



International Covenant on Civil and Political Rights

Distr.: General
18 September 2014

Original: English

Human Rights Committee

112th session

7–31 October 2014

Item 5 of the provisional agenda

**Consideration of reports submitted by States parties
under article 40 of the Covenant**

List of issues in relation to the second periodic report of Malta

Addendum

Replies of Malta to the list of issues*

[Date received: 25 July 2014]

* The present document is being issued without formal editing.



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Annexes**

** Annexes may be consulted in the files of the Secretariat.

I. Constitutional and legal framework within which the Covenant is implemented (art. 2)

Issue 1

1. The provisions of the Constitution, the European Convention Act 1987, and the judicial remedies available to all persons in Malta ensure that the rights enshrined in the Covenant, as contained in Maltese legislation, are fully enforced. Moreover, the Courts interpret legislation according to its plain meaning and no restrictive interpretations are given unless expressly permitted by the law. This clearly indicates that the said rights can be invoked before the Maltese courts. Act XI of 2009 transposes European Council Framework Decision 2008/913/JHA on combating racism and xenophobia. Hence such conduct is deemed as an offence under domestic law (Cap 9 — Criminal Code — namely, Article 82A *et seq.*) and punishable with imprisonment.

Issue 2

2. Malta will be maintaining its reservations as per its periodic report since there has been no change in policy direction.

Issue 3

3. In 2013, the Government of Malta affirmed its commitment to give greater prominence to the area of human rights. In this regard, the scope of the National Commission for the Promotion of Equality is intended to be widened to become a National Commission for Human Rights and Equality,¹ acting as a national human rights institution as well as an equality body in accordance with the provisions established by European Directives on equal treatment.

4. In this regard, in February 2014, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC) launched a consultation process with the goal of strengthening the current human rights and equality legislative framework and the setting up of a national human rights institution, the Human Rights and Equality Commission.

5. Government is currently assessing the input received to the Scoping Consultation and is exploring the structures that exist in other European countries to draw the most suitable set-up for the Maltese setting. MSDC has entered in contact with various national institutions as well as the EU Fundamental Rights Agency, the Council of Europe's Commissioner for Human Rights, the European Network of Equality Bodies, and the European Network of National Human Rights Institutions. MSDC is also in contact with the United Nations Human Rights Commission to ensure that the new institution meets all of the expectations and will allow for it to be adequately accredited.

6. A new round of consultation will be out during the summer of 2014 in the form of a White Paper consultation that consolidates the Government's approach based on the input received from the various institutions indicated above.

¹ Malta, Budget Speech 2014. Ministry for Finance, November 2013. Last retrieved 22nd January 2014: http://mfina.gov.mt/en/The-Budget/Documents/The_Budget_2014/Budget2014_Speech_EN.pdf.

II. Non-discrimination, equality between men and women (arts. 2, 3 and 26)

Issue 4

7. In June 2012, Chapter 456 of the Laws of Malta — *Equality for Men and Women Act*, was amended to safeguard equal treatment on additional grounds, including religion or belief. Hence, this legislation prohibits discrimination on these grounds in employment; education and vocational guidance; by banks and financial institutions as well as in advertisements of vacancies for employment. Language has not been addressed.

8. Bill No. 18 aimed at amending the anti-discrimination provision in the Constitution by adding sexual orientation to the list of prohibited grounds was adopted with a unanimous vote on 14 April 2014. In fact the Constitution of Malta was amended in April 2014, following Act X of 2014 — *Constitution of Malta (Amendment) Act*, to include “sexual orientation” and “gender identity” in the provision “Fundamental Rights and Freedoms of the Individual”.

Issue 5

9. The issue has yet to be analysed further with a view to political change in national legislation.

Issue 6

10. CAP 9 (Criminal Code) of the laws of Malta tackles incitement to racial hatred; the condoning, denying or trivializing genocide, etc., against a group; and the condoning, denying or trivializing crimes against peace against a group under TITLE II (Art. 82), as well as the General provision applicable to offences which are racially aggravated or motivated by xenophobia (Art. 83). Additionally, Sub-title II of wilful offences against the person allows for an increase of punishment in certain cases (Arts. 222, 251, and 325).

11. The National Action Plan against Racism and Xenophobia (NAPARX) has not yet been formally adopted, however, it is expected to inform the forthcoming Human Rights and Equality strategy that will emanate out of the current consultation referred to above.

12. Bill 53 of 2014 has passed its First Reading in Parliament. Bill 53 increase punishments by one to two degrees when the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion.

13. Following the introduction of the pertinent legislation in the Criminal Code, concrete measures taken by the Police authorities to combat manifestations of racism and xenophobia, included training and education to police officers. Training was also specifically directed towards police officers attending to border guard duties. Training for border guard is held every 18 to 24 months. The content of the training course on human rights for border guards, inter alia, consists of the following:

- Introduction to Human Rights;
- International and national mechanisms monitoring human rights;
- The principles of universality, equality and inalienability;
- The right to life;
- The right not to be tortured or to be subjected to inhuman and degrading treatment;
- The right to liberty;

- The right to a fair trial;
- The right to privacy;
- The right to freedom of association;
- The right of expression;
- Interviewing;
- Relevant case-law.

14. Furthermore, all cases of reported offences on racism and xenophobia, including racially motivated violence are investigated immediately by the Executive Police and if the offence results, offenders are arraigned before the judicial authorities.

15. Various initiatives have been carried out by the National Commission for the Promotion of Equality (NCPE) such as awareness raising campaigns and training activities. Moreover, NCPE is empowered to investigate cases of persons who feel discriminated against on the grounds of race or ethnic origin, in employment, education, vocational guidance and by banks and financial institutions in the access to and supply of goods and services.

