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### **DRAFT REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW \***

**Malta**

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## **Introduction**

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its fifth session from 4 to 15 May 2009. The review of Malta was held at the 6th meeting on 6 May 2009. The delegation of Malta was headed by Dr. Peter Grech, Deputy Attorney General. At its 10th meeting, on 8 May 2009, the Working Group adopted the present report on Malta.
2. On 8 September 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Malta: Egypt, Saudi Arabia and Ukraine.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Malta:
  - (a) A national report submitted in accordance with paragraph 15 (a) (A/HRC/WG.6/5/MLT/1);
  - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) (A/HRC/WG.6/5/MLT/2);
  - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/5/MLT/3).
4. A list of questions prepared in advance by the Czech Republic, Germany, Sweden, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, Argentina and Denmark was transmitted to Malta through the troika. These questions are available on the extranet of the UPR.

## **I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS**

### **A. Presentation by the State under review**

5. At the 6th meeting of the Working Group, the head of Maltese delegation, Peter Grech, welcomed the opportunity to assess the country's human rights situation, its existing procedures, practices and challenges, in a self-critical manner. He remarked that Malta's national report was formulated following broad consultations across the Government, the Ombudsman and local civil society. Civil society in Malta has a long and proud record of active involvement in safeguarding and promoting human rights, making the exchange of views intense and constructive.
6. The delegation stated that the articulation of specific rights and provisions guaranteeing their enjoyment had been progressively incorporated in Malta's constitutional development starting with the first bill of rights in 1802. The Independence Constitution of Malta of 1964 established a liberal parliamentary democracy, safeguards specific fundamental human rights of citizens and provides for a separation of powers, with regular elections based on universal suffrage.
7. The Maltese Parliament consists of the House of Representatives, presided over by the Speaker of the House and currently composed of 69 members. The President of Malta is elected for a five-year term by the House. With respect to local councils, elections of councilors are held every three years by means of proportional representation using the single transferable vote. All

European Union nationals resident in the Maltese Islands who are registered and possess a Maltese identity card are eligible to vote.

8. In addition to the guarantees for fundamental rights in the constitution, the delegation said that freedom of expression in Malta is also guaranteed by the Press Act and the Broadcasting Act. In 2006 the penalty of imprisonment for criminal libel, which had not been used for more than 30 years, was abolished. Freedom of religion, assembly and association are guaranteed by the European Convention Act as well as by the Employment and Industrial Relations Act and the Voluntary Organisations Act.

9. The Independence Constitution provides for the right of individual petition to courts with special constitutional jurisdiction, ensuring redress against actual or threatened violations of fundamental rights. In 1987, this judicial protection was strengthened when Malta ratified the right of individual petition to the European Court of Human Rights. Malta incorporated the European Convention on Human Rights and a number of its protocols in domestic law through the European Conventions Act. It has been a member of the Council of Europe since 1965 and the enforcement of fundamental human rights in Malta has been subject to its scrutiny and valuable guidance. Upon accession to the European Union in 2004, human rights protection in Malta was strengthened by the acceptance of the jurisdiction of Institutions of the European Union.

10. The delegation cited a number of human rights institutions established in Malta to safeguard, inter alia, gender equality, equality of opportunity for persons with disabilities and the rights of children. In response to questions, it said given the various institutions, Malta has not considered it necessary to have a distinct authority to monitor human rights. It added that effective judicial procedures were preferable to a human rights institution, but that the matter was under constant review.

11. Malta is also party to a number of international human rights treaties as well as regional instruments, including the European Social Charter; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocols and the Council of Europe Convention on Action against Trafficking in Human Beings.

12. The delegation stressed that the Maltese Parliament abolished the death penalty for ordinary crimes in 1971, keeping it in force for certain crimes committed by member of the Armed Forces and in times of war. In March 2000, an amendment to the Armed Forces Act abolished the death penalty for all crimes.

13. The Government has, over the years, taken various legislative initiatives relating to human rights. In addition to legislation cited above, the Employment and Industrial Relations Act protects the rights of workers, trade unions and employers associations, as well as collective bargaining and acceptable conditions of work. The Data Protection Act ensures protection of the right to privacy. The Administrative Justice Act mandates observance of fundamental substantive and procedural principles of law in matters of administrative justice. The Marriage Act ensures, in line with fundamental human rights and the values of family based on marriage, a free choice in matters of marriage, while the Social Security Act and the Malta Council for Economic and Social Development Act ensure access to social protection. Malta believes that civil and political rights go hand in hand with social and economic rights, was fully committed to vigorous development of economic and social policy, and was constantly pursuing a progressive agenda on such policy.

14. The efficiency and fairness of the judicial process is assisted by the Commission for the Administration of Justice, an independent Constitutional Commission presided by the President and including judicial representatives, the Government, Opposition and the Attorney General. Judicial representatives form half of the Commission.

15. The separation of powers in Malta is not sharp but is more of the nature of checks and balances. Notwithstanding that the Judiciary is appointed by the President, acting in accordance with the advice of the Prime Minister, the independence of judges and magistrates from the Executive is strongly safeguarded by the Commission for the Administration of Justice and by constitutional provisions concerning security of tenure of judges and magistrates.

16. The appointment of the Ombudsman is made by the President in accordance with a resolution of not less than two-thirds of the House of Representatives. The Ombudsman can investigate complaints about any decision or action, or lack of action by public authorities in the exercise of administrative functions. He can commence investigations on his own initiative if substantial public interest is involved.

17. Regarding the treatment of prisoners, the delegation said a move towards the concept of a correctional facility as a place of reform and therapy rather than of punishment led to the modernization, extension of facilities and renaming of the Malta Prisons into the Corradino Correctional Facility.

