports of Malta (2019)

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42. Adopt and implement a comprehensive strategy addressing all forms of discrimination, that includes **awareness-raising and educational programmes targeting children, families, the general public and faith-based organizations**.
43. Strengthen its efforts to combat racism, racial discrimination, xenophobia and related intolerance, which **negatively affects children**, especially asylum-seeking, refugee and migrant children.
44. Take **affirmative action for the benefit of children** and in particular children in vulnerable and marginalized situations, such as asylum-seeking, refugee and migrant children, children with disabilities, and children born to unmarried parents.

## Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Malta (2018)

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45. With reference to its general comment No. 5 (2017) on living independently and being included in the community and targets 10.2 and 10.3 of the Sustainable Development Goals, the Committee recommends that the State party, while reviewing its legislation to bring it into line with the Convention:
  - Amend article 3A (4) of the Equal Opportunity (Persons with Disability) Act to protect persons with disabilities against **intersectional discrimination**;
  - Ensure the provision of adequate human, technical and financial resources to the Commission for the Rights of Persons with Disability, so that it can address disability-based discrimination complaints in a timely and cost-effective manner;
  - Ensure that persons with disabilities are provided with accessible information on the mechanisms and procedures for lodging complaints and seeking remedies.

## C O N T A C T D E T A I L S

For more information on how you can follow and/or support our advocacy activities:

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