Issue 7

16. Meetings were held between the Ministry for Social Dialogue, Consumer Affairs & Civil Liberties (MSDC) and the Ministry for Education and Employment (MEDE) to discuss ways forward to address bullying and gender stereotypes, and promote human rights education (including on LGBTI issues) throughout the educational process. These discussions are ongoing.

17. Furthermore, schools have the ethical and moral obligation to address and stop harassment incidents about which they know or should have known, and provide equal protection for all students. Victims of harassment and discrimination are all equally supported to confidently pass on the message to the alleged bully that s/he is not reaching his/her target. Schools aim to foster a school climate within which it must become “uncool” to bully, and cool to help out students who are bullied.

18. Within the Personal, Social and Career Development (PSCD) Subject the aspect of bullying is tackled within the primary and secondary sectors. Specific learning objectives focus on bullying related to different sexual orientations, colour, race, religious denominations and any other factors that one can be bullied about. In the higher forms teachers deal specifically with learning objectives related to clarifying and helping students understand different sexual orientations so that they learn to respect and accept sexual differences and thus helping to minimize intolerance and bullying.

19. On a general note the subject also delves into different relationships (including same sex relationships) and different family structures (including same sex families). This promotes awareness and empathy towards sexual minorities. The teacher also has the duty and the liberty to tackle the topic in question with any class and any time during the scholastic year should the need arise.

20. Some teachers also organize a day seminar where they collaborate with the anti-bullying team and the master of discipline and focus on bullying. During recent years all secondary PSCD teachers were also given educational material and posters published by the Gay Rights NGO. To further celebrate diversity, accurate information regarding sexual identity and sexual minority issues can easily be infused into the curriculum.

21. As adult intervention is one of the best defences against bullying, it is critical that educators and even parents understand how to intervene to stop it. The aim of this attitude

is to lessen the fear and obliviousness surrounding homophobia whilst providing everyone in schools with the knowledge and tools to be able to confidently tackle the problem. However, much of the attitude still lies in what the children experience outside the school too; as with other forms of prejudice.

22. Training, therefore, needs to be a priority for school-wide initiatives to tackle homophobic bullying — school staff needs to be given the opportunity to engage in discussion in order to break down their own fears, misconceptions and barriers, and become knowledgeable about protective factors and the needs of sexual minority students. The aim is to continue encouraging schools to challenge existing beliefs and stereotypes and break assumptions, whilst integrating positive LGBT role models as part of general ongoing life routines.

23. Presently Malta is encouraging schools to have at least one trained staff member to serve as a resource key person for LGBT students and for those who might be questioning their sexuality. In many cases this could either be a LGBT teacher, the school counsellor or any other staff member willing to take on this role. This professional can start off a school-based gay-straight alliance to provide support and friendship, and empower LGBT students.

24. As with all other issues, schools are being encouraged to take on a student-centered approach from the very beginning in order to get more students on board. As a general rule teachers and Senior Management Teams in schools need to be better disposed at putting the safety and wellbeing of the children first and be prepared to step out of their own comfort zones. This aims at providing students with a happy and safe school environment so as to help them develop in the best way possible. Presently a team of professionals is updating its anti-bullying policy to arrive at this aim.

25. Homophobic bullying may be found in different forms in schools, including insults, harassment, threats, intimidation and even violence. Homophobic bullying can also take a more subtle form and students may report that they are being ignored, rejected, isolated or treated with less respect than their peers. Being picked on for one's sexuality or sexual orientation can be upsetting, embarrassing and negatively impinges on an individual's self-worth — similar to the effects of all the other types of bullying. For this reason, schools in Malta tackle this form of bullying by using the above measures. However children facing homophobic attacks are primarily encouraged to talk about the problem in order to seek out support.

26. Specific measures are being introduced by the Government to tackle problems faced by transgender children. These include measures like introducing gender neutral bathroom facilities, the opening of co-education schools and girls are also being given the opportunity of choosing a gender neutral school uniform. In addition the department of psychosocial teams is working closely with the child, the parents, the senior management team and teachers as well as all the other children to ensure integration and acceptance of the child as well as to tackle possible bullying.

27. The cases of transgender children are dealt with by assigning a team of professionals to ensure that the best possible solution is found for the child to adapt to the school environment. A Respect for All policy document is being drafted which shall contain reference to transgender children and how these can be protected from bullying and integrated in our schools. The policy is planned to be published in the near future.

28. It is paramount to understand that there is no set formula for the most effective way to intervene when there is a suspect or observation of any type of bullying incident, especially sensitive discriminatory cases. A variety of issues have to be considered, including the safety of all children, their age and gender as well as the circumstances surrounding the incident.

Issue 8

29. The Maltese Government has introduced a system of free childcare to enhance the female participation in the labour market and public life in general. Additionally, a Directory of Professional Women is currently being developed to enhance the female presence on governmental boards and other entities.

30. It is noteworthy, that 4 out of 6 elected MEPs in the recent round of European Elections (May 2014) were women, indicating that Government's proactive approach as well as greater equality awareness among the general public are permitting greater inclusion of women in public life.

III. Violence against women and children, including domestic violence (arts. 7 and 23)

Issue 9

31. In Malta, the specialised court system in place, which deals with cases of domestic violence, enables more consistency in the treatment of these cases. There is in effect more sensitivity to the needs of the victims who can be directed to other services. Dedicated courts or prosecution teams have now been able to process cases more quickly. Magistrates and prosecutors who consistently deal with domestic violence cases may see repeat offenders, with the result that they can build a more detailed background about the case and may better address the needs of the victim.

32. Furthermore, the Commission on Domestic Violence was set up in Malta in 2006 through the Domestic Violence Act (Cap. 481, Laws of Malta).