18. Malta's healthcare system was based on the principle of equality and solidarity with universal coverage. Life expectancy at birth has continued to improve and has reached the 81.4 years for females and 77.2 years for males. Statistics show that 84 per cent of the Maltese population is satisfied with the quality of medical care offered.

19. The delegation stressed that medical services and facilities offered by health authorities in Malta are equally accessible to irregular immigrants, refugees and people with humanitarian protection temporarily living in Malta, citing specific figures in this regard.

20. Maltese Society has recognized that inclusion is of benefit to all. Adequate, sustainable and equitable social security provisions effectively contribute towards the social protection and inclusion of persons at risk of poverty and social exclusion, and Malta would continue to enhance these. The concept of a Social Model of Disability would bring about changes in society to ensure equality of opportunities for persons with disabilities to enjoy the best quality of life possible.

21. On employment, Malta believed that information and education on the minimum conditions of employment would lead to greater awareness among vulnerable groups, particularly young persons, students, apprentices and immigrants. As regards housing, the concept of sustainable neighbourhoods was being studied. Within the education sector, students are provided with individual educational needs, including the multi-disciplinary assessment of their condition. In-service training is provided to teachers and teaching assistants. Education in Malta is free, even at tertiary level, where there is also a maintenance grant to students.

22. The delegation stated that the major challenge faced by the Maltese islands was the endless influx of irregular immigrants. The number of irregular immigrants arriving by boat in Malta between 1998 and 2008 tallied to over 12,000. Between January and mid-April 2009, 758 irregular immigrants had already landed in Malta. This phenomenon has stretched the financial and human resources of the island to maximum capacity and it is untenable for a small country

like Malta, by far the smallest Member State of the European Union, with a total surface area of 316 square kilometres. With a population of around 400,000, Malta has by far the highest national population density in the European Union and one of the highest worldwide.

23. Such limitations extend to the potential for adequate accommodation, integration and employment opportunities, which are invariably limited. Immigration centres hosting irregular immigrants are at full capacity. The situation is rendered more acute since most such immigrants possess no travel documents and sometimes lack identification entirely. The fact that Malta does not have a hinterland makes the situation even more precarious.

24. Notwithstanding the difficulties, Malta intended to continue honouring its international obligations with respect to genuine refugees and persons who qualify for humanitarian protection. Malta remains conscious of the human dimension of migration and of the need to ensure that individuals enjoy dignity and respect without exception.

25. In response to advance questions from delegations, Malta addressed migration issues; concerns relating to gender, children and equality; legal issues and other general issues.

26. On migration, the delegation cited the decision to establish a detention service where army and police personnel were replaced with suitably trained civilians as managers, to provide accommodation, material needs and health services of the irregular immigrants, and liaise with non-governmental organizations and international organizations willing to provide legal advice, educational and cultural orientation. Training for staff was structured to balance the requirements for humane treatment and the security of the personnel. A contingency plan was drawn up to deal with an exceptional influx of irregular migrants within a short period of time.

27. Detention of illegal immigrants is essential in Malta's context, particularly for security and public order, and is supported by general consensus among political parties. Illegal immigrants are subject to administrative detention. The Immigration Act provides for the reasonableness of the duration of detention to be challenged before an independent and impartial body. The lawfulness of detention may be challenged before the courts. A Board of Visitors for Detained Persons monitors the treatment of detained persons and conditions of the centres. All immigrants are given information booklets, advising them about their rights and relevant procedures. The duration of detention is limited to a maximum of 18 months for illegal immigrants and failed asylum seekers, and 12 months for asylum seekers.

28. Every effort is made to provide adequate conditions in detention, with health care being provided on the same level as for nationals including the treatment for HIV. Vulnerable migrants, including women and children, are not detained except for the period to establish their vulnerability. While unaccompanied minors are placed under a State Care Order, it was underlined that significant progress had been registered in the time lapse between referral of vulnerable cases and their release.

29. The Office of the Refugee Commissioner had also undergone reform to increase efficiency in the determination of asylum claims. The majority of decisions are given within six months, so that persons in genuine need of protection are detained for well below 12 months. Refugees are equivalent to Maltese citizens in terms of the Social Security Act, and are provided with education and training opportunities.

30. Of those who qualify for protection, the overwhelming majority do not fulfil the criteria for refugee status, but are granted subsidiary protection, as asylum seekers from regions characterized by civil conflict cannot be returned without exposing them to serious risk.

31. Malta consistently called upon the European Union and the international community to provide assistance in addressing this phenomenon, faced in disproportionate measure by Malta due to its geographical position. Malta cannot continue to deal with these circumstances alone, as acknowledged in various regional and international reports. Malta thanked the Office of the United Nations High Commissioner for Refugees (UNHCR) in supporting its request for relocation of refugees.

32. Malta has never refused help to persons at sea in need of assistance irrespective of their intention to claim asylum. Investment has been made to further improve the response to search and rescue incidents. Malta has on occasion overstepped its own responsibilities to coordinate search and rescue outside its own region, where the country responsible did not fulfil its own international obligations.

33. Regarding measures to combat discrimination, the delegation said all necessary legislation is in place but emphasis is being placed on changing de facto discrimination through awareness and training for various public, private and voluntary groups and organisations.

34. Marriage can only be contracted by people of opposite sex and there are no plans to change this. But discrimination based on sex and sexual orientation is illegal and individuals are protected against such discrimination by the institutions set up by the state.

35. The National Commission for the Promotion of Equality holds training on issues such as equality, gender sensitivity, racism and xenophobia, anti-discrimination and diversity. It also has monitoring responsibilities and has carried out a specific audit on legislation.

