



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Third periodic report submitted by Malta under  
article 40 of the Covenant pursuant to the optional  
reporting procedure, due in 2021\***

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\* The present document is being issued without formal editing.



## Section A

### Domestic applicability of the Covenant

1. The ICCPR and its principles are put into practice every time a new piece of legislation is drafted by assessing whether said piece of draft legislation is compliant with the principles in Covenant. There is no set manner in which a legislator is to do this. In house training on human rights as provided for in the ICCPR is given to members of the judiciary and to prosecutors.

### Reservations

- Article 13 – The Government of Malta endorses the principles laid down in article 13. However, in the present circumstances it cannot comply entirely with the provisions of this article;
- Article 14 (2) – The Government of Malta declares that it interprets paragraph 2 of article 14 of the Covenant in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts;
- Article 14 (6) – While the Government of Malta accepts the principle of compensation for wrongful imprisonment, it is not possible at this time to implement such a principle in accordance with article 14, paragraph 6, of the Covenant;
- Article 20 – The Government of Malta interprets article 20 consistently with the rights conferred by Articles 19 and 21 of the Covenant but reserves the right not to introduce any legislation for the purposes of article 20;
- Article 22 – the Government of Malta reserves the right not to apply article 22 to the extent that existing legislative measures may not be fully compatible with this article. “The Government of Malta declares that under article 41 of this Covenant it recognises the competence of the Human Rights Committee to receive and consider communications submitted by another State Party, provided that such other State Party has, not less than twelve months prior to the submission by it of a communication relating to Malta, made a declaration under article 41 recognising the competence of the Committee to receive and consider communications relating to itself.”

### National Human Rights Institution

2. The Human Rights and Equality Commission Bill (Bill 97 of 2019) has completed its second reading in Parliament and is awaiting the commencement of its analysis before the Adjunct Committee for the Consideration of Bills.

3. The Bill provides for the establishment of a body to be known as the Human Rights and Equality Commission in line with the principles relating to the Status of National Institutions (The Paris Principles) and European Union equality legislation, responsible for the promotion and protection of human rights including the right to equal treatment and non-discrimination in Malta. The bill dissolves the National Commission for the Promotion of Equality for Men and Women and provides for the conferral of its functions to the Human Rights and Equality Commission, as Malta’s first NHRI.

### Anti-discrimination legal framework

4. The Equality Bill, Bill 96 of 2019, brings together all equality provisions and elevates protection against all forms of discrimination to a wide variety of protected characteristics to an equal level.

5. The Bill, which is at Committee Stage at Parliament, generally prohibits all forms of discrimination in various spheres of life, to promote equality and prevent discrimination, by imposing positive obligations on the State. It also incorporates and goes beyond the minimum standards of the relevant provisions of Council Directive 2000/43/EC of 29 June 2000

implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to goods and services and their supply, the Communication from the European Commission (22.12.2011 C (2011) 9497) containing Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (Test-Achats), Council Directive 2006/54/EC of 5 July 2006 implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Council Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, and to repeal Chapter 456 of the Laws of Malta and its subsidiary legislation.

### **Racial Discrimination**

6. The Government of Malta has now launched the Anti-Racism Strategy 2021–2023, which is Malta’s first national action plan against racism and xenophobia. A public consultation initially ran from 9th October to 9th November 2020 during which 61 respondents gave their suggestions for measures on various areas such as research, law enforcement, education, employment and housing, amongst others. From the outset, this process and its outcome aimed to improve Government’s response to and mainstreaming in policymaking of discrimination, racism and xenophobia whilst also addressing racism at the societal and individual levels through activities with key actors of democracy and social partners as well as awareness raising at the grassroots level. This would build upon the existing anti-racist and anti-discriminatory legislation. Maltese law condemns, and penalises, discrimination, hate crimes, as well as hate speech in all their forms: Article 45 of the Constitution of Malta, Criminal Code (Cap. 9), Police Act (Cap. 164), Extradition Act (Cap. 276), etc.

7. The Anti-Racism Strategy 2021–2023 was adopted by Cabinet on Wednesday 28 July 2021. It was officially launched on Thursday 30 September 2021 and it was presented to stakeholders and recipients in a conference on Friday 15 October 2021. It is a comprehensive policy document, which aims to confront and eliminate racism in all its forms, individual, systemic and societal and to stimulate and support intercultural inclusion. Through its 22 measures, it makes anti-racism and anti-discrimination both individual and collective responsibilities across all sectors of society – Government and the public sector, democratic and political institutions, the media, but also the private sector, civil society, and the general population. Malta’s Strategy is in line with the EU’s Anti-Racism Action Plan 2020–2025. The implementation phase began with the first meeting of the Anti-Racism Platform (Measure 3) last July and the Anti-Racism Strategy Stakeholders Conference on 15 October. The first report on progress shall be drafted in Q4 2022.

8. In April 2021, a Victims Support Agency, a public agency, has also been set-up to address the psychological and legal facets of hate crime and speech in addition to educating the public and raising awareness on the increasingly prominent phenomenon of such crime. The Agency is composed of a multi-disciplinary team of professionals in the psycho-social remit, legal professionals, as well as members of the Malta Police Force Victim Support Unit and the Probation and Parole Department to provide holistic services under one roof. The former Hate Crime Unit would be absorbed into this Agency. A range of support services, namely psychological support, legal assistance, a dedicated phone line and assistance through online chat are offered free of charge to victims of hate crime and speech and their families.

9. Moreover, through the Rights, Equality and Citizenship-funded two-year project entitled Equality for All in Malta, which is being carried out by the Government of Malta in partnership with Aditus Foundation, European Network against Racism (ENAR) and European Network on Religion and Belief (ENORB), Race and Ethnic Minorities and Religious Minority organisations, and the public will be targeted in the following ways:

- Development and delivery of training to members of minorities, that may include victims of discrimination based on religion or belief, race and/or ethnic origin, and/or

multiple discrimination, to empower them to enjoy their rights and the new remedies laid down in the law. The training will be given to 120 representatives of religious belief and race and ethnic minorities, who will subsequently train around 20 members each in their own organisations, a total of around 2400 persons.

- Raising awareness on EU Directives and national legislation related to discrimination based on religion or belief, race and/or ethnic origin, and/or multiple discrimination, on intercultural understanding and equal opportunities, targeting the general public.
- Development of an outreach model targeting the grassroots, through local councils, to bring them on board in the fight against discrimination and to develop further non-discrimination tools for action at the local level already utilised in a migrant integration setting, who can in turn reach the general resident population.

10. Two individuals were arraigned on the 19th May 2019 accused with the murder of Lassana Cisse. The Court of Magistrates (Malta) as a Court of Criminal Inquiry found there were enough grounds to commit the accused to trial. The compilation of evidence is ongoing.

### **Discrimination against lesbian, gay, bisexual and transgender (LGBT) persons**

11. The Government offered training to all Personal, Social and Career Development (PSCD) teachers working in all state-run primary and middle schools while teachers working in church and independent schools have also participated. Training was also provided to PSCD teacher trainees undertaking studies with the University of Malta. Furthermore, the Government participated in the delivery of a two-day training seminar coordinated by the Foundation for the Wellbeing of Society and the Malta LGBTIQ Rights Movement (MGRM) and attended by the psychosocial service teams of different church schools.

12. A series of meetings with the Directors for Curriculum, Lifelong Learning and Employability and for Educational Services led to an agreement for piloting an intra-curricular program with two middle schools. July 2019 saw the start of a series of meetings with Educational Officers of six selected topics and the heads of both schools, to start discussing the technicalities of the project. Implementation of the Pilot was interrupted due to the disruption caused by the COVID 19 pandemic; however, work is expected to restart in the new scholastic year.

13. The Government also sponsored the pre-conference event organised by the English Language Teaching (ELT) Association held in October 2018. The one-day pre-conference event focused on LGBTIQ perspectives in ELT.

14. A number of resources in both English and Maltese on equality, gender diversity and rainbow families were also distributed to primary schools to support teachers in addressing LGBTIQ issues in the classroom.

15. A number of training sessions on addressing LGBTIQ issues in education were also conducted with around 50 educators through the Institute for Education.

### **Representation of women in political and public life**

16. Act XX of 2021, approved by Parliament in April 2021, amended the Constitution of Malta to introduce temporary positive measures necessary and reasonable in a democratic society to ensure de facto equality between men and women in politics and the amendment of the General Elections Act to increase the number of electoral commissioners and ensure equal representation between sexes.

17. The practical effect of this constitutional amendment will result in at least 40% of representatives in the House being women come next general election.

### **Violence against women and children**

18. In 2018, the remit of Malta's Commission on Domestic Violence was extended to both gender-based violence and domestic violence.

19. All members of the police corps are receiving training on how to handle victims of domestic violence. A virtual reality simulator was also introduced in the Police Training Academy to train officers on empathising with domestic violence victims. Moreover, officers dismissing the severity of domestic violence cases or showing a lack of empathy would face disciplinary action.

20. Malta recognises the need to empower victims of crime, and ultimately assist in their recovery from the consequences of crime. This can only be achieved through the protection of its citizens and the provision of the necessary support to a non-discriminatory access to Victims' rights. As a result, the Victim Support Agency was established through Legal Notice 418 of 2020 (Subsidiary Legislation 594.37), as a multidisciplinary agency wherein members of the police, members of the probation and parole department, professionals from the Hate Crime and Speech Unit, legal professionals and other public officers were brought together under one governmental entity. As expressed in its mission statement, the Agency shall act as the national contact point for victims of crime and promotes a holistic approach towards needs and support for achieving a better quality of life for all victims of crime.

21. AWAS is working on two initiatives related to domestic violence. An information booklet is currently being developed containing information including information on Domestic Violence. This information will be made available in different languages. AWAS also teamed with JRS so that the latter will deliver information and presentations sessions in Sensitive centres exclusively on Domestic Violence. Further collaboration with Victim Support Malta is also being sought on the same matter.

22. With regard to the provision of shelters, the Ministry for Social Justice and Solidarity, the Family and Children's Rights and the Foundation for Social Welfare Services (FSWS) have a number of Public Social Partnership (PSP) Agreements with NGOs by providing funding for their work with victims of domestic and gender-based violence. These include mainly shelter services, and support services. Examples are Fondazzjoni Merħba Bik (Emergency Shelter) and Fondazzjoni Sebh (Second Stage Shelter), two domestic violence and gender-based violence shelters run by religious-based NGOs and are funded and regulated by a Public Social Partnership agreement between the NGO and the Government.

23. There are also Domestic Violence Services within Aġenzija Appoġġ (the National Agency for children, families, and the community) FSWS. The Domestic Violence Service aims to provide specialised social work services to victims of domestic violence. The service is made up of a team of professional social workers, who provide support to victims of domestic violence and their children. It aims at supporting victims at the time of crises by providing them with immediate assistance to meet their immediate needs, helping them develop a safety plan, as well as providing ongoing support.

### **Abortion**

24. Malta is committed to the promotion of sexual and reproductive health. This includes the protection of the right of women to have control over and decide freely and responsibly on matters related to their sexuality, the timing and number of children, free of coercion, discrimination, and violence.

25. Malta's interpretation of the right to sexual and reproductive health (SRHR) within the context of the right to health does not include the right to abortion as this goes against the right to life, which is paramount. Abortion is illegal in Malta and is not provided as part of the range of sexual and reproductive health services available at national level.

26. Several sexual and reproductive health-care services are freely available within the national public healthcare system. These include family planning, safe motherhood, infertility treatment, assisted reproduction, transgender services, prevention, confidential testing, diagnosis, and treatment of reproductive tract infections, STIs and HIV/AIDS, prevention and treatment of reproductive cancers and maternal morbidities. Furthermore, contraceptives are easily accessible in community pharmacies. Rapid testing for HIV was introduced at the Genito-Urinary Clinic in 2017. In 2017 Malta licensed the sale of the morning after pill, as an over-the-counter preparation.