33. In 2008, the Commission on Domestic Violence embarked on a research study entitled "Perceptions of the Maltese general public on Domestic Violence". The main objective of this study was to provide a synopsis of the perceptions on domestic violence among the Maltese general public.

34. In 2010, the Commission on Domestic Violence embarked on an EU-funded project "Dignity for Domestic Violence Survivors" (ESF 3.43), which contributed towards the capacity building of personnel working with vulnerable groups in order to increase social cohesion. This included work on empowerment of the victims, by enabling them towards effective participation, inclusion and well-being. Inclusion into the labour market ensures that victims living with/escaping from domestic violence are able to better contribute to the general wealth of society while enhancing their dignity and financial independence. This project also aimed at building networks among NGOs and other agencies, to share best practices and experiences.

35. Malta is also currently in the process of ratifying the Council of Europe Istanbul Convention through Bill No. 41 — Council of Europe Convention on Prevention and Combating of Violence against Women and Domestic Violence (Ratification) Bill. The President of Malta signed the law on 17 June 2014 that lays the ground for the ratification in Strasbourg.

36. A committee to explore the various legislative and policy requirements emanating from the Convention has been set up, and it should provide a number of suggestions in due course. In the meantime, Malta is committed to adopt a strategy to tackle gender-based and domestic violence which would meet the four requirements above: i.e. (a) recording of statistics regarding the number of such cases; (b) carrying out of investigations; (c) imposition of sanctions; (d) and provision of remedies to victims.

Reply to question 9(a)

37. The number of new cases opened at the Domestic Violence Unit in the year by type of abuse reported and the number of new cases opened at the Domestic Violence Unit in the year by age category can be seen in Table 1² in Annex I.

Reply to question 9(b)

38. Statistical information regarding investigations carried out by the Police Vice squad can be found in Table 2 in Annex I.

Reply to question 9(c)

39. To date the Law Courts do not collect statistical information on penalties and sanctions given to perpetrators following a domestic violence incidence. Reports made to the police are taken to court, as the police are legally bound to do so “ex-officio”.

Reply to question 9(d)

40. A protection order is issued by the law courts in Malta in domestic violence cases. Women’s shelters are also available for those victims (and their children) who have left the household due to domestic violence.

41. Aġenzija Appoġġ³ offers social work interventions within its Domestic Violence Unit and also organises a Men’s Services for perpetrators of domestic violence. Victims can also be referred for further psychological help within the same agency.

42. For a proper understanding of the elements of the offence of rape in Maltese law one must understand that, under Maltese law, “violence” for the purpose of the offence of rape may be actual or constructive (presumed). This is immediately clear from Art. 201 of the Criminal Code which lays down the circumstances which give rise to a legal (irrebuttable) presumption of violence. “Unlawful carnal knowledge and any other indecent assault, shall be presumed to be accompanied with violence — (a) when it is committed on any person under 12 years of age; (b) when the person abused was unable to offer resistance owing to physical or mental infirmity, or for any other cause independent of the act of the offender, or in consequence of any fraudulent device used by the offender”. Jurisprudence has firmly established that the concept of violence amounts in essence to lack of consent which is of broader scope than physical or moral violence (Art. 201 refers).

43. Malta believes that the recognition of the lack of consent as a determining factor in qualifying the crime of rape is already very strong in the definition of rape found in Maltese law and jurisprudence.

² Tables referred to in this document may be consulted in the files of the Secretariat.

³ Aġenzija Appoġġ is the National Agency for children, families and the community, which safeguards and promotes the well-being of these persons through the development and provision of psycho-social welfare services.

IV. Right to life, prohibition of torture and cruel, inhuman or degrading treatment, right to liberty and security and the treatment of persons deprived of their liberty, including conditions of detention, rights of migrants, refugees and asylum seekers (arts. 6, 7, 8, 9 and 10)

Issue 10

44. Following the death of a Nigerian immigrant at Lyster Detention Centre on 16 April 2011, a Board of Inquiry was convened on 17 April 2011 to investigate the incident. The Board of Inquiry made a number of recommendations, including:

- A draft of procedures regarding the opening and closing of gates within detention centres;
- Training in first aid for all Detention Service personnel;
- Disciplinary action to be taken against personnel involved in the incident;
- Use of portable camera during incidents and installation of CCTV systems at detention centres.

45. The above recommendations have since been implemented in the following manner:

- In addition to Standing Operating Procedures (SOPs) dealing with actions to be taken during and after an escape of immigrants which had already been published several months before the incident, new procedures regarding the operating of security doors in detention centres were published and Non Commissioned Officers in Charge shifts were briefed on their implementation;
- All Detention Service (DS) personnel underwent first aid training by certified and qualified first aiders and each DS Staff was issued with a certificate and first aid qualification ID Card (valid for 3 years);
- A hand portable camera has been used in incidents when time allowed DS personnel to make use of it. Unfortunately, during escape attempts there is no time to obtain a camera when the priority is to apprehend escaped immigrants and secure the detention centre to prevent further escapes.

46. Further actions were taken regarding training and procedures:

- An agreement with UNHCR was reached whereby training would be organised on the treatment of immigrants in detention, including the treatment of women and vulnerable immigrants in detention. Other training was organised by the University of Malta as part of the EU-funded project SPARKLET project. As part of this project, training was also held for Detention Service personnel;
- Review of SOPs regarding actions on attempted escapes and subsequent briefing to all NCOs and Duty Officers. One action to be taken by a Duty Officer after an apprehension of an escaped migrant is to convey him to a health centre or hospital to be examined by a doctor for signs of ill treatment in order to rule out foul play by DS staff involved. SOPs were published and included in Duty Officer's orders;
- Other SOPs concerning the operating of security doors in detention centres were published and displayed in detention centre notice boards. Furthermore, instructions how to operate security doors were affixed to every security door in detention centres.