36. Although stereotypes are still prevalent in Malta, the delegation said there has been a forward movement in several sectors of Maltese society, including universities and workplaces, to overturn such typecasts. Special emphasis is made on the reconciliation of work and private life as being crucial to ensuring equality of opportunity to both genders. Various public policies regarding family friendly measures were transposed to national legislation, it said, including parental leave, urgent family leave and telework. Paternity leave, bereavement leave and marriage leave are also covered, but differ depending on the sectors.

37. Malta has one of the lowest gender pay gaps among European Union member States. But Malta acknowledged the under-representation of women within the legal, senior official and management occupational groups. Measures are being taken by the Government aimed at achieving a 60-40 gender representation in all boards and committees whenever possible.

38. On reproductive rights, the delegation stated that the right to life is an inherent right of every human being and Malta believes this includes the unborn child, from its conception. Abortion is a direct contradiction to the right to life. According to the International Conference on Population and Development, in no case should abortion be promoted as a method of family planning. Malta agreed that action towards the fulfilment of sexual and reproductive rights should focus on the positive aspects of education, social welfare and health care.

39. The delegation clarified that the Maltese Criminal Code has not limited the elements of rape to physical or moral violence but has extended the scope of the offence to include

circumstances of incapacity to resist due to physical or mental infirmity, or for any other cause independent of the will of the victim, such as sleep, intoxication, hypnotic state, as well as fraudulent devices used by the offender.

40. On questions regarding plans to monitor and combat racism and xenophobia, the delegation cited provisions in the Criminal Code that provide for offences of incitement to racial hatred and make it an aggravating circumstance if specific offences are motivated by racial hatred or if racial hostility is shown at the time of commission.

41. Responding to questions regarding the right to legal assistance during an interrogation, the delegation stated that an amendment to the Criminal Code in this regard has been made and is expected to enter into force within the coming months. The delegation also highlighted steps taken as part of a holistic programme to improve the judicial process by increasing efficiency while ensuring quality and safeguards.

42. On challenges in meeting treaty body reporting obligations, Malta said reporting commitments could be onerous on small administrations and the hectic process of Malta's accession to the EU caused it to fall behind. Given possible improvements in streamlining of reporting obligations under the various treaties, these challenges may progressively be overcome.

## **B. Interactive dialogue and responses by the State under review**

43. During the interactive dialogue, statements were made by 31 delegations. A number of delegations congratulated Malta on its comprehensive national report and detailed presentation, demonstrating its commitment to the UPR process. Some also thanked Malta for its responses to advance questions, while many noted that Malta is party to a large number of international human rights treaties.

44. Brazil recommended that Malta (a) accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and (b) strengthen efforts to submit all overdue reports to United Nations human rights treaty bodies. Concerned over the treatment of asylum-seekers and migrants, particularly vulnerable persons, such as children, pregnant women and elderly persons, and that detention periods may exceed twelve months, Brazil recommended (c) exploring alternative policies concerning asylum-seekers and considering working with UNHCR to train its professionals working with asylum-seekers. Concerning Malta's policy on "illegal migration", Brazil asked how considerations of national security are applied so as not to override the right to non-refoulement. While noting various legislative provisions for a refugee status determination procedure, Brazil recommended that Malta (d) consider updating its domestic law to suppress the term "prohibit immigrants" and avoid its legal consequences, particularly administrative detention, for all undocumented asylum-seekers. Brazil encouraged Malta to (e) progressively accomplish the human rights goals set forth in Human Rights Council resolution 9/12.

45. Finland welcomed improvements in Maltese legislation and other mechanisms concerning equality between men and women, such as the appointment of a national commission and Women Act and the Domestic Violence Act. However it called for improvement in the area of women's reproductive health and rights. Noting that Malta lacks a national sexual education policy and that this is crucial for realization of human rights, Finland recommended (a) formulating a national policy on sexual education and sought information in this regard. It also encouraged Malta to ensure that gender equality is realized at all levels of public life, especially



in decision-making processes. Finland recommended that Malta (b) carefully consider implementation of the recommendations of the Committee on Economic, Social and Cultural Rights on women's reproductive health and rights, asking about steps taken in this regard.

46. Algeria asked about measures taken with regard to the concerns of treaty bodies relating to discrimination against women, economic, social and cultural rights and the rights of the child, and the fact that treaty provisions had not been incorporated in domestic law, asking Malta to take all necessary measures to ensure that they are. Asking about the existence of follow-up mechanisms for specific human rights issues, Algeria recommended that Malta (a) study the possibility of establishing a national human rights institution to be accredited by the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights. Noting that since 2002, Malta had witnessed an influx of clandestine migrants from Africa, Algeria requested clarification on contributions that Malta might make to international and regional efforts to combat the root causes of such migration. Encouraging Malta to take a closer interest in the approach developed in the Common African Position on Migration and Development adopted by the African Union in 2006, Algeria recommended (b) that Malta consider acceding to ICRMW.

47. France, noting the importance of the issue of asylum seekers and refugees coming to Malta and the European Union, stated that a concerted response was required. France asked about plans to further strengthen existing legal arrangements against discrimination based on sexual orientation or gender identity, particularly in employment, health and education. It also sought clarification on the definition of the crime of rape in Maltese law as an attack against the peace and honour of families and against morality. France recommended (a) ratifying the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) and the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC); (b) providing for arrangements for same-sex couples to enjoy some of the rights and obligations enjoyed by non same-sex couples; (c) ratifying the Convention on the Rights of Persons with Disabilities and improving the integration of persons with disabilities in the education system.