27. Malta's travel bans during COVID-19 occurred largely between March and June 2020, with travel being permitted after this period to all EU countries (except Sweden, which was included on the amber list for permissible travel in September 2020).

28. Available data from our well-established National Hospital Information Systems and Mortality Registers have no registered complications following abortion (including all ICD 10 codes O04 – O07) over the past 10 years.

29. Furthermore, Malta's observed maternal mortality during the reporting period has been zero, going as far back to 2010.

30. There have been two reports of prosecution related to abortion, both occurring in 2014. To date there have been no further prosecutions.

### **Ill-treatment and excessive use of force by police officers**

31. The Malta Police Force (MPF) has established a number of Standard Operating Procedures (SOP) and Circulars which serve as guidelines to MPF officers regarding the use of force. These include a Code of Ethics, Use of Conducted Electrical Weapons (Taser), Use of Conducted Electrical Weapons (Taser), Guidelines on the Use of Pepper Spray, Guidelines for Police on the issue and use of firearms.

32. Furthermore, the following measures are in place to prevent ill-treatment:

(a) During interviews/interrogations, the police interviewer is to be accompanied by another officer as a witness.

(b) The suspect being interviewed under a caution is given his legal rights in writing in a language he/she understands.

(c) He/she is given the right to consult a lawyer and can even be accompanied by same during interviewing.

(d) Upon arrest, the suspect can consult a lawyer of his choice.

(e) When interacting with the public, officers are obliged to switch on their bodycams to record the event.

(f) Interrogations of a serious nature are duly recorded & videoed.

33. The Government has always ensured that disciplinary action has always been taken, when required, in response to any claims of abuse. The Detention Services (DS) has invested heavily in human resources, not only via the recruitment of 106 officials in 2021 but also in the training of new and veteran staff. Training on the use of force has also been included in the new curriculum. The DS has also recently updated their internal procedures regarding any incidents. An incident form has been created and a record of all incidents occurring at DS is being kept. Furthermore, the DS allocated a person responsible for the management of this register.

### **Trafficking in human beings**

34. The Government of Malta increased its commitment to fight human trafficking, mainly through greater collaboration between institutions on the identification of cases of human trafficking and training to public officers.

#### *Legislative Framework*

35. The Maltese Government sought to enhance its legislative framework considering the curbing of illegal employment especially of third country nationals who may also be in a trafficking situation. Two new labour laws came into effect on the 1st January 2019:

- Subsidiary Legislation 452.115 – Annual Leave National Standard Order sets clear procedures on the cancellation of leave, special leave, the accrual of leave during maternity leave and the payment of the leave balance in case of termination of employment. It also increases the obligations of employers in instances of forced leave.

- Subsidiary Legislation 452.116 – Itemised Payslip Regulations requires employers to issue payslips to employees on a monthly basis. Payslips issued to employers should include the number of hours worked, number of hours worked at overtime rates, and leave balances, amongst others. Failure to abide by these conditions will subject employers to a fine.

36. The new laws will facilitate the collection of data by national enforcement bodies, mainly the Malta Police Force and the Department for Industrial and Employment Relations (DIER), during the investigation of potential cases of labour trafficking.

37. In addition, a Procedure for the Inspection of Illegally Staying and Illegally Employed Third Country Nationals and the Monitoring of Third Country Nationals enrolled in Educational Establishments Regulations was published on 4 June 2019 by virtue of Legal Notice 112 of 2019. By virtue of this Legal Notice, a new Reporting Unit was set up within Identity Malta Agency with a view to inspecting the illegally staying and illegally employed third-country nationals. This is possible in accordance with the Minimum Standards on Sanctions and Measures Against Employers of Illegally Staying Third Country Nationals Regulations (S.L 217.14 of the Laws of Malta) and the monitoring of Third Country Nationals enrolled in educational establishments.

38. Furthermore, the Government consistently seeks to ensure that employment contracts satisfy minimum requirements. In this regard, companies entering into contracts with Government are required to fulfil all such minimum conditions. Moreover, Maltese legislation features adequate provisions against human trafficking and labour-related offences.

39. Charging workers recruitment fees is prohibited by the Employment Agencies Act. Moreover, when issuing advertisements for recruitment, employment agencies are required to cite their licence number.

40. Employment agencies are also to ensure that no prospective employees are referred to any employer unless the employer has furnished the employment agency with precise information about the vacancy to be filled. This includes an adequate job description, the terms and conditions of employment offered, and any special requirements identified by the employer. The employer is required to provide the newly recruited employee with a written agreement stipulating the terms and conditions of employment.

41. It should be noted that all Maltese nationals are issued with birth certificates and identity cards. Moreover, legislation is in place to avoid situations of statelessness, e.g., in the case of foundlings. It should also be noted, in this regard, that Malta has recently acceded the 1954 UN Convention on the Status of Stateless Persons.

42. Furthermore, with a view to further strengthening legal provisions in the relevant areas, Malta ratified the 2014 Protocol to the 1930 Forced Labour Convention and endorsed the Call to Action to End Forced Labour, Modern Slavery, and Human Trafficking, launched at the UN General Assembly in 2017. This confirms the country's commitment to further provide institutional support towards the promotion of a healthy and positive working environment. The new protocol establishes the obligations to hinder forced labour, protect victims and provide them with access to remedies and emphasises the link between forced labour and trafficking in persons, including sex trafficking. Malta envisages participation in the 50 for Freedom campaign led by the International Labour Organisation (ILO).

43. With a view to further strengthening legal provisions on trafficking in persons for organ removal and organ trafficking, Parliament published a new law on Human Organs, Tissues and Cells Donation Act (Cap 558 of the Laws of Malta) on the 16 of December 2016. This Act made consequential amendments to the Criminal Code (Cap 9 of the Laws of Malta). Therefore, Article 248CA of the Criminal Code addresses measures related to the abuse of persons or abuse of organ harvesting for the purpose of exploitation and is intended to make provisions for substantive articles of the Council of Europe Convention against Trafficking in Human Organs and to ensure full compliance with the said Convention.

44. On the 2 May 2016 additional new measures were brought into effect to curb precarious work in the cleaning, clerical, security, and care work services provided on contract for Government departments and/or public sector organisation. New measures of how contracts are awarded were also introduced in order for contractors to provide better services whilst offering contractees the best benefits at their place of work. In addition, contracts for provision of goods and services will now be awarded on the 'Best Price-Quality Ratio' rather than on the cheapest being the best policy. All these measures not only protect both Maltese and foreign workers from being exploited in Malta but also protect workers who may be exploited at the countries of origin providing goods consumed in Malta.

*New Strategy: January 2020–December 2023*

45. The Government of Malta embarked on a national consultation process in September and October 2019 as part of the country's reform on human trafficking and prostitution. The subject of prostitution has been included in this reform as the Government acknowledges the link between the two phenomena, as well as the existence of Maltese individuals who could be exploited for sexual purposes in their home country.

46. The aim of this consultation period was intended to develop a five-year national strategy (2020–2024) against human trafficking with the following objectives:

- Develop more effective tools to identify potential victims of human trafficking and facilitate the provision of professional support through a fully-fledged national referral mechanism;
- Strengthen the country's investigative and judicial arms against perpetrators of human trafficking and secure convictions of traffickers in a shorter time period;
- Set up preventive mechanisms and introduce regulations aimed at safeguarding the interests of vulnerable persons who face greater risks of human trafficking.

47. One of the top priorities of the strategy is the setting up of a permanent structure within government, which shall see the over-all implementation of the strategy. The said structure will also coordinate the work of state and non-state entities that are already part of the Government's existing task force on trafficking in human beings within the Ministry for Home Affairs and National Security, including social welfare, immigration and employment agencies, the Malta Police Force and civil society.

48. As part of the Action Plan January 2017 – December 2019, training was carried out, which was targeted towards a number of stakeholders, including those working with vulnerable persons, such as migrants in accommodation centres. The training also targeted officials from Appoġġ agency who come into regular contact with vulnerable persons. These officials assist potential victims of trafficking and encourage them to report any offences to the Police for perpetrators to be investigated and prosecuted.

49. To ensure that its nationals who are deployed abroad as diplomats are aware of what human trafficking is and what it involves, a one half-day training event was held in July 2015 and was dedicated to 150 Ambassadors, Diplomats and Consuls working in the Maltese Foreign Representations. This session materialized through the collaboration of the Ministry of Foreign Affairs. This training was provided by two IOM foreign experts and participants were briefed about human trafficking and about their role in the prevention of the phenomenon. As a follow up to the training provided to Ambassadors and Diplomats in July 2015, information brochures were disseminated amongst the various Maltese Representations abroad namely in China, the Philippines, Algeria and Russia. These brochures were translated into different languages and feature information about regular work and work conditions in Malta and indicators of human trafficking. Police and Appoġġ Agency helpline numbers are also indicated in the brochure. This leaflet was drawn up by IOM in consultation with the stakeholders and the Ministry for Home Affairs and National Security. It is aimed at providing information to third country nationals who wish to come to Malta to work. This action in part implemented projected measures regarding awareness-raising.

50. One important outcome of another training event organised between the Ministry for Home Affairs and IOM was the publication of a list of National Indicators for identifying victims of human trafficking that was disseminated amongst local stakeholders who are considered as working in areas where they may encounter potential victims or victims of human trafficking for adoption. These are the Police (Vice Squad, Immigration and Border Control), Appoġġ Agency, Health, and the Agency for the Welfare of Asylum Seekers (AWAS), the office of the Commissioner for Refugees, the Employment and Training Corporation (ETC) and the Jesuit Refugee Services (JRS) and Caritas Malta, amongst others.

51. The list of National Indicators was also disseminated amongst professionals who are considered as front liners, including NGOs who work in the detention and open centres, the Case Workers of the Officer of the Refugee Commissioner and the Case Workers of the Agency for the Welfare of Asylum Seekers. All these professionals have undertaken training in this regard and were involved in the drawing up of the Indicators. Furthermore, a Victim Referral Mechanism was mapped out. To consolidate this mechanism and streamline operations between the stakeholders Standard Operating Procedures (SOPs) have been developed.

52. In 2020, AWAS in coordination with EASO, have introduced a new team which is the Vulnerability Assessment Team. The team is assessing potential vulnerable persons who are at the Initial Reception Centre, closed centres and open centres. AWAS already has a history and extensive experience of carrying out vulnerability assessments. The added value of EASO's support is a structured methodology for vulnerability assessments, and support to carry out more assessments which go beyond AWAS' capacity to do so. This team was set up to ensure that vulnerable adults in the centres are assessed accordingly. Referrals can be internal, whereby service users can be referred by all teams within AWAS:

- coordinators in the centres, care team and therapeutic team. All other entities and NGOs who visit the closed and open centres can also refer people by using a specific referral form.

#### Statistical information about the victims of human trafficking between 2014–2020:

<i>Victims</i>	<i>Formally Identified</i>	<i>Female</i>	<i>Male</i>	<i>Age</i>	<i>Nationality</i>	<i>Exploitation</i>
<b>2014</b>						
	17	3	0	adult	Chinese	Sexual
		1	0	adult	Indonesian	Labour
		0	1	adult	Chinese	Labour
		1	0	adult	Romanian	Sexual
		9	0	adult	Vietnamese	Labour
		2	0	adult	Chinese	Labour
<b>2015</b>						
	2	1	0	adult	Chinese	Sexual
		1	0	adult	Italian	Sexual
<b>2016</b>						
	31	13	18	adult	Philippines	Labour
<b>2017</b>						
	3	3	0	adult	Chinese	Sexual
	2	2	0	adult	Hungarian	Sexual
<b>2018</b>						
	19	9	10	adult	Ukrainian	Labour
	14	10	4	adult	Philippines	Labour
	1	1	0	minor	Maltese	
	1	1	0	adult	Philippines	Labour

<i>Victims</i>	<i>Formally Identified</i>	<i>Female</i>	<i>Male</i>	<i>Age</i>	<i>Nationality</i>	<i>Exploitation</i>
2019	0	0	0	0	0	0
2020	4	4	0	1 adult 3 minors	1 Philippines 3 Maltese	Labour and sexual Sexual

### **Administrative detention of migrants and asylum seekers**

53. An individual assessment is carried out in respect of each asylum seeker who enters irregularly and detention order is issued only where necessary. Plans are in hand to make explicit reference that detention is to be a measure of last resort. At present there are no plans to reduce further the initial judicial review of detention orders.