47. Despite these measures a number of escapes did occur and it was evident that the reason behind such escapes was the disregard of these SOPs by a few individuals despite their training and instructions given which contributed to the unwarranted death of the migrant of Malian origin. An investigation was carried out and appropriate disciplinary action has been taken against all involved.

48. Ongoing measures to ensure a safety environment in Detention centres also include:

- All Detention Service Officers are given regular training on the proper treatment of Immigration Detainees;
- All Standard Operating Procedures are revised on a regular basis to reflect current International Obligations and Detention Service policies;
- Detention Centre Rules have been revised and are in the process of being enacted under the Immigration Act.

Issue 11

49. The position remains unchanged.

Issue 12

50. The four prison officers charged with ill-treatment of a Dutch prisoner in 2008 were arraigned in Court and found guilty.

51. Two of the prison officers were found guilty as accomplices under Articles 214, 216(1)(d) and 139A(b) of Chapter 9 of the Laws of Malta, Articles 42(e) and 141 of the same Chapter 9. These two prison officers were also found guilty under Article 153(c) of Chapter 9. The court also found two of the prison officers guilty as accomplices to crimes under Article 339(1)(d) of Chapter 9. These two officers were sentenced to a term of five years and three months imprisonment.

52. The other two prison officers were found guilty as accomplices to the crimes accused under Articles 214, 216(1)(d) and 139A(b) of Chapter 9, Articles 42(e) and 141 of the same Chapter 9. These two officers were also found guilty as accomplices under Article 339(1)(d). The Court sentence for these two prison officers was a five year term of imprisonment.

53. The Court ordered the four prison officers to reimburse expenses related to the experts referred to during these proceedings, as per Article 533 of Chapter 9 of the Laws of Malta, which amounts to €1,271.59 each, and €5,086.36 in total.

54. This sentence has been appealed by the prison officers and is currently pending before the pertinent Court.

55. Malta did not return any person to Libya on the 17 July 2010. The persons in question were never on Maltese territory or under Maltese control. They were disembarked directly from their craft to a Libyan patrol craft back to Libya from where they had left.

56. The Maltese Government reiterates its position that persons rescued at sea are not subjected to Maltese jurisdiction, but have knowingly chosen to be rescued by the Maltese Authorities rather than remain in a dangerous distress situation. This means Malta has always respected its obligations under international law. The fact that Malta honours such obligations should in no way be construed as Malta agreeing that further obligations ensue.

57. With reference to the events of 9 July 2013, when the Maltese Government was reported as having made preparations to return a number of migrants to Libya, after they had reached Malta illegally that day, and before they could apply for international protection, it should be noted that Government was keeping all options open, and that no

decision to return the migrants in question had in fact been made. At no point did Malta set its international obligations aside.

58. The Maltese authorities have always complied with their international obligations and fundamental rights have always been respected in the context of operations carried out by the Armed Forces of Malta (AFM). All reported cases of search and rescue were duly addressed by the AFM in accordance with international law. Thousands of lives have been saved in the Central Mediterranean as a result of these operations.

59. The principle of non-refoulement is safeguarded by the Refugee Act (Cap. 420) and related legislation. In practice, all irregular migrants are informed of their rights, including in particular the right to apply for international protection. Such information is provided by means of booklets as well as information sessions delivered by the Office of the Refugee Commissioner. Information is made available in the main languages of the countries of origin of asylum seekers.

60. 59. All asylum seekers who were at any point on Maltese territory or under Malta's effective control were given the opportunity to seek asylum, and were provided with all information and assistance required to do so. This is attested by the fact that the substantial majority of immigrants who reach Malta irregularly over the past years have proceeded to apply in Malta. This demonstrates that effective access to asylum procedures exists and that the asylum system is readily accessible.

61. The de facto accessibility of the asylum system is attested by the fact that nearly all irregular migrants file an asylum application. Moreover, Malta's asylum recognition rate is consistently high. United Nations High Commissioner for Refugees (UNHCR) statistics for 2013,⁴ and taking into consideration the population, Malta received the largest number of asylum applications per 1,000 inhabitants in 2013 (4.8 applications) (EU average: 0.8) and between 2009-2013 (20.2 applications) (EU average: 2.9) among the 44 industrialised countries covered by the UNHCR Asylum Trends Report 2013. Additionally, Malta's asylum recognition rate is consistently high, at around 50 per cent or over, in view of the needs of persons seeking protection in Malta. This likewise demonstrates that the principle of non-refoulement is upheld both legally and in practice.

62. It should also be noted that UNHCR and relevant NGO's have full access to any asylum seekers in detention, thereby providing for further safeguards.

63. Furthermore, asylum proceedings have a suspensive effect, thus the principle of non-refoulement is safeguarded through the suspension of removal orders as soon as an asylum request is lodged. No removal order is executed before a definitive decision has been given, that is, where an appeal has been lodged, the outcome of that appeal must be awaited.

64. Migrants who believe that their human rights have been violated can file a constitutional application in the legal courts.

Issue 13

65. Maltese law does not define what reasonable chastisement is and so it is left up to the Maltese Courts to interpret reasonable chastisement. However reasonable chastisement cannot refer to corporal punishment. This is due to a 2014 amendment to the Maltese Criminal Code. Prior to this amendment, the Maltese Criminal Code had made it an offence for a person who "being authorised to correct any other person, exceeds the bounds of moderation", thus allowing the use of "moderate" corporal punishment in child rearing. In February 2014, this article was amended and now the law states that "Provided that, for the

⁴ UNHCR, Asylum Trends 2013, Levels and Trends in Industrialized Countries.

avoidance of any doubt, corporal punishment of any kind shall always be deemed to exceed the bounds of moderation.” This amendment makes it very clear that the infliction of any kind of corporal punishment constitutes a crime against the person. This amendment applies also to corporal punishment in alternative care settings, in early childhood care, in schools and in penal institutions.