48. Azerbaijan noted that, because of its geographical location, Malta faces a large number of illegal migrants and asylum seekers. Congratulating Maltese efforts to handle illegal migration, Azerbaijan called upon all relevant actors to increase their assistance to Malta. Noting the lack of mention of measures taken by Maltese authorities to combat human trafficking, Azerbaijan requested additional information on this and on measures to prevent child labour. Citing the concern expressed by the Committee of the Rights of the Child regarding the low age of criminal responsibility – nine years – of children, it recommended (a) considering raising it and (b) paying more attention to solving the issue of under-representation of women, which subsists in many fields of society, including decision-making.

49. The Netherlands, noting the large number of migrant arrivals in Malta, said international cooperation was required. Welcoming Malta's cooperativeness with the Special Rapporteur on the human rights of migrants, it expressed concern about the increasingly restrictive reception and legal procedures for migrants. It recommended (a) strengthening efforts to make the Maltese legal system for asylum-seekers effectively accessible, preventing delays and administrative obstacles and guaranteeing to asylum seekers the necessary procedural safeguards in detention according to international standards. While welcoming efforts to combat discrimination, including on sexual orientation grounds, it noted reports of continued discrimination in this regard, as well as NGO reports on the denial of legal recognition of same-sex partnerships. The

Netherlands recommended (b) taking further measures to advance equality on the ground of sexual orientation and gender identity, and among others using as a guide for policy- making the Yogyakarta principles. Noting the non-submission of reports to the Human Rights Committee since 1996, it recommended (c) strengthening efforts with regard to timely reporting to treaty bodies, and especially submitting its second report to the Human Rights Committee as soon as possible.

50. India encouraged Malta to enact legislation fully incorporating international human rights instruments. It commended human rights education initiatives as well as the establishment of various institutions and mechanisms relating to human rights. Acknowledging Malta's readiness to cooperate with the Special Rapporteur on migrants, India urged a review of procedural safeguards for asylum seekers, including access to legal counsel, periodic judicial review during the mandatory detention period and the fast track release procedure. Asking about the prevalence of trafficking in women and children, it asked if Malta was considering ratifying CRC-OP-SC. It sought information on the effectiveness of the national policy on special education for children with disabilities, and urged Malta to consider ratifying the Convention on the Rights of Persons with Disabilities (CPD). India encouraged the establishment of a national human rights institution in accordance with the Paris Principles.

51. Morocco congratulated Malta on its institutional structures for the promotion and the protection of human rights, particularly the establishment of the National Commission for Persons with Disabilities and the Commissioner for Children Act. Welcoming the interest shown by Malta with regard to consumer rights, Morocco recommended (a) continuing to reinforce its jurisdiction in relation to the human rights of consumers in general and more particularly that which is applicable to the tourism sector. Morocco asked about measures taken in relation to the recurrent situation of overpopulated prisons.

52. The United States of America asked about Malta's plan to ensure that detained migrants are fully accorded their human rights in line with international legal requirements. It recommended that detention conditions be improved by a variety of measures, including reducing overcrowding, separation of men and women in facilities, and ensuring that people have access to legal counsel. It asked about Malta's efforts to eradicate trafficking of persons. It recommended increased steps to prosecute traffickers and to identify, assist and protect victims of trafficking.

53. Mexico recognised efforts to respect human rights, particularly in legal and institutional terms, citing legal initiatives with respect to gender equality, domestic violence and non-discrimination against persons with disabilities, as well as the Domestic Violence Act. Mexico acknowledged Malta's standing invitation to special procedures. It recommended (a) to the extent possible, presenting reports due to the treaty bodies to which the country is party; and (b) taking measures conducive to the creation of a national human rights institution in accordance with the Paris Principles. Noting Malta's position as a transit point on migration routes, and its high population density, Mexico asked about cooperative mechanisms established with international organizations, particularly OHCHR and UNHCR, and what kind of help Malta needed from these and other regional organisations such as the European Union to complement initiatives undertaken by Malta. It recommended (c) complying with the principles of ICRMW and considering the possibility of eventual ratification.

54. The United Kingdom of Great Britain and Northern Ireland recommended that Malta (a) continue its process of consultation with civil society in its follow-up to this review, asking about

plans in this regard. Noting that the legal and institutional framework against racial discrimination had been strengthened, it requested information on measures to address concerns regarding legal provisions against racial expression, racially motivated offences and racial discrimination. It recommended that (b) Malta strengthen its legal and institutional framework to combat racism and racial discrimination to ensure all legal provisions are fully applied and to ensure active monitoring of racism and racial discrimination. Welcoming ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT-OP), the United Kingdom recommended (c) ensuring that the Maltese National Preventive Mechanism under CAT-OP is granted with the necessary human, financial and logistical resources to be able to carry out its preventive work, requesting information in this regard.

55. Ukraine welcomed Malta's close cooperation with human rights mechanisms, its standing invitation to special procedures and the network of national commissions relating to human rights. In the face of socio-economic problems posed by illegal immigration, Ukraine asked for elaboration on multilateral and bilateral cooperation in this area, particularly between Malta and countries of origin, to identify common solutions. It asked about measures to combat human trafficking, closely connected to the problem of illegal migration. Ukraine recommended (a) continuing efforts aimed at the promotion and protection of human rights.

56. While noting Malta's key priorities such as social welfare and the care for the elderly, Turkey called for enhancement of women's representation in public life and decision-making bodies. Appreciating the challenges due to the influx of undocumented migrants, particularly boat people, Turkey praised measures taken to combat discrimination against them and to provide free medical care. Turkey appreciated the Government's cooperation with non-governmental organizations. Noting reports of long detention periods for undocumented migrants, Turkey recommended that (a) the Government take part actively in rescue operations at sea particularly for boat people and provide instant refuge for them. Noting that some international human rights treaties had not been incorporated into domestic law, Turkey requested information on plans in this regard. It recommended (b) considering becoming a party to the CEDAW-OP and the CRC-OP-SC.