54. A therapeutic team has been set up in 2019 consisting of Assistant Psychological Officers (APO), interpreters, counsellors, and a psychologist who can be consulted daily. They also provide their services in the open centres, detention centres and assess residents who are admitted at Mount Carmel Hospital. Interpreters are always present with the assessors.

55. The aims of the assessment are to provide clients with a safe space to share their experiences, allowing the team to make appropriate referrals to suit their individual needs. Assessments are conducted on a voluntary basis with asylum seekers who are sixteen years of age and over.

56. In the case of an individual under the age of sixteen, consent may be gained from their parents or from their legal guardian. Due to the nature of the psychological assessments, the APO must wait for a minimum of four weeks post arrival in Malta to conduct assessments. In the case of a client who appears to be vulnerable, APO will conduct interventions and refer to other professionals. The assessments consist of a Socio-Demographic Questionnaire – to gather information about clients’ life before migration, journey, and post migration experience and a Hopkins Symptom Checklist – psychological tool used to assess for anxiety and depression.

57. The APOs also provide Information Sessions about AWAS psychosocial services, mental health, symptoms of anxiety, depression and PTSD on the third day upon new arrival.

58. In 2020, AWAS in coordination with EASO, have introduced a new team which is the Vulnerability Assessment Team. The team is assessing potential vulnerable persons who are at the Initial Reception Centre, closed centres and open centres. AWAS already has a history and extensive experience of carrying out vulnerability assessments. The added value of EASO’s support is a structured methodology for vulnerability assessments, support to carry out more assessments which go beyond AWAS’ capacity to do so. This was set up to ensure that vulnerable adults in the centres are assessed accordingly. Referrals can be internal, whereby service users can be referred by all teams within AWAS: coordinators in the centres, care team and therapeutic team. All other entities and NGOs who visit the closed and open centres can refer people by using a specific referral form.

59. In 2021, AWAS engaged three additional welfare officers to compliment the welfare coordinator within each centre. The role of these officers is to strictly follow the client’s hand in hand with the residents’ social worker, welfare coordinator and psychosocial team. Additionally, AWAS plans to strengthen its team of vulnerability assessors by the recruitment of eight professionals in 2022.

60. The principle of the best interests of the child, which has always been at the centre of Maltese administrative practice, is incorporated in the definition of ‘representative’, and in Article 17A of the International Protection Act, which introduced Temporary Humanitarian Protection into the national legislative system by means of Act XL of 2020. Moreover, the principle has been incorporated into the Reception Conditions Regulations since 2015, in Regulations 14 thereof, and in the Procedural Standards for Granting and Withdrawing

international Protection Regulations, in the definition of ‘representative’, in Regulation 17, and Regulation 18 thereof, which Regulations have been in force since 2015.

61. Vulnerable persons as defined in the Reception of Asylum Seekers Regulations, SL 420.06, including minors, are not issued with Detention Orders by the immigration authorities upon discharge from the Initial Reception Centre (IRC). Such persons are therefore accommodated at Open Centres suited to their specific circumstances. Families involving children and unaccompanied minors are processed expeditiously to ensure that they can be moved to an open centre at the earliest possible. Persons who are confirmed to be minors following the age assessment test are transferred to open facilities immediately. AWAS require a medical bone test in any of those instances whereby uncertainty remains in the age assessment process.

62. Throughout the age assessment process, those assessing try as much as possible give the benefit of the doubt towards the alleged UMAS.

63. Furthermore, irrespective of the status of their parents or their own status, all unaccompanied minors have access to State School education free of charge. Whenever necessary, particularly with reference to linguistic needs, preparatory classes are made available to such minors at State Schools. Procedures to trace the family members of Unaccompanied Minors are initiated once such minors are accorded International Protection, in accordance with Regulation 18 of the Procedural Standards in Examining International Protection Regulations (SL 420.07). In the eventuality that family members are positively identified, further action would be taken, possibly with a view to reuniting the minor with his or her family members, provided that this is in the best interest of the child.

64. All unaccompanied minors are designated to a social worker who will assist them throughout their stay in the centres managed by AWAS. The social worker along with the minor will carry out a holistic needs assessment to indicate which areas the minor requires support in. In 2020 AWAS founded a new service, known as the UMAS Protection Services, which is a dedicated service that ensure that the UMAS interest is safeguarded.

65. The Principal Immigration Officer (Commissioner of Police) decides on whether to detain or to impose alternatives to detention on irregular migrants who apply for international protection (while they are staying at the IRC). Detention and Alternatives to Detention may only be imposed on persons who are not deemed vulnerable in terms of the Reception Conditions Regulations (Subsidiary Legislation 420.06).

66. The regulations provide for recourse to alternatives to detention by Immigration Police. Such measures may have a duration of not more than 9 months and may take the form of:

- reporting at an assigned place within specified timeframes;
- residence at an assigned place;
- deposit or surrender of documents; or
- placing of a one-time guarantee or surety.

**Below are figures for alternative to detention issued between 2018–2021**

2018	2019	2020	2021
710	1 380	1 797	538

**Figures for Detention Orders issued**

2018	2019	2020	2021
55	259	490	31

**Non-refoulement and refugee determination procedures**

67. Newly arrived migrants residing at the Initial Reception Centre (IRC) are provided with information about the asylum process and asked whether they wish to apply for asylum. Practically all migrants rescued at sea apply for international protection. Visits by lawyers and NGOs, including UNHCR, are allowed at IRC and closed centres to provide information about the process.

68. Malta abides by the principle of non-refoulement in accordance with its international obligations and the provisions of the International Protect Act. This principle applies in respect of all asylum seekers and beneficiaries of international protection. Furthermore, the International Protection Agency (set up in 2020) is taking all necessary measures to ensure that as far as possible, applications are assessed within a reasonable period. This includes moving to new premises that are more adequate for the running of its operations, extending IPA's presence at the Initial Reception Centres as well as the beefing up of human resources in lines with the plans of the IPA. In total, there were 9 additional recruits in 2020 and 2021. These measures have resulted in:

- Elimination of backlog of asylum seekers awaiting to submit their application for asylum;
- Elimination of waiting time between the moment a migrant leaves the initial reception centre and apply for asylum. Applications are being registered immediately after asylum seekers are transferred from the initial reception centre to an open centre. The issuance of an Asylum Seeker's Document (ASD) at such an early stage is giving more stability to the asylum seekers, particularly in terms of applying for a work permit.

69. It should also be noted that applications are assessed on an individual basis. Interpreters are made available throughout the asylum process and decisions are communicated in writing in a language understood by the asylum seeker.

**Living conditions in detention centres**

70. Despite that Malta carries the responsibility of the largest share of irregular migrants per capita in the EU, the Government of Malta has constantly remained committed to safeguard the minimum standards in the humane and safe reception of migrants.

71. The following measures have been taken to ensure adequate personal space for detainees and alleviate pressure from closed centres:

(a) Regeneration of an open migrants' facility in Hal Far Hangar Open Centre, which increased the capacity by 780 spaces and made it possible to reduce drastically the number of migrants awaiting accommodation in the community. The opening of this centre alleviated the pressure within initial reception centres;

(b) Increase the efficiency of relocation and returns to alleviate the unprecedented pressure on Malta's reception system, including the introduction of a new cash incentive scheme for voluntary returns;

(c) Built up two new compounds within the Safi Detention Centre to reduce overcrowding – the two compounds started to be used in August 2020 and June 2021. Migrants are now housed according to protection needs.

(d) Built a clinic inside the Safi Detention Centre which serves the purpose of a health centre. The clinic started to be used in February 2021 and made it possible to provide a wide range of health services on site. Visiting consultants are carrying out specialist reviews such as TB clinic, GU & dermatology and ophthalmic inhouse.

(e) Despite the ongoing migratory pressure, an extensive large-scale refurbishing and maintenance exercise has been carried out. This process will continue until all parts of the Safi Detention Centre would have been renovated. Adjustments were made to include emergency lighting, new bathroom finishing which are vandal-proof, more secure windows and electrical systems, improvements to the sewage system and the installation of a new CCTV-camera system, among others.

72. Other efforts aimed at improving the living conditions in closed centres include:

(a) All compounds have access to outdoor and recreational areas during daytime. Books, balls, cards and board games are available. A plan is in place to have a structured education and physical activity programme which includes training in the English language, professional football training and other training in information technology, first aid and other basic life skills.

(b) Communication with the outside world, especially international calls with family members, is possible in all section of the closed centres. A new area has been designated to hold these visits in private with NGOs, lawyers and community representatives.

(c) A new post of a welfare officer has been created to ensure an adequate balance between security and welfare. Reporting has been introduced with respect to incidents arising inside the closed centres, complaints raised by detainees and visits by lawyers, family members and NGOs.

(d) Increase in investment in human resources in open and closed facilities, not only through the recruitment of additional staff but also their training. New staff included professionals in the field of social work, support workers, reception facility officers, psychological officers, counsellors, welfare officers, and psychologists. Detention Service (DS) recruited 106 new detention officers in 2020, almost doubling in number. AWAS increased its staff capacity from 89 in 2019 to 211 by end of 2020. The process for the recruitment of additional staff is also ongoing. DS is no longer making use of private security officials.

(e) Regular visits by spiritual directors take place regularly. Religious books, praying rugs and food associated with religious festivals are distributed during these visits.

(f) Hermes Block, formerly used as a detention centre, has been closed down to undergo extensive maintenance and renovation works.

### **The right to a fair trial**

73. According to Article 355AUA of the Criminal Code:

(1) The suspect or the accused person shall have the right of access to a lawyer in such time and in such a manner so as to allow him to exercise his rights of defence practically and effectively.

(2) The suspect or the accused person shall have access to a lawyer without undue delay. In any event, the suspect or the accused person shall have access to a lawyer from whichever of the following points in time is the earliest:

(a) before they are questioned by the Executive Police or CRIMINAL CODE [CAP. 9. 207 by another law enforcement or judicial authority in respect of the commission of a criminal offence;

(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with sub-article (8)(e);

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

### **Juvenile justice**

74. In the Maltese Juvenile Court Act, Chapter 287 of the Laws of Malta, a child or young person is outlined as one who has not yet attained the age of sixteen (16) years. A denotable feature of the Maltese system is that the position of the juveniles accused in criminal proceedings does not significantly differ from that of adults. This is portrayed as from the pre-trial phase where unvaryingly, adult and minor suspects shall be informed of the arrest or detention in comprehensible discourse and if need be, by the aid of an interpreter and be brought before a court within the same timeframe after arrest: 48 hours and if not, be released. This is further signified by the scarcity in the special rights awarded to minors during the

criminal procedure. The right of interpretation and the right to have all the relevant documents including indictments and judgments, translated within a reasonable period is an example of a right applying indifferently whether the accused is an adult or a juvenile.

75. A dissimilar approach depending on the age of the minor is taken during the hearing itself. As per the Juvenile Court Act, juveniles charged in proceedings who are under the age of sixteen are *ex lege* safeguarded by this institution, which excludes the public from the hearings concerning them, whereas per Article 7 of the Juvenile Court Act, save cases where consent is attained from the Juvenile Court, only the Court and prosecution officials, the parties, their lawyers or other lawyers, representatives of the Ministry concerned, witnesses or individuals having a direct interest in the case, parents, relatives or guardians of the child or *bona fide* representatives of newspapers may be present to the proceedings or in a room adjacent to where these are being heard. Furthermore, what is reported with regards to these proceedings is also controlled. It is essential that no media platform shall reveal the identity of the child or young person or lead to its revelation, unless the Juvenile Court or the Minister are satisfied that it is appropriate to do so for the purpose of avoiding injustice to a child or young person.