Issue 14

Reply to 14(a)

66. The detention of irregular migrants finds its legal basis in the Immigration Act. Pursuant to the decriminalisation of illegal entry, irregular migrants are subject to administrative detention, within centres which are distinct from the prison facilities and under separate management. It should be clarified that vulnerable migrants, including unaccompanied minors, persons with disabilities, the elderly, families with young children, pregnant women and lactating mothers are not detained. Their freedom is restricted only until their vulnerability has been established and the necessary medical clearance is given, with medical checks systematically carried out for every immigrant upon arrival. Vulnerable migrants are provided with alternative accommodation as well as any special attention they may require, such as particular health care. Minors receive the same rights as Maltese minors, including the right to attend state schools. It is therefore considered that adequate procedural safeguards are in place in order to ensure that the detention of irregular migrants does not infringe international standards.

67. With a view to achieving compliance with the EU’s recast Reception Conditions Directive 2013/33/EU, which has to be transposed into Maltese National Law by 20 July 2015, the following reforms will be introduced:

- Alternatives to detention will be referred to in national legislation in accordance with Article 8(4) of the Directive (e.g. regular reporting); and,
- Legislation to indicate reasons why asylum applicants may be detained, as per Article 8(3) of the Directive, these being:
 - (a) In order to determine or verify his or her identity or nationality;
 - (b) In order to determine those elements on which the application for the international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
 - (c) In order to decide, in the context of a procedure, on the applicant’s right to enter the territory;
 - (d) When he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in order to prepare the return and/or carry out the removal process, and the Member States concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
 - (e) When protection of national security or public order so requires;

(f) In accordance with Article 28 of Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the Member States by a third-country national or a stateless person.

Reply to 14(b)

68. With a view to achieving compliance with the EU's Recast Reception Conditions Directive 2013/33/EU, which has to be transposed into Maltese National Law by 20 July 2015, alternatives to detention will be referred to in national legislation in accordance with Article 8(4) of the Directive (e.g. regular reporting).

Reply to 14(c)

69. It should be noted that Malta's detention policy is also fully compliant with recommendations of the Council of Europe (Recommendation 2003(5)) on the detention of asylum seekers. In fact detention is justified when:

- Their identity, including nationality, has, in case of doubt, to be verified, in particular when asylum seekers have destroyed their travel or identity documents or used fraudulent documents in order to mislead the authorities of the host state;
- When elements on which the asylum claim is based have to be determined which, in the absence of detention, could not be obtained;
- When a decision needs to be taken on their right to enter the territory of the state concerned;

Or

- When protection of national security and public order so requires.

70. Administrative detention is also limited in its duration. It is subject to a maximum period of 12 months for asylum seekers. At present the maximum time limit for detention is not set in national law but by policy. It is however envisaged that the maximum period of detention will be set in national law when transposing the EU's re-cast Reception Conditions Directive 2013/33/EU.

Reply to 14(d)

71. Within the existing legal framework, it is possible for a detainee to challenge detention before the Immigration Appeals Board (IAB), in accordance with the Immigration Act. Amendments are however to be effected to Article 25A (10) of the Immigration Act whereby a challenge against a detention order may be filed at any point of the procedure. At present it is possible to file an appeal against detention if it is deemed that the duration of such detention is unjustified.

72. The sittings before the IAB are conducted in a similar manner to those held before the national Courts. Individuals may be assigned a legal aid representative and evidence is heard by the Board and submissions are made by the parties. The appellant is also given the opportunity to make oral or written submissions. It should also be noted that the members of the Board enjoy security of tenure, with a view to ensuring the independence of the Board.

73. The amendment to the Immigration Act referred to above will ensure compliance with Article 9(3) of the EU's Recast Reception Conditions Directive 2013/33/EU. This states that:

“Where detention is ordered by administrative authorities, the Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio and/or at the request of the applicant. When conducted ex officio, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member states shall define in national law the period within which the judicial review ex officio and/or the judicial review at the request of the applicant shall be conducted.”

74. With regard to return of illegally staying third-country nationals, legislative amendments to the Common Standard and Procedures for returning Illegally Staying Third Country Nationals Regulations (S.L 217.2) have been effected with a view to providing for a periodic review of the grounds of detention, in the context of detention for the purpose of returning the persons in question.

75. With regard to this periodic review, such third-country national shall have their detention reviewed either on application or ex officio by the Principal Immigration Officer at reasonable intervals of time which, in any case, shall not exceed three months. In the case of detention periods of six months or more, the Principal Immigration Officer shall carry out such review and notify the Board which shall supervise and, where necessary, revise such review.

Reply to 14(e)

76. 75. All asylum seekers whose application is being processed at first instance by the Office of the Refugee Commissioner, have the right to access legal assistance at any stage of the procedure. In this regard, reference is made to Article 15(1) of EU Council Directive 2005/84/EC on the “right to legal assistance and representation” which states that “Member states shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications”.

77. This has been implemented by Maltese law through Legal Notice 243 of 2008. Para. 7(1) states that:

“An applicant shall be allowed to consult, at his own expense, in an effective manner, a legal adviser in relation to his asylum application: Provided that in the event of a negative decision, free legal aid shall be granted under the same conditions applicable to Maltese nationals.”

78. Many NGO representatives are very active in providing assistance in legal proceedings; however, this complements free legal aid provided by the State for proceedings before the Refugee Appeals Board which hears appeals regarding asylum applications. Furthermore, an asylum seeker may, if s/he so wishes, make use of private legal counsel.

79. The legal adviser representing the applicant at appeals stage is given access to the applicant’s file, upon request. With regard to having access to the information in the file of the applicant, it should be noted that prior to the personal interview, the applicant is given a copy of the formal application form. Moreover, the applicant is also given a copy of the interview notes (verbatim transcript of the interview) as well as a copy of the decision.