57. The Holy See highlighted that Government policies in Malta contribute to the free practice of religion. It applauded, and recommended, that the Government (a) continue its policy in defence of the right to life and in defence of the family as the natural and fundamental group unit of society based on the stable relationship between a man and a woman. Noting that Malta's geographical position attracted a massive arrival of migrants, and that it has called for burden sharing within the European Union, the Holy See asked how Malta, with the help of the European Union, intended to improve the situation of illegal immigrants, many of whom are kept for months in administrative detention. It also asked about the ongoing development of community-based services for the elderly and the policy to increase awareness and understanding of what constitutes abuse and how to prevent it.

58. Sweden expressed concerns about detained immigrants and asylum-seekers while appreciating that this poses a challenge. It recommended (a) taking all measures possible, with a view to ensuring that the detention regime in Malta is brought in line with international human rights law; (b) continuing efforts to ensure that those subject to administrative detention are provided free legal assistance. Sweden welcomed awareness-raising efforts to fight the persistence of traditional stereotypes in gender roles and the trend of change in the younger generation. Noting Malta's explanation on the definition of rape and violent assault, Sweden

recommended (c) continuing and strengthening the ongoing efforts to combat all sorts of violence against women in society. It asked about measures to revise Malta's legislation to prohibit corporal punishment within the family.

59. Noting progress in various domains, Egypt requested further information on measures to provide social services, especially in the area of healthcare and housing. It recommended that Malta (a) continue its efforts aimed at protecting and promoting human rights and fundamental freedoms, and in this regard, ensure congruence between its national legislation and the international instruments to which it is a party; (b) continue resisting attempts to enforce any values or standards beyond the universally agreed ones; and (c) continue exercising its sovereign right of implementing its laws and legislation in conformity with the universally agreed human rights standards and norms.

60. Concerning detention centres and the situation of irregular migrants and asylum seekers, Argentina recommended (a) strengthening efforts to improve the living conditions in detention centres, and a possible reduction of the detention time of irregular migrants and asylum seekers. It also recommended (b) continuing to implement policies to ensure equal opportunities in the job market with particular emphasis to be paid on reducing the existing wage gaps. Noting that a bill on violence against women was under consideration, Argentina praised efforts to address this. It recommended (c) continuing to offer programmes to train women in political leadership and implementing awareness campaigns with respect to their political participation; (d) considering ratifying the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic Social and Cultural Rights, the CEDAW-OP and the CRC-OP-SC.

61. Palestine commended Malta's commitment to human rights promotion through the establishment of national institutions, such as on the rights of children and persons with disabilities, and its legal and constitutional guarantees, particularly protection from inhuman treatment and the deprivation of property, and the freedoms of worship and movement. It noted Malta's role in the defence of freedom, justice and cooperation between "the North" and "the South". Remarking that the influx of illegal immigrants could be a risk to stability, Palestine recommended that Malta (a) deal with the influx of illegal migrants in a fair and human approach and to treat these immigrants and asylum seekers, particularly the most vulnerable persons -- children and pregnant women -- in the most proper manner, especially by providing them with the medical and psychological assistance that they deserve and need.

62. Burkina Faso asked whether a procedure of ratification had been undertaken for the international instruments signed by Malta. It noted efforts to strengthen the legal provisions for the family, including the creation of the Commission against Family Violence and to make working conditions more flexible, suggesting that these initiatives should be consolidated and extended. Noting the establishment of the National Commission for the Promotion of Equality, it asked whether this Commission was functioning. Noting the constraints faced regarding migration flow, it stated that the treatment and detention conditions of migrants should be improved. Burkina Faso recommended (a) taking concrete measures to improve services for migrants and to ensure full respect of the human rights of migrants as well as consider acceding to ICRMW. It invited the international community to support Malta to ensure effective management of this phenomenon.

63. China congratulated Malta on stipulating clearly the promotion and protection of human rights in its constitution and specific laws, and for paying close attention to the practical

protection of basic human rights and establishing human rights protection agencies including an effective protection and monitoring framework. It acknowledged Malta's innovative measures in human rights protection, in relation to human rights education and prison management. China asked Malta if the National Commission for the Promotion of Equality had the competence to investigate complaints of discrimination and take independent action for remedy. China asked if measures aimed at ensuring the basic rights of detainees had had the expected effects and whether Malta would promote this practice in other enforcement agencies.

64. Jordan welcomed the development of a legislative and institutional framework, including the establishment of the National Commission for the Promotion of Equality. While appreciating efforts in tackling major challenges relating to refugees, asylum seekers and immigrants, Jordan expressed hope that Malta would continue to effectively address concerns raised by UNHCR, human rights treaty bodies and special procedures recommending that (a) all measures and actions taken to effectively address concerns raised by UNHCR, human rights treaty bodies, special procedures, be in line with international human rights law. Jordan also recommended that Malta (b) consider the establishment of an independent national human rights institution in accordance with the Paris Principles; (c) consider the ratification of CPD; and (d) provide and improve training programmes on human rights for the judiciary, law enforcement personnel and lawyers.

65. Maldives noted that despite human resources-constraints and a high population density, Malta has made impressive strides. It sought information on the resources granted to national prevention mechanisms under CAT-OP, namely the Board of Visitors for Detained Persons and the Board of Visitors for the Prisons; and asked how they divide responsibilities. Maldives asked if Malta, in view of the large number of conventions to which it is party, considered preparing a common core document to streamline treaty reporting. Maldives recommended considering establishing a national human rights commission in line with the Paris Principles.