76. Further rights in Malta include the right to remain silent, to consult any medical practitioner if accessible and to have at least one individual informed of the arrest or detention and be able to communicate with such individual without undue delay. This equally applies when the arrestee or detainee is a minor, except for the fact that in such case, at least one person having parental authority, tutorship, curatorship or guardianship over the minor shall be made aware of the punishment and the reasons leading to it. Similarly, whilst the method of questioning of suspects as applicable to adults also applies to minor suspects, special attention must be given to the interviewing of minors. If possible, the interview is led in the presence of a parent, tutor or another individual of the same sex as the interviewee and who is not a member of the Police Force, who might as an example be a social worker or the person having effective care and custody of the juvenile.

77. In Malta, along with non-custodial fines and the possibility of the accused being placed for some time in the care of a probation officer a copy of which probation order shall be distributed to the parent or person charged with the upbringing of the probationer if the latter is a minor, juveniles who are between fourteen and sixteen years of age acting with mischievous discretion and in the case where the minor is aged between sixteen and eighteen years, the applicable penalty is decreased by one or two degrees. Minors under sixteen years of age are exempt from criminal responsibility for any act or omission done without any mischievous discretion.

78. The adoption of the Minor Protection (Alternative Care) Act of 2020, Chapter 602 of the Laws of Malta updates the Children and Young Persons (Care Orders) Act of 1980 (not all provisions are in force). This law addresses issues such as when minors protected by a care order would end up stuck in the system until they became of age, with their future reviewed every six months.

79. Juvenile care orders (also of a correctional nature) were shifted from the minister's responsibility, to the responsibility of a Juvenile Court. Three alternatives to care orders (now called 'protection orders') were introduced, to avoid care orders serving as a catch-all solution. The children involved will now participate at every stage of the process, with a Children's Advocate representing their interests. To offer them a feeling of security, they do not need to be heard in court, but can do so in a suitably calm environment.

80. Every professional involved in the process will now receive specialised training, while the law introduced new offences for anyone who hinders or obstructs their work or who acts in a violent manner towards them. A time frame for the minor to return to their natural family will be set, while further amendments seek to provide a sense of permanency and stability in cases where such a return will not be possible. The new act also introduces a right to appeal at every stage of proceedings.

#### **Right to vote of blind persons**

81. Blind persons and persons with visual impairments can request a Braille ballot at polling stations, and the Electoral Commission ensures that a number of these ballots are

available for this purpose. The layout of standard ballots has also been changed, using clearer structure and a larger typeface. Internal discussions are also constantly ongoing to ensure further access.

### **Freedom of expression and freedom of conscience and religious belief**

82. The legal regime regarding media freedom has been amended to make it more protective of the right of freedom of expression of journalists and media houses through the enactment on the 14th May 2018 of the Media and Defamation Act (Chapter 579 of the Laws of Malta). For instance, Malta removed criminal libel from its legal system and introduced provisions in the Act against strategies which may be used to multiply actions in libel on essentially the same issues. Articles 163 and 164 of Title IV of the Criminal Code which dealt with crimes against the religious sentiment specifically with vilification were deleted by means of Act XXXVII of 2016.

## **Section B**

### **Reply to paragraph 2 of the list of issues prior to reporting (CCPR/C/MLT/QPR/3)**

83. Domestic legislation is examined, during drafting stage, to ensure that it is compliant with the provisions respecting and guaranteeing fundamental human rights. Continuous training on human rights protections is provided to the judiciary and to prosecutors.

### **Reply to paragraph 3 of the list of issues**

84. Please refer to the input provided under section A on page 2.

## **National Human Rights Institution (art. 2)**

### **Reply to paragraph 4 of the list of issues**

85. Government has drafted and presented to the House of Representatives two Bills in this respect: Bill 96, the Equality Bill, and Bill 97, the Human Rights and Equality Commission Bill.

86. The Equality Bill strengthens Malta's anti-discrimination legal framework by consolidating and elevating equality and non-discrimination provisions, which are presently applied in a piecemeal manner. The Bill also brings together all protected characteristics currently protected by local and international law, defines discrimination widely, and secures protection from discrimination in all spheres of life.

87. The Human Rights and Equality Commission Bill establishes Malta's first National Human Rights Institution in full accordance with the Paris Principles.

88. With respect to the Equality Bill and the Human Rights and Equality Commission Bill, three public consultations were carried out. The Scoping Consultation was the first public consultation, followed by the White Paper Consultation through which two legislative initiatives were launched – a Bill towards an Equality Act aimed to meet the highest anti-discrimination and equality standards, and a Bill towards a Human Rights and Equality Commission Act that will set up the Commission. Moreover, the last public consultation on the aforementioned Bills was carried out prior to their presentation in Parliament for the first reading. The scope of the latter consultations was that of encouraging input on any issues with respect to Articles in any one of the Bills, alongside comments on what needs to be added and/or removed; and voicing any concerns on the Bills, while subsequently providing concise explanations and alternate proposals.

89. Alongside public consultations, a stakeholder consultation was also carried out in which international experts, social partners, government institutions and civil society participated accordingly. The scope of this consultation was that of developing a robust legal

framework, which ensures effective protection from discrimination and equality in all spheres of life.

90. The Equality Bill and the Human Rights and Equality Commission Bill are currently at Committee and awaiting Committee stage, respectively.

### **Anti-corruption measures (arts. 2 and 25)**

#### **Reply to paragraph 5 of the list of issues**

91. A financial crime investigation department was set up within the Police Force and extensive recruitment took place during 2020.

92. With effect from the 18th December 2019, the Office of the Attorney General became an exclusive prosecutorial service (with the advisory role of the Attorney General entrusted to the State Advocate). Extensive recruitment took place within the Office of the Attorney General in 2020 with the number of prosecutors increasing from 16 to 33. This led to the taking over from the Police of the decision to prosecute by the Attorney General of serious offences such as corruption, money laundering and wilful homicide cases. The Office of the Attorney General and the Police concluded Standard Operating Procedures (SOPs) to guarantee the smooth transition of the prosecutorial duties that are entrusted to prosecutors at the Office of the Attorney General. From the 1st October 2020 (when the Attorney General took over the decision to prosecute and prosecutions of serious offences) until the 14th May 2021, the Office of the Attorney General instituted 32 prosecutions 24 of which related to money laundering offences, 3 relating to wilful homicide, 4 relating to attempted homicide and 1 relating to attempted bribery. Amongst the persons prosecuted, there is an ex-PEP.

93. Prosecutors at the Office of the Attorney General were organized into four units (Litigation unit; international and mutual assistance unit; in genere unit and the EU Affairs unit) with prosecutors within the litigation unit divided according to offences. Currently 13 prosecutors are responsible for economic crime and this segregation is resulting in ensuring specialization amongst prosecutors. Continuous training is being provided to prosecutors through the organization of webinars and in-house training. Briefing and debriefing sessions take place regularly at the Office of the Attorney General.

94. The method of appointment of members of the judiciary was drastically changed through constitutional amendments that were enacted in 2020. The amendments provide for the issuing of a public call when there is a vacancy in the office of Judge or Magistrate and stipulates a list of objective eligibility criteria. Furthermore, members of the judiciary shall be appointed by the President exclusively from the names of three candidates submitted to the President by the Judicial Appointments Committee. The Chief Justice will be appointed by a Parliamentary process with the appointment requiring the approval of two-thirds of the Members of the House of Representatives. Should such a majority not be achieved the sitting Chief Justice will remain in office until such a majority can be reached.

95. In June 2020, a new Police Commissioner was appointed as per the new procedure set out in the revised law. The manner of appointment of the Police Commissioner has been overhauled, to be in line with the recommendation made by the Venice Commission. This was achieved by an amendment to the Police Act (Chapter 164 of the Laws of Malta) as well as to the Constitution of Malta. These amendments were carried out via Act XIX of 2020. Article 6(2) of the Police Act (Chapter 164 of the Laws of Malta) lays down the procedure as to when there is a vacancy in the office of Police Commissioner. Firstly, the Public Service Commission is to issue a public call for applications, subject to the necessary qualifications and experience required for a person to be eligible for appointment. The Public Service Commission is to then evaluate the applications and then draw up a shortlist indicating the two most suitable candidates. Following this step, the Public Service Commission is to refer this shortlist to the Cabinet. The Cabinet is to consider both candidates and then nominate the most suitable candidate for a hearing before the Parliamentary Public Appointments Committee. If this Committee advises in favour of the appointment of the selected candidate, the Prime Minister shall appoint the selected candidate after consultation with the Public

Service Commission. The current Police Commissioner has been appointed in June 2020, in accordance with this new procedure.

96. Following this, the Malta Police Force launched its Transformation Strategy for the years 2020–2025. The desired outcomes are as follows: i) increase in trust, confidence, legitimacy and responsiveness externally from the perspective of the community, and internally from police officers and staff; (ii) transformation of the current police organisation into a flexible, efficient, data-driven, community centric, outcome-focused and modern Police Force; and (iii) innovation and sustainment of the positive changes resulting from reform through leadership and management practices that are both effective and efficient.

97. Eleven strategic objectives have been identified based on the three desired outcomes. The key strategic objectives most relevant to the material scope of the European Rule of Law Mechanism and the overall institutional reforms being undertaken in Malta are the following:

(a) To communicate with the public in a clear, consistent and transparent manner: This would be done through holding frequent and open consultation with public interest bodies, holding periodic press briefings, listening to feedback from the public about the service by the police etc.

(b) Holding itself accountable at all times: This would be done by drawing up internal performance targets, publishing key indicators on the performance of the Force and implementing operational internal audit and quality control measures.

(c) Strengthening anti-corruption measures and safeguards: This would be achieved through continuous screening of police officers, offering adequate protection to whistle-blowers and conducting regular drug testing of personnel.

98. The implementation of the Transformation Strategy will be under the scrutiny of the Board of Governors to ensure concrete deliverables. EU funding was used for this Strategy also with a view to add a level of European Commission scrutiny.

99. An Anti-Fraud & Corruption Policy which provides a framework for identifying and preventing corruption within the Police force has been introduced. This policy assists individuals and their supervisors in ensuring that their actions can withstand scrutiny. This policy also defines corruption and fraud within the context of policing. It provides a framework for identifying and preventing corruption and details what actions should be taken by an individual where corruption and/or fraud is suspected or has been committed by colleagues.

100. A revised Code of Ethics was also introduced which is embedded in day-to-day thinking and actions. The new Code of Ethics presents an opportunity for the Force to revitalise itself and re-focus its attention on improving levels of confidence and trust in the police. This document binds every sworn officer of the Force, from the Commissioner to the Constable, setting out the standards of behaviour leading to more correct decision making. Additionally, the Code outlines the values which shall guide the principles of policing whilst emphasising the adequate handling of the varied stakeholders, including victims of crime, witnesses, offenders, defence lawyers, the judiciary and the media.

101. The new Code of Ethics will improve the delivery of service and gives a practical focus and benchmark around quality and consistency to help the Police Force build public confidence through greater transparency and accountability. The Code will be a living document which will be reviewed at least every five (5) years and revised as appropriate.