80. As part of ongoing efforts to enhance the asylum determination process, not only at first, but also at second instance, the number of lawyers providing free legal aid in the asylum context has been doubled.

81. In view of these considerations, the Maltese authorities do not consider that free legal aid has to be provided from the outset. The current guarantees are deemed sufficient.

Issue 15

82. During 2013, one third of the asylum seekers arriving in Malta passed through the vulnerability and age assessment procedures. Specifically with regard to unaccompanied minors, 26 per cent of the total arrivals claimed to be unaccompanied minors asylum seekers. In 2014, 74 out of 91 migrants claimed to be minors, out of whom 64 claimed to be unaccompanied. Notwithstanding the fact that this places a great deal of pressure on the Agency for the Welfare of Asylum Seekers (AWAS) services, AWAS has once again reviewed the age assessment AWAS internal procedure. The following measures are being undertaken to ensure that the assessment is conducted promptly:

- All claiming to be under the age of 14 are met on the following day of arrival;
- Additional human resources have been sought in order to increase the pool of trained persons who are able to conduct age assessment;
- Bone test is only used as last resort and/or to grant benefit of the doubt;
- All decisions (if bone test is not required) are taken within 10 working days;
- Minors who are evidently minors are fast-tracked immediately out of detention and age assessment is conducted from the Open Centre.

83. All the above measures ensure that assessment is prompt and efficient as much as possible to ensure the right level of protection.

84. Furthermore a specific zone is reserved at Lyster Detention Centre for persons claiming to be minors so as to ensure that migrant children are not detained with adults.

Reply to 15(a)

85. Appeals of any immigration decision can be made to Immigration Appeals Board.

Reply to 15(b)

86. Unaccompanied minors are protected with a Care Order under the Children and Young Persons (Care Orders) Act. This implies that the Minister for Family and Social Solidarity has care and custody and ensures, through an Advisory Board setup, that a care plan for each and every minor is prepared, and that unaccompanied minors are protected and cared for on a psychosocial level.

Issue 16**Reply to 16(a)****Lyster and Safi Barracks Detention Centres***Overcrowding*

87. Overcrowding in detention may occur in exceptional cases as a result of large influxes of third-country nationals at a given time. In an effort to mitigate this, the total holding capacity of detention centres has been reduced to a maximum of 1,242 persons.

Living Conditions

88. All accommodation areas for irregular migrants in closed centres are refurbished regularly so as to ensure proper living conditions which respect human dignity. Warehouse II at Safi Detention Centre has been totally refurbished and further refurbishment initiatives were conducted in 2012 to Hermes Block at the Lyster Detention Centre. This effort is an

ongoing process, whereby ventilation systems, commercial grade washing machines and dryers are being installed. Fire detection and fighting system are also being installed as part of the projects that are being implemented to ameliorate living conditions within detention centres. Sanitary conditions have been considerably improved by regular cleaning and disinfecting of premises as well as by building larger toilet facilities in the centres. In order to promote better living conditions in detention centres, regular education sessions on personal hygiene are being held at the detention centres, as well as the provision of all items necessary to put in practice these sessions. Health care services are provided on a 24-hour basis via the National Health system and through privately contracted doctors and nurses free of charge. Recreational and training opportunities are provided on site through state funding or through voluntary services by non-governmental organisations.

89. A number of EU funded projects have been implemented to better the living conditions at Safi and Lyster Barracks. These included a mobile X-Ray facility in Lyster to reduce the time lag for health screening and overcrowding, other projects included provision of food supply, bedding, training opportunities and refurbishment. A brief overview of EU-funded projects implemented at Closed Detention Centres can be seen in Table 3 in Annex I.

Corradino Correctional Facility (CCF)

Overcrowding

90. Over the past 14 years, CCF has experienced a steady increase in the prison population. In fact, the average for 2014 indicates a 248 per cent increase over the average population for 2001. The comparison with previous years can be seen in Table 4 in Annex 1

91. In 2003, CCF concluded a major extension project. Three new divisions were built in the male inmates section catering for 144 new cells. Apart from these divisions, a new block was built which is currently housing the Female Division, Division 15 and three single rooms. This block is potentially self-sufficient in terms of amenities (including a Gate House, a Chapel, a kitchen, visiting facilities, common room, a library and a yard), although it currently makes use of certain facilities from within the main prison compound.

92. In terms of legislative provisions, there are two systems in place that provide for the early release of offenders, addressing in part overcrowding. These systems are the remission system and the parole system:

- Remission: According to the Restorative Justice Act (Cap 516), remission may be awarded to prisoners serving a prison term of more than one month. Remission earned cannot exceed one third of the total of the term of a sentence of imprisonment;
- Parole: Parole has been introduced in Maltese law through the Restorative Justice Act (Cap 516) in 2012. The parole system allows for the early release of inmates as indicated in Table 5 in Annex 1, subject to eligibility and conditions.

Living Conditions

93. The newer blocks have showers available on all floors, flushing facilities, extractor fans in all cells, and a 6' x 2' window in each cell. Drinking tap water is available in all cells.⁵

⁵ Maltese tap water is certified for human consumption and CCF water has also been certified by the Director of Environmental Health.

94. Even the older section of the prison has seen various stages of upgrading and renovation in recent years. In fact, in recent years, extensive refurbishment projects have been carried out in Division 1 and Division 4, which refurbishment works included the upgrade of cell windows and installation of skylights. All materials required for cleaning the cells are provided by CCF to inmates at no charge. All inmates have access to showers at divisional level and can make use of the showers as many times and for as long as necessary.