66. Italy noted that, while corporal punishment is prohibited in schools and in other institutions, it is not prohibited by law in the form of "reasonable chastisement" within the family. Noting the concern of the Committee on the Rights of the Child at limited measures for the rehabilitation of victims and at insufficient social awareness of the harmful consequences of ill-treatment and abuse, including sexual abuse of children, Italy recommended (a) explicitly prohibiting any kind of corporal punishment of children, including within the family, and strengthening measures to prevent and combat child abuse and ill-treatment. Commending institutional measures to promote the rights of persons with disabilities, Italy noted concerns about the social stigma attached to children with disabilities and limitations faced by voluntary organizations in addressing in a comprehensive manner all the needs of children with disabilities. Italy recommended (b) ratifying CPD and strengthening efforts to protect, in particular, children with disabilities against any form of discrimination, including by envisaging awareness-raising campaigns.

67. Slovenia noted that Malta is party to most core human rights documents, but ratified CEDAW with reservations. While commending legal efforts undertaken since ratification of the Convention, Slovenia asked if Malta intended to review and withdraw the reservations to articles 11, 14, 15 and 16 and recommended it (a) do so. It also recommended (b) ratification of the CEDAW-OP and the CRC-OP. Bearing in mind its constitutional and legal framework and its strong position on abortion, Slovenia suggested Malta consider reviewing its legislation and that exceptions be made to the general prohibition in cases of rape, incest and therapeutic abortion.

68. Noting the recommendation by the CRC regarding the training programmes on CRC-AC-OP for armed forces staff and all relevant groups working with and for children, Germany requested information on measures taken. Germany recommended (a) entirely prohibiting corporal punishment by law even in cases of so-called “reasonable chastisement” within the family; and (b) that Malta introduce an explicit prohibition by law of the recruitment of children under the age of 15 into armed forces or armed groups.

69. Canada expressed particular interest in the challenges Malta faces in hosting growing numbers of irregular economic migrants and asylum seekers. Congratulating its efforts to upgrade capacity to handle the growing influx, Canada expressed concern about continuing reports from a variety of sources of overcrowding and inadequate infrastructure to accommodate these arrivals. Canada recommended that the Government (a) continue to take steps to ensure the well-being and protection of immigrants and their rights. Canada also expressed concern over reports of growing anti-immigrant sentiments among the Maltese population, citing the Maltese Prime Minister’s concerns in this regard. It recommended (b) implementing measures to foster a climate of greater tolerance and acceptance towards immigrants, many of whom face persecution and/or civil strife in their home countries and are therefore unable to return.

70. While recognizing the burden of continuing waves of migrants, the Czech Republic (a) recommended that Malta review its legislation and practice with a view to ensuring effective access to asylum procedure, upholding the principle of non-refoulement, and ensure protection of all human rights of asylum seekers upon entry and also during the procedure, including by minimizing their detention, ensuring access to legal counsel and providing in particular all persons in detention with all procedural safeguards in compliance with international standards. While highlighting the positive impact of cooperation with treaty bodies, the Czech Republic recommended (b) submitting as a matter of priority its delayed reports to treaty bodies. It also recommended that (c) resources available to its national preventive mechanism be increased so as to be able to carry out its functions effectively according to the CAT-OP. While welcoming the recent strengthening of the provisions of the Criminal Code relating to racism and xenophobia, it recommended (d) strengthening the National Commission for the Promotion of Equality; (e) adopting further measures to fight discrimination and promote, including through awareness raising campaigns, the realization of human rights by all persons belonging to minorities, including foreigners, refugees, persons with disabilities and persons of minority, sexual orientation or gender identity.

71. Spain congratulated Malta’s establishment of a number of institutions relating to human rights. Despite these efforts, Malta still does not have a national human rights institution accredited to the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights. Spain recommended (a) establishing a national human rights institution in accordance with the Paris Principles. Conscious of the enormous efforts made by Malta in the face of an unprecedented flow of illegal immigrants and asylum seekers, Spain asked Malta to explain existing procedures for a judicial revision by a efficient and independent body when an asylum application is denied and if Malta could explain if the right to non-refoulement is limited by considerations of national security or public order or in the event of certain crimes having been committed.

72. Nicaragua noted the lack of an institutional and legal framework, which indirectly affects all immigrants. Noting that irregular migrants and asylum seekers, people requiring humanitarian protection and refugees remain vulnerable to racial discrimination in access to services and exploitation on the job market, Nicaragua expressed concern about the use of administrative

detention for prolonged periods. Nicaragua noted the lack of safeguards in the detention of asylum seekers, affecting the most vulnerable people, including people who had been victims of torture in their own countries. Nicaragua recommended that Malta (a) adopt all the necessary measures in order to ensure that national norms and legislation are not in contravention of its international human rights obligations; (b) avoid arbitrary and discretionary detention particularly of foreigners, and that the detention period particularly of asylum seekers be adequately reduced; (c) consider alternatives to detention of asylum seekers; and (d) that all necessary measures be taken to guarantee dignified conditions of detention, corresponding to the level of development of the country.

73. Belgium joined various treaty bodies' concerns on the lack of education relating to sexuality and reproduction and asked about specific measures to strengthen such programmes. It asked about measures to improve adolescent access to advisory services, also outside of the school environment. It recommended (a) putting in place an adequate health education programme and ensuring effective access to health advisory services, notably for matters related to sexuality, sexual and reproductive rights. Regarding the rights of homosexual, bisexual and transgender persons, it noted that legal protection in employment exists. But according to some non-governmental organizations, homosexual, bisexual and transgender persons remain discriminated against in employment, provision of goods and health services and education. Belgium asked how the National Commission for the Promotion of Equality fights discrimination based on sexual orientation and if equal attention is paid to all forms of discrimination, whatever the grounds. Belgium recommended that Malta (b) do its utmost to combat all forms of discrimination, including discrimination based on sexual orientation.