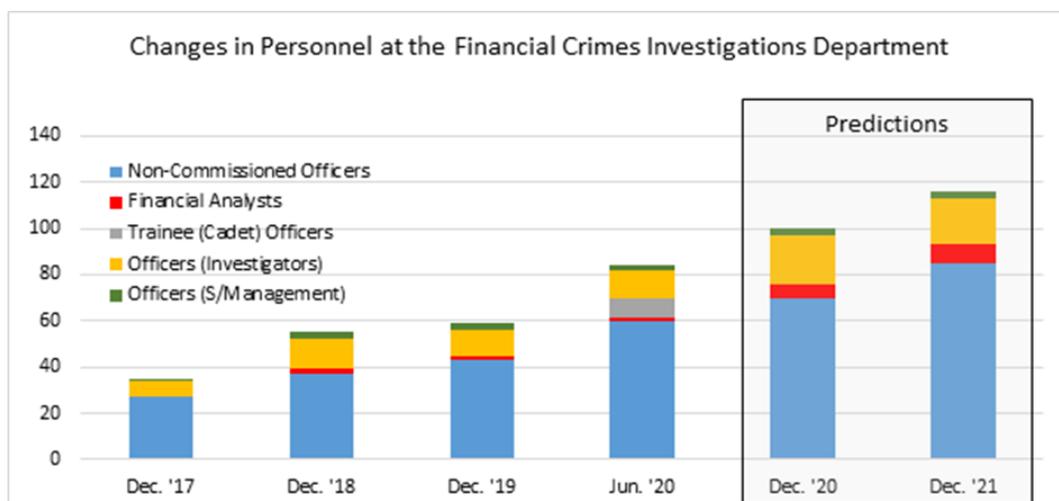
102. In addition, a Business Interest & Additional Occupations Policy was launched on the 25th November 2020 which sets out the framework to ensure there will be no conflict of interest, arising from any parallel activity.

103. The reform of the Malta Police Financial Crimes Investigations Department is proceeding according to plan, with additional personnel and training being provided to cater for the demands that are being placed on this sector.

104. As of 1st June 2020, the Financial Crimes Investigations Department is made up of the following personnel:

- One Assistant Commissioner acting as Head of Department aided by one Superintendent heading the Economic Crimes and Anti-Money Laundering Squads. The selection process for additional superintendents within the Malta Police is in progress.
- Eight investigators are assigned to the Economic Crimes Squad and four investigators are assigned to the Anti-Money Laundering Squad. Nine officer cadets are currently receiving training with the Department and these will be promoted to inspectors in a few months' time after receiving the necessary academic training. Eight of these cadets will be assigned to the Anti-Money Laundering Squad, and one to the Economic Crimes Squad.
- Currently, the Department has one financial analyst working full time. Vacancy calls for more analysts will be issued in the coming days for an additional five analysts.
- Sixty Non-Commissioned Officers (Police Constables and Sergeants) assisting in the Department's daily work.

105. The chart hereunder illustrates the changes in personnel and the predictions till end December 2021.



## Non-discrimination (arts. 2, 20 and 26)

### Reply to paragraph 6 of the list of issues

106. The proposed Equality Bill, currently being debated in Parliament, strengthens Malta's anti-discrimination legal framework by consolidating and elevating equality and non-discrimination provisions, which are presently applied in a piecemeal manner. The Bill also brings together all protected characteristics currently protected by local and international law, defines discrimination widely, and secures protection from discrimination in all spheres of life. Among other protected characteristics, the Equality Bill proposes the characteristic of language, defined as "any spoken, written and sign language officially recognised at law".

107. Government has undertaken an ongoing legislative exercise to amend or repeal, as necessary, provisions which are incompatible with the principle of non-discrimination. As a result, in December 2020, for instance, Government repealed clauses calling upon women alone to state their civil status in notarial deeds.

108. Government is currently in the final drafting phases of Malta's first National Action Plan against Racism and Xenophobia (NAPRAX). The goals of the NAPRAX are to (i) confront and eliminate racism in all its forms, individual, systemic and societal; and (ii) stimulate and support intercultural inclusion. Following a fruitful Public Consultation during 2020, a draft final document was redacted. The process of redaction included important consultations with Council of Europe (CoE) experts. Presently, a number of the measures are

being refined, and it expected that the NAPRAX will be presented for final approval during the coming months.

109. The Hate Crime and Speech Unit was established to address issues of hate speech and hate crime in Malta, and support victims through the provision of free therapeutic and legal services. The team consists of the Head of Unit, a Therapeutic Deputy Unit Leader, 4 Therapeutic Assistants, and a lawyer specialising in hate crime and speech legislation. The Unit provides a multidisciplinary service, and refers victims to internal and external services, on a case-by-case basis, over and above pro bono legal aid. It also compiles statistics and processes cases of hate crime and hate speech which are reported to the Unit, conducts research on the issue, and educates and trains both the general public and professionals.

110. The Equality Bill is an Act which is to prohibit discrimination in various spheres of life, to promote equality and prevent discrimination, to incorporate the relevant provisions of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to goods and services and their supply, the Communication from the European Commission (22.12.2011 C (2011) 9497) containing Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (Test-Achats), Council Directive 2006/54/EC of 5 July 2006 implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Council Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, and to repeal Chapter 456 of the Laws of Malta and its subsidiary legislation.

111. The Human Rights and Equality Commission Bill is an Act which provides for the establishment of a body to be known as the Human Rights and Equality Commission in line with the principles relating to the Status of National Institutions (The Paris Principles) and European Union equality legislation, responsible for the promotion and protection of human rights including the right to equal treatment and non-discrimination in Malta; to provide for the dissolution of the National Commission for the Promotion of Equality for Men and Women (NCPE) and to provide for the conferral of its functions to the Human Rights and Equality Commission and to make provision with respect to matters ancillary thereto or connected therewith.

112. The new Equality Bill being discussed by Maltese Parliament, once enacted, would further prohibit discrimination and is to place an equality duty on educational establishments to “promote diversity and respect towards any person, paying particular attention to the diversity and particular combinations of protected characteristics” and on employers to “implement policies, rules, or guidelines about equality, equal treatment and non-discrimination as may be necessary”. Additionally, the new Equality Bill is to place an even stronger equality duty on public administration which is to be obliged to “ensure equality mainstreaming when formulating and implementing laws, regulations, administrative provisions, policies and activities in all areas”.

113. One of the tools which the NCPE makes use of throughout the year and by which it is able to implement its remit, particularly the racial or ethnic origin ground, is by means of awareness-raising campaigns. The NCPE carries out such campaigns by making use of its social media platforms, by organising and participating in conferences, through appearances on local television and radio stations, by publishing press statements and through the projects that the NCPE carries out.

114. With regards to persons with disabilities, Malta issued the United Nations Convention on the Rights of Persons with Disabilities Bill, 2021, and the Equal Opportunities (Persons with Disability) (Amendment) Bill, 2021, for Public Consultation in May 2021. The former will ensure applicability of substantive Convention Articles in the domestic legal framework, while giving a legal basis to the national focal point and national coordination mechanism and setting up a civil society participation mechanism. The latter sets up a UNCRPD Redress

Panel in respect of discrimination claims linked to substantive Convention articles, while strengthening other existing avenues of redress, and giving a structured legal basis to the investigation, compliance and enforcement functions of Malta's disability regulator.

*Discrimination against LGBT persons*

115. 2015: The Gender Identity, Gender Expression and Sex Characteristics (GIGESC) Act was adopted, granting the right to the recognition of one's gender identity and the right to bodily integrity and physical autonomy (Act XI of 2015).

- Three amendments have since been affected to the Gender Identity, Gender Expression and Sex Characteristics Act:
  - the first to ensure that the provisions of the Act fully apply to adopted persons (Act XX of 2015);
  - the second to ensure that the effects of the Act extend to persons in detention (regardless of nationality), as well as to depathologise all sexual orientations, gender identities and gender expressions (Act LVI of 2016); and
  - the third to conform the penalties applicable to intersex genital mutilation to the penalties applicable to female genital mutilation (Act XIII of 2018).

116. 2015: The Trans, Gender Variant and Intersex Students in Schools Policy which provides guidelines on how to implement the provisions of the GIGESC Act in schools was launched.

117. 2015: Adoption of the LGBTIQ Action Plan 2015–2017.

118. 2016: The Affirmation of Sexual Orientation, Gender Identity, and Gender Expression Act was enacted to end harmful conversion practices and affirm that all sexualities and genders are equal before the law (Act LV of 2016).

119. 2017: The Marriage Act and other Laws (Amendment) Act was introduced in order to remove all distinction between different-sex and same-sex couples before the law (Act XXIII of 2017). A legal notice introduced the right to convert civil unions into marriages (LN 382 of 2017).

120. 2017: A legal notice introduced in vitro fertilisation (IVF) leave for all couples regardless of their sexual orientation. This was further amended in 2020 L.N. 156 of 2017 as amended by Act XXIV of 2018; L.N. 263 of 2020).

121. 2017: The 'X' marker was introduced as an alternative option to 'M' or 'F' on identity cards and passports.

122. 2018: A legal notice introduced 'gender identity and sex characteristics related conditions' in the entitlement schedule relative to the National Health Service (NHS) (LN 44 of 2018). A consultation to ensure the best healthcare services on these grounds was subsequently launched. The Gender Wellbeing Clinic started providing Trans Specific Healthcare Services as of November 2018.

123. 2018: The Embryo Protection Act was amended, redefining 'prospective parent' and removing any discriminatory exclusions on the basis of SOGIGESC and catering for third-party donations (Act XXIV of 2018).

124. 2018: The National Police System was amended to facilitate the capture and reporting of hate crime when such incidents are reported. A number of police officers also underwent the Training against Hate Crimes for Law Enforcement (TAHCLE) Train the Trainers Programme organised by the office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) and have since then trained over 800 police recruits and officers.

125. 2018: Adoption of the LGBTIQ Equality Strategy & Action Plan 2018–2022.

126. 2018: Setting up of the Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIGESC) Unit within the Human Rights Directorate responsible for monitoring implementation of the LGBTIQ Equality Strategy & Action Plan 2018–2022. An

annual report is published each year during a public conference reporting on the progress made and the work conducted by the SOGIGESC Unit.

127. 2020: The Civil Code and Various Other Laws (Amendment) Act introduced various provisions including (Act LXV of 2020):

- To use as far as possible gender inclusive terminology;
- To allow the change of the registered sex to reflect the gender identity of individuals as provided for in the ‘Gender Identity, Gender Expression and Sex Characteristics Act’ – Cap. 540 of the Laws of Malta;
- To ensure that what applies to a civil marriage, applies equally to a civil union.

128. 2020: The Procedural Standards in Examining Applications for Refugee Status Regulations were amended to also include consideration of gender identity, gender expression and sex characteristics (LN 416 of 2015, as amended by Act XL of 2020).

129. Also in 2020, the International Protection Agency (set up that same year to improve the examination process of applications for international protection in accordance with Maltese law) adopted internal guidelines for Case Officers in the processing of Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics Unit (SOGIGESC) related claims.

130. In April 2020, the NCPE started working on the Empowerment for Diversity (E4D) project. The aim of the project is that of addressing the societal and cultural impact led by the enactment of laws which have passed in the last five years, vis-à-vis LGBTIQ+ rights.

#### **Reply to paragraph 7 of the list of issues**

131. Since 2020, reports on online hate speech are being investigated by the Vice Squad, which is a specialized branch within the Police Force. Previously, this crime was investigated and prosecuted by the divisional police.

### **Gender equality (arts. 2, 3 and 25)**

#### **Reply to paragraph 8 of the list of issues**

132. Since June 2000, gender mainstreaming became official government policy, which policy was reiterated in 2012 through OPM Circular No. 15/2012. The scope of the policy was that of ensuring that policies and practices are gender mainstreamed, as well as to obtain a consolidated yearly report on what is happening throughout governmental departments and entities in relation to gender mainstreaming. Every department and entity is requested to prepare a report on the measures taken and the progress achieved in the sphere of gender equality and mainstreaming. This annual report is then forwarded to the NCPE with a synopsis also to be included in the department’s annual report.

133. The Equality Bill states that, once enacted, at least 40% of the appointments made for officially designated bodies should be women.

134. While none of the provision in the Equality Bill directly mentions “stereotypes”, it is to encompass the promotion of equality, thus entailing a pro-active effort to avoid stereotypes and overcome traditional gender roles.