95. The Female Division has recently been relocated from an old part of the prison to a newer section, which was previously occupied by the Young Offenders Unit of Rehabilitation Services (YOURS). YOURS was moved out of the main prison compound to Mtaħleb. This move has improved the general environment provided to female inmates. Moreover, female inmates can now make use of the large yard within their own division. This yard is used on a daily basis for fresh air and recreational activities. Showers in this division have been very recently refurbished by correctional staff with the participation of inmates.

96. Works are currently being carried out in Division 15 where a new shower area is being installed, increasing the number of showers available to four. Once this project is terminated, the existing shower area will be dismantled, creating more space for Division 15 residents.

97. The Medical Infirmary has been relocated in recent years and upgraded to cater for various medical needs of the growing inmate population. Apart from the doctor's room, such improvement resulted in a fully equipped dentist room, a treatment room and a nurse bay. Health care services in prison are available round the clock. A doctor's clinic is held on a daily basis from Monday to Friday and an on-call system is in place to cater for all the needs that arise outside clinic hours. Nurses are in attendance at CCF from Monday till Sunday at the Medical Infirmary from 07:00hrs till 20:30hrs. A Psychiatric clinic is held twice a week and an on-call service is available. Inmates who require residential psychiatric treatment may be referred to the Forensic Unit. A dental clinic is available twice a week. All medical services are available for male and female inmates, as well as to officers at their place of work. All services that cannot be handled within the Prison Infirmary are sent to Mater Dei Hospital or other healthcare facilities outside CCF for further investigation or treatment. In addition, a pharmacy and pharmacist are available as necessary.

98. A marked improvement in the visiting facilities could be noted through the building of a playroom. This playroom is fully equipped and built according to EU standards and has been specifically built for inmates who have young children visiting them, thus improving the quality of the visits. The contact and non-contact visiting areas were also completely refurbished in the past year, thus creating a more pleasant environment for inmates and the relatives visiting them. The refurbishment works were carried out by correctional staff and inmates.

99. CCF provides various professional services, including social work and psychological services to inmates who require professional support and interventions. Moreover, professional services contribute to the parole process, through a multi-disciplinary approach within the Care and Reintegration Unit. CCF is in the process of augmenting professional services. The Faculty of the social well-being at the University of Malta is contributing by offering its services through the Masters in Counselling students who are carrying out their placement at the CCF.

100. The Chaplaincy has an active role at CCF. Mass is celebrated every day in the main chapel. Since not all inmates can attend Mass in the main chapel for security reasons, Mass is celebrated in other chapels and areas within the prison. There is also a Mosque in CCF and the Imam comes to CCF to meet Muslims regularly. Other religious denominations are

allowed to meet their religious leaders in CCF. It must be said that the religious leaders work together in harmony in CCF.

101. Various non-governmental organisations offer their services to inmates. In general, the main scope of their service is to provide psycho-social support to inmates and to integrate them back into society.

102. Recreational activities are available at CCF. All inmates in all divisions have access to yards. Moreover, the football pitch, gyms and board games are widely used. A seven-a-side football pitch has recently been built with an average of 450 attendances per month is registered as making use of the main football ground. A professional footballer is engaged on a part-time basis. Other recreational facilities include a gym, board games and the music room.⁶ Outdoor sports have recently been reintroduced for female inmates.

103. Several training and work opportunities are available to inmates. The CCF Education Centre is currently offering lessons in the following 10 subjects: Computer Awareness, Pure Maths, Health and Beauty, ICT Advanced, English (various levels), Personal and Social development (PSD), Spanish (various levels), Electronics, Italian (various levels) and French. Female inmates are also provided with classes in Art, Beauty, Italian, Physics, English, Computer, Sewing and Curtain Making. Interested inmates are given the opportunity to sit Matsec O'level and A'level examinations. In all, nine part-time teachers offer lessons together with two other voluntary teachers. Two inmates also offer lessons. Training is also offered through two EU-funded projects; one in partnership with Malta College of Arts, Science and Technology (MCAST) and Paola Local Council, offering courses carrying a Level 2 accreditation in 22 subjects and another project whereby CCF is a primary partner, a pan-European core group is creating a syllabus for teachers working in a prison environment. Inmates can also participate in courses by MCAST and ITS, as per Prison Regulations (S.L.260.03).

104. At CCF a number of workshops have been established a Work and Pay scheme which provides inmates with work experience and also is a source of income. Some examples of workshops include: curtains and soft Furnishings, souvenirs, Playmobil, woodwork, fitter, electrical works, masonry and baking. Through the scheme, inmates are also involved in manning the library, chapel, kitchen, cleaning and other community work.

Reply to 16(b)

Open Centres

105. Continuous efforts are made to provide improved services and create an adequate living environment for migrants living at open centres. Training and recreational activities are also provided at Open centres. In this regard, a number of EU-funded projects have been implemented to provide adequate living conditions for persons in open centres briefly can be seen in Table 6 in Annex I.

Forensic Unit at Mount Carmel

106. The Department of Correctional Services provides for a consultant-led psychiatric firm solely dedicated to male and female Forensic Unit patients enabling more frequent follow-ups and assessments in ward. A 24-hour on-call psychiatric service is in place and Psychiatric In Reach Services at CCF have been re-established with twice weekly clinics for the general inmate population, hence providing early intervention and timely follow-up,

⁶ Division 6, due to it being a short-stay high-security division, is the only division that does not avail itself of the activities mentioned below.

effectively reducing the number of patient population in Forensic Unit by 30 per cent and thus reducing overcrowding.

107. The female Forensic Unit site has been relocated as a specialist annex to Female Ward One Mount Carmel Hospital. This permits access to an outdoor area, occupational therapy input and is generally of a much more genial environment.