74. While noting Malta had made significant advances in human rights protection, Bangladesh shared treaty bodies' concerns, especially regarding migrants and asylum seekers. Welcoming attempts to address them, Bangladesh noted that critical issues remained inadequately addressed. Concerned about reports of violence and inhumane treatment against irregular migrants in certain detention centres, it hoped that Malta would bring necessary reform to ensure that the human rights of irregular migrants and asylum seekers are not violated. Bangladesh recommended that Malta (a) broaden the scope and application of legal and institutional reforms to address all forms of discriminatory treatment against irregular migrants and asylum seekers with special focus on protecting the rights of the vulnerable groups; (b) continue to work towards ensuring greater representation of women in high-level policy and decision making institutions, especially in the national legislature and local government bodies; (c) consider establishing an independent and full-fledged human rights commission in accordance with the Paris Principles; and (d) continue to protect family as the natural and fundamental unit of society based on the stable relationship between a man and a woman.

75. The delegation of Malta thanked States for their interventions and made further comments on questions asked. It clarified that since 2002, Malta has built up its legislative and administrative capacity to deal with claims for asylum and has since emerged as the State with one of the highest rates of acceptance. Malta has been advocating more opportunities for legal migration. In no instances are persons refused asylum because there is no capacity.

76. The delegation also stressed that trafficking is an offence in Malta. The law criminalizes forced inducement, mainly using means of violence, threats or deceit to coerce prostitution. It also criminalizes international trafficking, child labour and sexual exploitation. Security personnel and social workers dealing with issues relating to trafficking of women and children

have been trained in this regard. Malta was active in the preparation of the Council of Europe Convention on Action against Trafficking in Human Beings.

77. Clarifying the policy towards corporal punishment, the delegation said that concepts of lawful correction and reasonable chastisement are in no way equivalent to corporal punishment. In fact, the law recognizes even offences of small consequence as an offence of slight bodily harm. Ratification of the Optional Protocol to the Convention on the Rights of the Child was foreseen and would take place shortly, once minor amendments were made to Maltese legislation to bring it fully in line with the dictates of this instrument.

78. On CPD, the delegation clarified that the Government has in principle decided to ratify it, but that ratification and implementation in Maltese law require amendments to legislation and to the Constitution. Those amendments are being drafted and considered.

79. Thanking delegations for their valuable comments, Malta hoped the UPR mechanism would be beneficial to itself and to the international community in general to help improve the situation of human rights where required.

## **II. CONCLUSIONS AND/OR RECOMMENDATIONS**

80. In the course of the discussion, the following recommendations were made to Malta:

1. Accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (Brazil, Algeria, Burkina Faso); comply with the principles of ICRMW and consider the possibility of eventual ratification (Mexico);
2. Take concrete measures to improve services for migrants and to ensure full respect of the human rights of migrants (Burkina Faso);
3. Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC) (France, Slovenia, Turkey, Argentina);
4. Ratify the Convention on the Rights of Persons with Disabilities (France, Italy, Jordan) and improve the integration of persons with disabilities in the education system (France);
5. Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Argentina);
6. Withdraw the reservations to articles 11,13,15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Slovenia);
7. Continue its efforts aimed at protecting and promoting human rights and fundamental freedoms and, in this regard, adopt all necessary measures to ensure better harmonization between its national legislation and the international instruments to which Malta is a party (Egypt, Nicaragua);



8. All measures and actions taken to effectively address concerns raised by the Office of the United Nations High Commissioner for Refugees (UNHCR), human rights treaty bodies and special procedures be in line with international human rights laws (Jordan);
9. Accomplish progressively the human rights goals set forth in Human Rights Council resolution 9/12 (Brazil);
10. Study the possibility of establishing a national human rights institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (Algeria); take measures conducive to the creation of a national human rights institution in accordance with the Paris Principles (Mexico); consider establishing an independent and full-fledged national human rights institution in accordance with the Paris Principles (Jordan, Maldives, Spain, Bangladesh);
11. Ensure that its National Preventive Mechanism under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT-OP) is provided with the necessary human, financial and logistical resources to be able to carry out its preventive work effectively (United Kingdom, Czech Republic);
12. Strengthen the National Commission for the Promotion of Equality (Czech Republic);
13. Adopt further measures to fight discrimination and promote, including through awareness-raising campaigns, the realization of human rights by all persons belonging to minorities, including foreigners, refugees, persons with disabilities and persons of minority sexual orientation or gender identity (Czech Republic);
14. Continue its efforts aimed at the promotion and protection of human rights (Ukraine);
15. Continue resisting attempts to enforce any values or standards beyond the universally agreed ones; continue exercising its sovereign right of implementing its laws and legislation in conformity with the universally agreed human rights standards and norms (Egypt);
16. Continue its process of consultation with civil society in its follow-up to this review (United Kingdom);
17. Strengthen efforts to submit all overdue reports to United Nations human rights treaty bodies (Brazil); strengthen efforts with regard to timely reporting to United Nations human rights treaty bodies, and especially submit its second report to the Human Rights Committee as soon as possible (Netherlands); to the extent possible, present the reports that are due to the various treaty bodies to which Malta is party (Mexico); submit as a matter of priority its delayed reports to treaty bodies (Czech Republic);