135. In 2019, a report on the Gender Balance in Parliament Reform was presented to Parliament that proposed recommendations to address the dearth of women parliamentarians. In February 2020, Hon. Prime Minister Dr. Abela reaffirmed the government’s commitment towards gender balanced representation, not only in parliament but also in directorship and governmental roles. Moreover, the gender parity mechanism, identified in the 2019 reform report, would enable the increase of female representation in parliament. It is important to note that an agreement on said proposals was reached with the opposition. Indeed, Act XX of 2020 was successfully approved by Parliament, and the mechanism which will ensure that at least 40% of representatives in the House are women will be enacted in the next general election.

136. In April 2021, the Maltese Parliament passed the Constitution of Malta and Various Laws (Amendment) Bill to amend the Constitution of Malta to introduce temporary positive measures necessary and reasonable in a democratic society to ensure de facto equality between men and women in politics and also the amendment of the General Elections Act to increase the number of electoral commissioners and ensure equal representation between sexes.

137. In 2020 NCPE finalised its EU co-funded project Prepare the Ground for Economic Independence (PGEI) which addressed existing gender gaps over the life cycle. An Equal Pay Tool has been developed for the Equality Mark and is nationally the first of its kind; a baseline upon which to keep improving. Since the Equal Pay Tool has been developed within the framework of the Equality Mark certification, NCPE is prepared to do the same and keep the revamped Equality Mark going beyond the project lifetime. Once organizations and companies opt to also be equal pay certified through the use of this Tool, this will ensure a work environment that is aware of the issue of unequal pay between women and men, which will contribute to the increase of equal economic independence, hence leaving a socio-economic impact on society.

138. In 2015 the NCPE finalised its Gender Balance in Decision-Making project which was aimed at increasing the number of women in decision-making positions; empowering and enabling women to take up decision-making positions; and tangibly supporting and advising policy makers on gender-balance in decision-making. The objectives aforementioned were reached by means of: two research studies, Gender-Balanced Representation in Decision-Making, and Gender Quotas and Other Measures towards a Gender-Balanced Representation in Decision-Making, which are still available on NCPE's website; a Mentoring Programme; and the Directory of Professional Women which was launched by NCPE in fulfilment of this project and is aimed at giving more visibility and opportunities to professional and competent women for appointment on boards and committees, and/or to take on decision-making roles in the labour market.

139. In order to incentivize men to increase their participation in caring responsibilities and break away from traditional roles and stereotyping, in November 2016 five (5) days of paid paternity leave were given to public sector employees, an increase of three (3) days.

140. Since 2014, working parents and parents in education, have been benefitting from free good quality childcare resulting in an increase in female participation in the labour market on a full-time basis, as well as an improved female representation in headship positions.

141. Female employment in Malta, for age group 20–64, has increased from 55.3% in 2015 to 68% in 2020. Moreover, in 2020 women accounted for 9.9% of employees in largest listed companies, as presidents, board members or employee representatives, as opposed to 4.5% in 2015. The aforementioned statistics reaffirm that family-friendly measures and equality between women and men in the sharing of care and household responsibilities, do encourage and provide women with equal opportunities to develop and progress in their career.

142. Since 2010, the National Commission for the Promotion of Equality (NCPE) has been awarding the Equality Mark certification to organisations that demonstrate a pro-active commitment to equality between women and men and to persons with family responsibilities in the workplace. The Equality Mark, and the certification and re-certification are based on the following principles and the adherence to the following, respectively:

- Policies and initiatives, particularly equality policy and sexual harassment policy in line with relevant legislation;
- Recruitment and appointments are based on the principles of equal opportunities, ensure equal pay for work of equal value, and ensure that work force profiles and job descriptions are gender neutral and roles are free from gender stereotypes;
- A company is to make sure that an employee equality representative and/or equality committee is appointed;
- Ensure equality in career and personal development opportunities;
- Provide family-friendly measures for men and women employees with caring responsibilities;

- Ensure gender equality in the access to and supply of goods and services.

143. Other initiatives which have been taken include:

- The setting up of the Gender Mainstreaming Unit (GMU) within the Human Rights Directorate (HRD) to serve as Government's coordinating body and feed the gender perspective to ongoing processes.
- The setting up of the Consultative Council for Women's Rights (CCWR) to act as an advisory body and to enhance dialogue between Government and civil society.
- The development of the first national strategy and action plan on Gender Equality and Mainstreaming, which is expected to be launched at the end of 2021. This document aims to strengthen gender mainstreaming in all stages and in various sectors of policymaking, and by committing Government to direct, targeted, measures to achieve full gender equality.
- Legislative draft on the Gender Balance in Parliament, proposing a gender corrective mechanism. The Parliament bill will introduce temporary positive measures which are necessary in a democratic society to ensure de facto equality between men and women in politics. In addition, an amendment of the General Elections Act to increase the number of electoral commissioners and ensure equal representation between sexes has been approved.
- Amendments to the surname regime in marriage by means of the Marriage Equality Act, introducing a new, gender equal regime aimed at eliminating discrepancies between husband and wife in the choice of surname.
- A High-Level Group Meeting on Gender Mainstreaming was organised during Malta's Presidency of the EU in 2017, with a particular focus on advancing equal economic independence of women and men, combating gender-based violence, and promoting gender equality and women's rights globally.
- Malta ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) during the 63rd session of the Commission on the Status of Women.
- The licensing, importation, and distribution of over-the-counter emergency contraception was introduced in 2016.
- In 2018, the introduction of IVF treatment within the national health system for individuals and couples alike.
- The Women in ICT focus group has been set up as part of the eSkills Malta Foundation, discussing gender issues in ICT and digital entrepreneurship, undertaking initiatives to increase digital skills and knowledge in girls and women, and undertaking studies on gender balance within the Digital Sector.
- Introduced in 2014, the benefit tapering scheme provides support to people who enter the employment market after having been on unemployment assistance, social assistance or single parent benefits.
- The Maternity Leave Trust Fund was introduced in 2015, where every employer is paying a minimum contribution for every employee irrespective of the sex.
- HRD and NCPE organise various raising awareness campaigns on stereotypes, sexism, equality, STEM etc.

## **Violence against women, including domestic violence (arts. 2, 3, 6, 7 and 26)**

### **Reply to paragraph 9 of the list of issues**

144. The following actions were taken:

- The ratification and full incorporation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in national legislation in 2014.
- The creation of the Gender-Based Violence and Domestic Violence Commission, coupled with considerable amendments to Maltese criminal law (the GBV&DV Act), aimed at ensuring justice for victims of violence, heightened protection, and preventive measures against violence.
- The introduction of the first Gender-Based Violence and Domestic Violence Strategy and Action plan (Vision 2020), fully in line with the GBV&DV Act and the Istanbul Convention. A follow up Strategy is expected to be launched in 2021. Malta's second strategy on gender-based violence and domestic violence which was launched in June 2021. The strategy is built on the 4 pillars of the Istanbul Convention namely: Prevention, Protection, Prosecution and Integrated Policies. It also aims at implementing recommendations emanating from the GREVIO report.

### **Reply to paragraph 10 of the list of issues**

145. As of April 2020, Legal Aid Malta has initiated a 24-hour service for legal aid advice to victims of domestic violence and specially trained lawyers were recruited by the same Agency for this purpose. The service has also been extended to a 24-hour basis. Legal Aid Malta, in collaboration with the Police Victim Support Unit and Aġenzija Appogg, has drawn standard operational procedures which have been implemented to enforce standard professional services across the entities involved.

146. The Police Victim Support Unit is a centralised office investigating GBDV cases, where all officers are specialised and given training in that type of crime, therefore making the victims feel more at ease and comfortable to report the crime. Victims are offered transportation when they do not have the means to arrive at the police headquarters to report a crime. Moreover, emotional support is also offered.

147. Moreover, these three entities have embodied these SOPs in a Memorandum of Understanding which was signed on the 14th September 2020 in the presence of the respective Ministers. Persons who refer or are referred to Legal Aid Malta Agency for domestic violence issues are immediately assigned a legal aid lawyer for free advice on their situation and if necessary be referred to other entities accordingly. Legal Aid Malta will strive to continue to provide free legal aid to victims of violence against women, children and vulnerable persons in order to accomplish all the provisions enshrined in the Istanbul Convention and ratified in Chapter 581 of the Laws of Malta.

## **Voluntary termination of pregnancy and sexual and reproductive rights (arts. 6–8)**

### **Reply to paragraph 11 of the list of issues**

148. Please refer to the input provided under section A, page 5.

149. In addition, MFH provides several sexual and reproductive health-care services, which are freely available within the national public healthcare system. These include family planning, safe motherhood, infertility treatment, assisted reproduction, transgender services, prevention, confidential testing, diagnosis and treatment of reproductive tract infections, STIs and HIV/AIDS, prevention and treatment of reproductive cancers and maternal morbidities. Furthermore, contraceptives are easily accessible in community pharmacies. Rapid testing for HIV was introduced at the Genito-Urinary Clinic in 2017. In 2017 Malta licensed the sale of the morning after pill, as an over-the-counter preparation. For further information on

Sexual health services provided by the Health Promotion & Disease Prevention Directorate (HPDP) – MFH. You may wish to access the following link: <https://sexualhealth.gov.mt/> and for Sexual Health Malta social media platform on the following links for <https://www.facebook.com/Sexual-Health-Malta-102604634651092;> <https://www.instagram.com/sexualhealthmalta/>, <https://twitter.com/SexualHealthMT>.

150. IMFH works in collaboration with the Ministry of Education and organises Sexual education campaigns for the teaching profession, like for example, the Sexuality and Relationship Education campaign referred in the following link: HPDP website: <https://deputyprimeminister.gov.mt/en/healthpromotion/Pages/campaigns/2015/sexuality-and-relationship-education.aspx>.

### **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and treatment of persons deprived of their liberty (arts. 7 and 10)**

#### **Reply to paragraph 12 of the list of issues**

151. Please refer to input provided under section A, pages 6, 12–13 and to the next question, on page 26.

#### **Reply to paragraph 13 of the list of issues**

152. All migrants are entitled to free medical healthcare and emergency services upon arrival. However, the COVID-19 pandemic has brought about unprecedented challenges on the national public health system not least to the migrant population. During the pandemic an isolation facility was set up near one of the open detention centres to cater for the medical treatment of migrants testing positive for COVID-19. Patients in this facility are closely monitored by a medical team in case their condition worsened, furthermore systematic swabbing of residents in the centres are conducted regularly. Additional fruit and vegetables are provided to positive cases to help boost their own immunity. Information to migrants is provided in their own language with the help of translations done by NGOs.

#### *Corradino Services Agency*

153. The medical mitigation measures during the pandemic within the Correctional Services Agency mimicked that in the public setting, through the following actions:

1. Prompt identification of positive cases

154. With heavy investment in purchasing CDC and WHO-approved rapid antigen COVID-19 swab tests – for the past 8 months, the Correctional Services Agency (CSA) have been in a position to get immediate test results on arrival of a new inmate in the Correctional Facility. In addition, anyone exhibiting symptoms can be swabbed immediately with a result. Over 2,000 rapid antigen tests have been done so far within the facility since the beginning of the pandemic. CSA are now officially an accredited rapid antigen swab test centre – and have been approved by Maltese Public Health authorities. Over 4,000 PCR COVID-19 swabs have been carried out since the beginning of the pandemic and all data is relayed to the Maltese public health server.

2. Early Isolation of Positive and high risk COVID-19 cases

155. If a new inmate marks positive on arrival to the prison facility, the person is immediately sent to an isolation room for quarantine and medical observation. An incoming inmate does not follow the routine admission protocol in the eventuality that he has a positive rapid antigen COVID-19 result. The focus in such cases is prompt isolation to avoid local transmission to other inmates and staff.

3. Continuous Clinical Assessment of Positive & High-Risk Cases

156. In the eventuality that an inmate is identified as a positive COVID-19 case via a rapid antigen test or a COVID-19 PCR swab – whilst in quarantine – his parameters are monitored

at minimum twice daily. His/her oxygen saturations, blood pressure, pulse, temperature is monitored. Clinically his/her respiratory function is observed via peak flow testing and auscultation of the chest. In the eventuality of any potential deterioration, medical colleagues at the Accident & Emergency Department at Mater Dei hospital are informed for a potential transfer for further intensive care. So far this was never required.

4. Contact Tracing in Collaboration with Public Health Authorities

157. All contacting tracing for any positive inmates or officers since the beginning of the COVID-19 pandemic has been done by the medical team at CSA. Every contact tracing report is discussed via phone or in writing with Public Health Authorities. Contact tracing is done on the same day of identification of a positive result – so as to avoid delays in management.

5. Vaccination against COVID-19

158. As on the 6th of June 2021 – a total of 2,655 COVID-19 vaccines have been administered in prison.

159. These numbers are not inclusive of the few inmates vaccinated with Pfizer COVID-19 vaccine at the Severe Allergy Clinic at Mater Dei hospital. It is also not inclusive of those who were vaccinated in the community prior to incarceration.

- 1,619 vaccines have been given to inmates and 1,036 vaccines administered to staff.
- 96% of prison staff have accepted the first dose of the COVID-19 vaccine.
- 94% of inmates have accepted the first dose of the COVID-19 vaccine.
- 76% of inmates who have taken the first dose in prison have taken the second dose in prison too. Another 10% have taken 2<sup>nd</sup> dose of the vaccine in the community after being released from prison.
- So far, all inmates who accepted the first dose of the vaccine have also accepted the second dose of the COVID-19 vaccine.

*Detention Centres*

160. The Government has set up the necessary facilities to reduce the spread of COVID-19 inside closed facilities. Nearly one year after the first case of COVID-19 in Malta, the situation inside migrants' centres has always remained under control.

161. In response to COVID-19, a new medical facility (HIRC) has been set up as part of the contingency measures being taken to contain the outbreak of COVID-19. The building is being used to accommodate residents who have tested positive for the virus and must remain in isolation until they recover. It is important to clarify that no women or minors were treated at HIRC. These were either isolated at their respective reception centres or treated at public or private hospitals. Pregnant migrants who had COVID-19 gave birth without any complications.

162. A new medical facility has been constructed at Safi adjacent to the closed facility. The facility is expected to start operating in the coming weeks. It aims to (i) serve as a hub for the migrant health needs, and (ii) provide immediate assistance to migrants who require medical assistance.

163. Mitigating measures were subject to updates and changes according to any new measures implemented by the Superintendent of Public Health. Awareness raising material in different languages have been disseminated in the centres.

164. Hygiene packs are distributed monthly or according to demand. These also include masks and hand sanitizers to avoid the chances of COVID-19 infections. All detergents bought by DS are also certified disinfectants against COVID-19.

165. Furthermore, a new shampoo has been specifically developed for DS by a local soap factory. Unlike the ordinary on the shelf products this soap is much less toxic thus it is safer than stock products if ingested by migrants.

166. Migrants have also been included in the COVID-19 vaccine roll out plan set out by the health authorities. Migrants will be inoculated in the same process applicable to the rest of the population, according to their age or health conditions. All personnel working within the immigration sector are considered as front-liners and are being inoculated according to their age or vulnerability. The vaccination of these front-liners is planned to be concluded by the end of April 2021. It is also important to point out that the residents of closed centres have all been vaccinated against the influenza virus in January.

### **Trafficking in persons (art. 8)**

#### **Reply to paragraph 14 of the list of issues**

167. Please refer to the input provided under section A on pages 6–10.

### **Migrants, asylum seekers and refugees (arts. 6, 7, 9 and 10)**

#### **Reply to paragraph 15 of the list of issues**

168. In accordance with the United Nations Convention on the Law of the Sea (UNCLOS), Search and Rescue Regions (SRR) are not subject to States' jurisdiction since they fall within the high seas considered to be the common heritage of mankind. This is further corroborated by the 1979 Search and Rescue Convention (SAR) Article 2.1.7 'The delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States.' The obligation of States arising in SRRs is one of coordination of rescue operations rather than exercising territorial jurisdiction.

169. Malta strongly rebuts any allegations on arbitrary delays in responding to distress calls. Malta abides by international obligations and has always responded to distress calls in its Search and Rescue Region. All notifications received are investigated, assessed, prioritised and actions are taken accordingly. Malta seeks to continue to respect all its international obligations regarding the rescue of persons in distress at sea inside its area of responsibility. All such efforts are conducted in full respect of relevant instruments of international law; fulfilling all SAR obligations as set out in the UN Convention on the Law of the Sea, and applicable provisions contained within the 1979 Maritime SAR Convention.

170. Should an allegation arise as to whether a person commits a criminal offence involving migrants, local mechanisms are in place wherein a Magisterial Inquiry has legal powers to investigate. Such Magisterial Inquiry took place for instance, in mid-2020 where it looked into whether officials involved in a Search and Rescue operation were guilty of voluntary and/or involuntary homicide or other offences. The Inquiry concluded that there was no basis or reason for prosecution and no criminal offence resulted. Migrants and/or their heirs at law also have the possibility to institute civil proceedings for claims of a civil nature at the local Courts of Law in accordance with extant legislation.

171. It is also additionally noted that international instruments speak of a 'place of safety' rather than a 'port of safety', which latter term is narrower in scope and interpretation.

#### **Reply to paragraph 16 of the list of issues**

172. Irrespective of the class or type of vessel used in conducting search and rescue operations, the vessel shall abide and comply with the relevant legal framework. The Search and Rescue measure is reactive, in that a contracting State coordinates, sometimes through the deployment of public or private vessels, search and rescue operations. The activities of these vessels are specifically to intercept migrant vessels and should always comply with the instructions of the responsible SAR authority. This is ensured through the exemption provided in Art 32.1(a).

**Reply to paragraph 17 of the list of issues**

173. In order to ensure that the detention is necessary and proportionate, Malta's reception system is based on three different stages of accommodation for asylum seekers and irregular migrants, namely:

- Initial Reception Centres (IRCs);
- Closed (Detention) Centres; and,
- Open Centres.

174. The conditions for detention are set out in the SL 420.06 Reception of Asylum Seekers Regulations. The regulations provide for recourse to alternatives to detention by Immigration Police. Such measures may have a duration of not more than 9 months and may take the form of:

- reporting at an assigned place within specified timeframes;
- residence at an assigned place;
- deposit or surrender of documents; or
- placing of a one-time guarantee or surety.

175. In order for an asylum seeker to be detained he or she would have to be issued with a Detention Order by Immigration Police, which Order informs the person concerned of the reason for detention in accordance with the Reception of Asylum Seekers Regulations (e.g. in order to verify identity or nationality; when protection of national security and public order so require) as well as of avenues of redress. The Detention Order is issued in a language the migrant is expected to understand. In cases of difficulty, an interpreter is provided to explain the contents and effects of this order to the person concerned.

176. Each Detention Order issued to an asylum seeker is reviewed within seven days by the independent Immigration Appeals Board and, if the person in question is still in detention, his or her detention is reviewed after 2 months and every 2 months thereafter. In accordance with the mentioned Regulations no asylum seeker may be detained for more than 9 months.

177. Vulnerable groups, children and unaccompanied minors are not issued with detention order in terms of subsidiary legislation under the International Protection Act. Therefore, children are confined only in view of health and related considerations, when necessary.

178. Families with children, and unaccompanied minors, are processed expeditiously to ensure that they can be moved to an open centre from the Initial Reception Centre (IRC) at the earliest possible. Persons who are confirmed minors following the age-assessment test are transferred to open facilities immediately.

179. Families with young children and unaccompanied and separated children are hosted at IRC in different areas and separated from male adults. Families with young children and Unaccompanied Minor Asylum Seekers (UMAS) who are awaiting accommodation have also been granted permission to go in and out of the centre.

180. Free legal representation is provided as required in terms of relevant legislation, including in particular the International Protection Act. In the case of unaccompanied minors, following their submission of an application, he or she is provided with a representative, appointed by the competent authorities. In this regard, it is important to keep in mind that before the CEO of the International Protection Agency can proceed with the asylum procedure, a representative needs to be appointed to ensure that the unaccompanied minor is provided with the necessary assistance. Moreover, a personal interview will only take place with the presence of the applicant's representative.

**Reply to paragraph 18 of the list of issues**

181. Please refer to the input provided under section A, pages 10–12.

## **Free legal aid (art. 14)**

### **Reply to paragraph 19 of the list of issues**

182. As of April 2020, Legal Aid Malta has initiated a service for legal aid advice to victims of domestic violence. Specially-trained lawyers were recruited by the same Agency for this purpose. The service has also been extended to work on a 24-hour basis. Legal Aid Malta, in collaboration with the Police Victim Support Unit and Aġenzija Appoġġ, has drawn up Standard Operational Procedures (SOPs) which have been implemented to enforce standard professional services across the entities involved.

183. These three entities have embodied these SOPs in a Memorandum of Understanding which was signed on the 14th September 2020 in the presence of the respective Ministers. Persons who refer or are referred to Legal Aid Malta Agency for domestic violence issues are immediately assigned a legal aid lawyer for free advice on their situation and would if necessary be referred to other entities accordingly. Legal Aid Malta will strive to continue to provide free legal aid to victims of violence against women, children and vulnerable persons in order to accomplish all the provisions engraved in the Istanbul Convention and ratified in Chapter 581 of the Laws of Malta.

184. Also, through *Criminal Code (Amendment no.2) Act* of 2020, Malta transposed the Legal Aid Directive (Directive 2016/1919) in its Criminal Code bringing our legal aid legislation in line with EU standards.

## **Independence of the judiciary, administration of justice and right to a fair trial (art. 14)**

### **Reply to paragraph 20 of the list of issues**

185. Major Constitutional reforms were made in so far as the appointment and removal of members of the judiciary. These reforms have seen the total exclusion of political involvement.

186. The following is a brief overview with short comments on the legislative measures taken in this regard:

#### *Constitution of Malta (Amendment) Act (Act XLIII of 2020)*

187. This Act concerns the procedure for appointment of the Chief Justice, Judges and Magistrates.

188. The Chief Justice will be appointed by a Parliamentary process with the appointment requiring the approval of two-thirds of the Members of the House of Representatives. Should such a majority not be achieved the sitting Chief Justice will remain in office until such a majority can be reached.

189. This Act also changed the composition of the Judicial Appointments Committee ('the Committee') so that the Attorney General no longer forms part of that Committee and the majority of the Committee is composed of sitting members of the judiciary.

190. The Act also provides for the issuing of a public call when there is a vacancy in the office of Judge or Magistrate and also stipulates a list of objective eligibility criteria.

191. Under the Act, members of the judiciary shall be appointed by the President exclusively from the names of three candidates submitted to the President by the Judicial Appointments Committee.

192. The procedure for judicial appointments introduced by this Act represents an improvement on the previous system in that it should better avoid situations which give rise to allegations of politicization of judicial appointments.

193. Regarding the right to a fair trial, please refer to the input provided on section A, page 13.

*Various Laws (Removal from Office) (Amendment) Act 2020 (Act XLV of 2020)*

194. This Act provides for the procedure for removal from Office by the Commission for the Administration of Justice of Judges and Magistrates and by Parliament in the case of proved misbehavior or inability to perform the functions of the office on the part of Attorney General and the State Advocate.

195. The procedure regarding the Attorney General and the State Advocate is similar to that previously applicable for the impeachment of members of the judiciary. It involves a hearing before the Commission for the Administration of Justice and a prima facie finding of misbehavior or incapacity to perform the functions of the office before Parliament, after which, the latter can proceed to consider the impeachment motion.

196. This amendment strives to strike a balance between an exclusively parliamentary impeachment process and a judicial process for the removal of the Attorney General and State Advocate and represents a mixed system involving both a quasi-judicial and a parliamentary procedure.

197. More important amendments introduced by this Act concern the process for the removal of judges and magistrates which will now become an essentially judicial process subject to appeal to the Constitutional Court.

198. The Act also changes the composition of the Commission for the Administration of Justice ('the Commission') by removing the Attorney General from the Commission and thereby granting the judiciary a majority on the Commission. This is seen as being in line with the new powers of the Commission in relation to the removal from Office of members of the Judiciary as members of the judiciary will be judged by their own peers.