18. Strengthen its legal and institutional framework to combat racism and racial discrimination to ensure that all legal provisions are fully applied and ensure active monitoring of racism and racial discrimination (United Kingdom);
19. Broaden the scope and application of legal and institutional reforms to address all forms of discriminatory treatment against irregular migrants and asylum seekers with special focus on protecting the rights of vulnerable groups (Bangladesh);
20. Continue implementing policies to ensure equal opportunities in the job market with particular emphasis on reducing the existing wage gaps (Argentina);
21. Strengthen efforts to protect, in particular, children with disabilities against any form of discrimination, including by envisaging awareness-raising campaigns (Italy);
22. Do its utmost to combat all forms of discrimination, including discrimination based on sexual orientation (Belgium); take further measures to advance equality on the ground of sexual orientation and gender identity, using the Yogyakarta Principles, among others, as a guide for policy-making (Netherlands);
23. Provide for arrangements for same-sex couples to enjoy some of the rights and obligations enjoyed by non-same-sex couples (France);
24. Continue and strengthen the ongoing efforts to combat all sorts of violence against women in society (Sweden);
25. Improve detention conditions by a variety of measures, including reducing overcrowding, separating men and women in facilities and ensuring that people have access to legal counsel (United States); take all necessary measures to guarantee dignified conditions of detention, corresponding to the level of development of the country (Nicaragua); strengthen efforts to improve the living conditions in detention centres (Argentina);
26. Take all possible measures to ensure that the detention regime is brought into line with international human rights law (Sweden); consider a reduction of the detention time of irregular migrants and asylum seekers (Argentina);
27. Explore alternative policies concerning asylum seekers and consider working with UNHCR to train its professionals who work with asylum seekers (Brazil);
28. Consider alternatives to the detention of asylum seekers (Nicaragua); avoid arbitrary and discretionary detention particularly of foreigners and adequately reduce the detention period particularly of asylum seekers (Nicaragua);
29. Increase steps to prosecute traffickers and to identify, assist and protect victims of trafficking (United States);
30. Introduce an explicit prohibition by law of the recruitment of children under the age of 15 into armed forces or armed groups (Germany);

31. Consider raising the age of criminal responsibility (Azerbaijan);
32. Explicitly and entirely prohibit any kind of corporal punishment of children by law, even in cases of so-called “reasonable chastisement” within the family (Italy and Germany); and strengthen measures to prevent and combat child abuse and ill-treatment (Italy);
33. Provide and improve training programmes on human rights for the judiciary, law enforcement personnel and lawyers (Jordan);
34. Continue its policy in defence of the right to life (Holy See);
35. Continue its policy to protect the family as the natural and fundamental group unit of society based on the stable relationship between a man and a woman (Holy See, Bangladesh);
36. Pay more attention to solving the issue of under-representation of women, which subsists in many areas of society, including in decision-making (Azerbaijan); continue to offer programmes to train women in political leadership and implement awareness campaigns with respect to their political participation (Argentina); continue to work towards ensuring greater representation of women in high-level policy and decision-making institutions, especially in the national legislature and local government bodies (Bangladesh);
37. Carefully consider the implementation of the recommendations of the Committee on Economic, Social and Cultural Rights on women’s reproductive health and rights (Finland);
38. Formulate a national policy on sexual education (Finland);
39. Put in place an adequate health education programme and ensure effective access to health advisory services, notably for matters related to sexuality and sexual and reproductive rights (Belgium);
40. Consider updating its domestic law to suppress the term “prohibit immigrants” and avoid its legal consequences, particularly administrative detention, for all undocumented asylum seekers (Brazil);
41. Review its legislation and practice with a view to ensuring effective access to asylum procedures, upholding the principle of non-refoulement, and ensure the protection of all human rights of asylum seekers upon entry and also during the procedure, including by minimizing their detention, ensuring access to legal counsel and providing in particular all persons in detention with all procedural safeguards in compliance with international standards (Czech Republic);
42. Strengthen its efforts to make the legal system for asylum seekers effectively accessible, prevent delays and administrative obstacles and guarantee to asylum seekers the necessary procedural safeguards in detention according to international standards (Netherlands);

43. Continue efforts to ensure that those subject to administrative detention are provided free legal assistance (Sweden);
44. Take an active part in rescue operations at sea particularly for boat people and provide instant refuge for them (Turkey);
45. Deal with the influx of illegal migrants, taking a fair and humane approach, and treat these immigrants and asylum seekers, particularly the most vulnerable persons -- children and pregnant women -- in the most proper manner, especially by providing them with the medical and psychological assistance that they deserve and need (Palestine);
46. Continue to take steps to ensure the well-being and protection of migrants and their rights (Canada); implement measures to foster a climate of greater tolerance and acceptance towards immigrants, many of whom face persecution and/or civil strife in their home countries and are therefore unable to return (Canada);
47. Continue to reinforce its jurisdiction in relation to the human rights of consumers in general and more particularly as applicable to the tourism sector (Morocco).

81. The response of Malta to these recommendations will be included in the outcome report to be adopted by the Council at its twelfth session.

82. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

**Annex**

**COMPOSITION OF THE DELEGATION**

The delegation of Malta was headed by Dr. Peter Grech, Deputy Attorney General Head of Delegation and composed of nine members:

Mr. Victor Camilleri, Ambassador Permanent Mission of Malta Genève;

Mr. Christopher Mercieca, Deputy Permanent Representative, Delegate, Permanent Mission of Malta, Genève;

Ms. Sina Bugeja, Delegate;

Ms. Carmen Zammit, Delegate;

Mr. Mario Caruana, Delegate;

Dr. Dennis Vella Baldacchino, Delegate;

Dr. Donatella Frendo Dimech, Delegate;

Dr. Nicole Miller, Delegate, Permanent Mission of Malta Genève;

Mr. Christian Sgandurra, Delegate.

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