*Other measures taken relative to members of the judiciary:*

199. The financial package of members of the judiciary was revised with drastic increases in salary and allowances to maximize the independence and curb risks of corruption of members of the judiciary.

*Reform to the functions of the Attorney General*

200. In the first place it must be recalled that since the 18th December 2019 the Attorney General no longer has the dual role of acting as advisor to Government and as Malta's public Prosecutor. The function of advisor to Government has, with effect from the 18th December 2019, been passed on to the newly established Office of the State Advocate. Thus, the Office of the Attorney General is now a specialized and exclusive prosecutorial service. The Attorney General enjoys security of tenure akin to members of the judiciary.

201. Since March 2020, the Office of the Attorney General plays no role in the Board of Governors of the Financial Intelligence Analysis Unit.

202. By virtue of the amendments introduced in the Constitution on the 7th August 2020 (Act XLIII of 2020 and Act XLV of 2020), the Attorney General is no longer a member of the Commission for the Administration of Justice and of the Judicial Appointments Committee.

203. The role of the Office of the Attorney General has, therefore, over a span of ten months changed substantially and the Office is now strictly a prosecution service.

204. As a dedicated prosecution service, the Office started to take over a wider range of activities in the field of prosecution and, in particular, it started to gradually take over prosecutions before the Inferior Courts which are currently prosecuted by the Police. In order to be able to address this demand, the office was in April 2020 moved to larger premises, extensive recruitment was conducted so that the prosecutors at the office have doubled in number, a Code of Ethics for Prosecutor was published in 2019 and a collective agreement to increase the financial package of the prosecutors has been finalized.

205. The first group of cases where the decision to prosecute and prosecution before the Inferior Courts was taken over by the Office of the Attorney General, which includes the

most serious crimes like willful homicide and terrorism, corruption and money laundering, was taken over by the Office on the 1st October 2020 by virtue of Legal Notice 378 of 2020.

206. On the 1st October 2020 The Judicial Review (Decisions not to Prosecute and Other Decisions of the Prosecution) Act (Act XLI of 2020) came into force. This Act increases the accountability of the Attorney General in taking decisions not to prosecute by introducing the possibility of judicial review of those decisions (after a demand for reconsideration) on the grounds of illegality or unreasonableness. The Act also covers other decisions of the Attorney General such as in the case of “either-way” prosecutions where the Attorney General can decide in which court to prosecute an offence and decisions of the Attorney not to grant access to the acts of a Magisterial Inquiry. The Act also grants the Auditor General, the Commissioner for Standards in Public Life, the Permanent Commission Against Corruption and the Ombudsman, the right to seek judicial review of decisions not to prosecute taken further to reports of corrupt practices made by them, to the Attorney General. This is an important exception to the rule that judicial review of a decision not to prosecute may be made only by the injured party. The Act is an important step forward in ensuring openness and accountability of the prosecution service and in finding a proper balance with the rights and interests of society as a whole and those of injured parties.

207. The Office of the Attorney General does not have a legislative function or an advisory function in respect of legislation outside the fields touching upon criminal law. Its *locus standi* to comment on legislation of a constitutional nature passed by Parliament as a result of negotiation and compromise in the political sphere is therefore limited.

## **Right to privacy (art. 17)**

### **Reply to paragraph 21 of the list of issues**

208. The Malta Security Service is the entity with vested authority pursuant to the Malta Security Services Act Chapter 391 Laws of Malta.

209. The principles of legality, proportionality and necessity are addressed in article 6 of the Security Services Act, particularly:

- Article 6 (3) (a) addresses the legality and necessity principles where it states that ‘if the Minister – (a) thinks it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting the Service in carrying out any of its functions under this Act’
- Article 6 (3) (b) addresses the principle of proportionality where it states that ‘if the Minister – (b) is satisfied that what the action seeks to achieve cannot reasonably be achieved by other means.

210. As regards judicial authorisation, Article 8 (1) specifically states that ‘A warrant shall not be issued or modified except – (a) under the hand of the Minister; or (b) in an urgent case where the Minister has expressly authorised its issue or modification and a statement of that fact is endorsed on it, under the hand of a senior government official.’ Moreover, Article 11 empowers the Prime Minister, where it appears to the Prime Minister necessary to do so, to exercise any of the powers of the Minister under the Act. However, the act does not foresee any judicial authorisation.

211. With regard to effective and independent oversight mechanisms, the Security Service Act provides two important mechanisms:

- Article 12 foresees the appointment of an independent Commissioner, a person who had previously held the office of a judge of the superior courts or the office of AG. The Commissioner is empowered to keep the exercise of the Minister with regard to warrants under review and is empowered to be provided with the pertinent information or documents as necessary. The Commissioner also reports annually to the Security Committee, and to the Prime Minister on any matter under the functions laid down under the Act

- Article 13 empowers the Commissioner to undertake investigations on complaints about the Security Service, with Schedule 1 to the Act delineating the procedure to be followed in such circumstances
- Article 14 establishes the Security Committee, which is composed of the Prime Minister, the Minister responsible for the Security Service, the Minister responsible for Foreign Affairs, and the Leader of the Opposition. Its' remit is to examine the expenditure, administration and policy of the Security Service, and reports to the House of Representatives through an annual report. Schedule 2 of the Act lays down the terms of reference for the Security Committee.

212. The Malta Security Service in 2020 embarked on an exercise to review the legal framework within which it operates and prioritised three important areas where to make its proposals for the future, including the provisions regulating warrants, interference with privacy and surveillance.

## **Freedom of expression (art. 19)**

### **Reply to paragraph 22 of the list of issues**

213. The Media and Defamation Act introduced various provisions which strengthen freedom of the media and prohibited the multiplicity of libel lawsuits in Malta on the same journalistic report. At the same time, the new law added no new burdens on journalists and owners of media houses in terms of civil libel damages. Apart from this, this Act does away with the filing of precautionary warrants against journalists and the filing of multiple lawsuits against a journalist on the same facts. Although our laws already have a number of appropriate safeguards, Malta is committed to be at the forefront of introducing specific anti-SLAPP legislation at national level to boost the adequacy of the existing legal framework. Malta is looking ahead to formalise legislative amendments to ensure that our journalists are protected and can work under the right conditions.

214. Investigations of hate speech and hate crime against journalists have been assigned to the Vice Squad. Two additional investigative teams have been added to this Squad. Specialised training was delivered throughout to the officers regarding effective interaction with victims of hate crime upon first contact. A Victim Support Agency was launched in April 2021 and incorporates the services offered to victims of crime, while closely working with non-government organisations.

215. Moreover, the Cyber Crime Unit within the Technical Support Department of the Malta Police Force provides technical assistance in the detection and investigation of crime involving digital technology. The Unit's involvement also extends to investigations such as fraud and threats. The Unit also analyses the digital evidence seized in connection with investigations as well as in identifying persons who are committing crimes over the internet. Any other threats reported to the Police are actioned immediately.

### *Daphne Caruana Galizia*

216. A magisterial inquiry was initiated on the 16th October 2017, after the reporting of the murder of Daphne Caruana Galizia. The Magisterial Inquiry is still ongoing.

217. In December 2017, three persons (George Degiorgio, Alfred Degiorgio and Vincent Muscat) were arraigned in court charged with the murder of Daphne Caruana Galizia. In 2019, another person (Yorgen Fenech) was arraigned in court charged with the murder of Daphne Caruana Galizia.

218. Major developments took place recently in the investigations of the murder of Daphne Caruana Galizia. On the 23 February 2021, Malta saw the first conviction relative to this murder, as Mr Vincent Muscat was found guilty and sentenced to fifteen years effective imprisonment and to the payment of the proceeds of the crime as well as his share of the court expenses.

219. On the following day, 24 February 2021 two other persons (Robert Agius and Jamie Vella) were arraigned in court charged with the participation in the murder Daphne Caruana Galizia. Sittings are being held on a regular basis and evidence is being duly compiled.

220. Moreover, the compilation of evidence against two other persons (George Degiorgio and Alfred Degiorgio) arraigned in 2017 relative to the murder of Daphne Caruana Galizia was concluded with a formal Bill of Indictment filed on the 16th July 2019. The Criminal Court by means of its judgment of the 30th October 2020 rejected all the preliminary pleas filed by the accused persons. The accused filed an appeal from the said judgment before the Court of Criminal Appeal which appeal was decided on the 22nd September 2021. Since the Court of Criminal Appeal delivered its judgment the trial by jury can now be appointed for hearing.

221. On 18th August 2021, the compilation of evidence against the alleged mastermind (Yorgen Fenech) was concluded, resulting in the indictment of the individual, who will face trial by jury. This follows the previous developments in the case earlier this year.

222. The recent developments in the Daphne Caruana Galizia murder case are important milestones, bringing us closer towards achieving justice. Malta remains determined in taking the necessary steps, to ensure that justice is served, and to deter any possible future attacks against the safety and dignity of journalists.

#### **Reply to paragraph 23 of the list of issues**

223. The Government of Malta is committed to safeguard the right to freedom of expression and has enacted the Media and Defamation Act (Chapter 579 of the laws of Malta), which came into force on 14th May 2018. The Act aims at updating and re-writing the Maltese law on libel and slander in a substantial manner that strengthens respect for the right to freedom of expression. The new law also promotes the use of alternative means of dispute resolution, such as through mediation, and introduces a system of a preliminary hearing in defamation actions to determine whether a case can be decided either by agreement or by mediation. The major departure made by means of the Media and Defamation Act is that criminal proceedings can no longer be filed against journalists for libel, slander, and defamation. This protects the fourth pillar of democracy in the sense that media freedom is in no manner hampered by a threat that criminal proceedings may be instituted against journalists which had the effect of silencing journalists.

224. The Act was also drafted and enacted following wide consultation with, inter alia, the Institute for Maltese Journalists and the OSCE through the Special Representative on Freedom of the Media. Through this law, the protection of sources applies to every editor, publisher, author, operator of a website or broadcaster. The Act prohibits the issue of precautionary garnishee orders and other precautionary acts by plaintiffs involved in civil libel suits against journalists. Another important provision that was introduced is a provision to discourage the filing of strategic lawsuits against public participation by providing that when multiple libel actions are filed by the same person about the same article the single capping on libel damages of 11,640 euro will apply to all such cases taken together as though they were one case.

225. Other positive amendments were introduced, including the definitions of the notions of ‘defamation’, ‘libel’ and ‘slander’; Concept of Serious Harm; Decriminalisation of Offences; Abolition of warrants of seizure and garnishee orders; Strengthening of the defence of truth and the introduction of the defence of honest opinion; and Introduction of the single publication rule.

226. This Act forms part of the ongoing justice reform, which is also evidenced by other new bills or amendments being presented to Parliament, including the amendments introduced in the Constitution which address the Venice Commission Opinion, amendments aimed at the strengthening of the rule of law and the most recent introduction of the possibility for sittings of civil proceedings be held through a live video conferencing link. These legislative proposals help enhance the system of checks and balances in the evolution of Maltese democracy.

227. With the coming into force of the Media Defamation Act, 2018 in April 2018, Chapter 248 of the Laws of Malta was repealed, and hence criminal libel was abolished. In this regard. With regards to ongoing civil libel cases, there are 45 ongoing cases, 9 terminated cases (judgement was delivered) and 12 cases which have been ceded.

### **Right to peaceful assembly (art. 21)**

#### **Reply to paragraph 24 of the list of issues**

228. The Malta Police Force has always favourably processed any requests for public protests/demonstrations. In cases where such events were held without prior notice to the police, these were still allowed to take place since the Police force recognises and safeguards the public's right to a peaceful assembly.

229. Moreover, during all such events the police were present and ensured that the events proceeded smoothly whilst guaranteeing protection to the participants. When the events, both organised and spontaneous, required traffic diversions and management, the police did their utmost remedied as best as possible to ensure everyone's public safety.

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