108. Several alternative sites for male Forensic Unit were considered and surveyed, however, due to the close proximity of 24-hour medical and nursing services and issues of safety and security, the original site remains the most favourable site. However alterations and refurbishments were needed. The first step was to clearly define the boundaries of the male Forensic Unit, by separating it from Maximum Secure Unit, the management of which falls under the main hospital. A particular area for group counselling sessions, available to all patients, was identified. Current work in progress includes room by room refurbishment of the living quarters in line with modern psychiatric practices, building of a gym room, alterations to the current medical treatment room, and extension to the single room area.

109. Mass is also celebrated at the Forensic Unit.

Irregular Migrants' Ward at Mount Carmel

110. The Irregular Migrants' Ward provides health care to irregular migrants from a multidisciplinary team of health professionals. This also includes counselling from psychologists. The Irregular Migrants' Wards at the Mount Carmel Hospital has recently undergone a general refurbishment with a view of improving their stay whilst on the ward. The ward has been whitewashed, air conditioning has been installed in the common areas, and window treatments have been put in place. Lockers for the storage of personal belongings have also been made available. In addition, the kitchen facilities have been upgraded to include basic appliances. In order to allow both male and female patients easier access to recreational facilities, another television set in a different area of the ward has been provided. Other efforts to improve the living conditions within the Ward included increasing space for patients by transferring female patients with both psychiatric and drug addiction to another section. Patients are free to practice their religion whilst at the Irregular Migrants' Ward. Copies of the Koran are readily available, whilst mass is organised for those who are Catholic. Consideration is also given to dietary preference. Furthermore, in order to facilitate and ensure proper communication, Mount Carmel Hospital management is in the process of recruiting professional interpreters in the main languages spoken by migrants. In addition since it is believed that patient empowerment is key to services, staff also teach basic skills, such as hygiene, cooking sessions and activities of daily living.

111. All irregular migrants at closed detention centres are allowed to receive regular visits from a large number of NGOs and Ministers from various religions. Regular visits by lawyers for legal aid purposes are also allowed. Irregular migrants at closed detention centres are also not subject to disciplinary sanctions.

Reply to question 16(b)(i)

112. Currently, the policies regarding segregation of inmates revolve around gender, juvenile offenders, offenders with mental health problems who require treatment and vulnerable inmates (vulnerability within a prison setting).

113. It is to be noted that CCF inmates are designated a cell based on the availability of such cells. CCF hosts an average of 630 inmates and space is limited by capacity which results in the designation of cells based on available empty locations. All entries, apart from those who fall under the criteria mentioned above, have the same probability of being designated a particular cell.

Reply to question 16(b)(ii)

114. All Immigration detainees are allowed to receive regular visits from a large number of NGOs and Ministers from various religions. Regular visits by lawyers for legal aid purposes are also allowed.

Reply to question 16(b)(iii)

115. Immigration detainees in Malta are not subject to disciplinary sanctions.

V. Elimination of slavery and servitude, forced labour (art. 8)**Issue 17**

116. Government continued efforts in advancing anti-trafficking prevention efforts by publishing its first Anti-trafficking National Action Plan in October 2011. Measures targeting the suppression of human trafficking in Malta continue to be implemented in the second National Action Plan on Combating Trafficking in Persons 2013 – 2014. Key issues being addressed in this action plan amongst other are:

- Creating awareness among persons vulnerable to human trafficking;
- Create awareness raising campaign amongst general public;
- Finalisation of guidelines for the identification of victims of human trafficking;
- Formalisation of arrangements for the identification and referral of victims of human trafficking; and,
- Completion of a study on the human trafficking scenario in Malta.

Reply to question 17(a)(i)

117. One of the objectives of the first Anti-Trafficking National Action Plan (2011-2012), was the identification of the International Organisation for Migration as an international partner for the implementation of a project in this context. The project “Launching Initiatives supporting Malta’s Efforts to Suppress Trafficking (LIMES)” envisaged amongst other activities: training for local stakeholders, assistance in the establishment of a formalised referral mechanism, and an awareness campaign.

118. Various training events were held for stakeholders to continue raising awareness among public authorities on cases of human trafficking, as well as to register greater effectiveness in relation to the prosecution of cases and the identification of victims. Joint training sessions were held for professionals working in the field to encourage networking. Outcomes of the training included the development of a formalized victim-referral mechanism and the drawing up of a list of National Indicators.

119. The Victim Referral Mechanism was further developed by means of Standard Operating Procedures (SOPs). Draft SOPs were discussed in consultation with members of the Stakeholders Task Force and subsequently approved. Furthermore, a handbook has been published to serve as a support tool for service providers on human trafficking, which includes detailed information and features the SOPs on identification and referral of (potential) victims of trafficking.

Reply to question 17(b)

120. Operations within the Police Vice Squad have been split into three specialised units to include a special unit focused on Prostitution and Human Trafficking. This reform

entered into effect on 25 January 2012. It is considered that the concerted efforts by this unit assisted in improved identification of human trafficking cases as an increase in trafficking cases being investigated was witnessed, followed by an increase in the arraignments of suspected perpetrators in court.

Reply to question 17(b)(i)

121. In 2013, seven adult females were formally identified as victims of human trafficking exploited to provide sexual services. Another two potential victims, who were also adult females did not wish to take their case to the police.

Reply to question 17(b)(ii)

Investigations & prosecutions

122. 121. In 2013, the Prostitution and Trafficking in Persons Unit within the Vice Squad reported that they conducted 563 inspections in connection with street prostitution always keeping in mind indicators of human trafficking during these inspections. Five persons were also arraigned in Court in relation to new cases for alleged human trafficking and other crimes.

Convictions

123. The most recent judgement regarding a case of human trafficking was passed on the 2 March 2012, by the Court of Criminal Judicature, convicting an adult male with trafficking women into Malta for prostitution purposes. The sentence meted out was of 10 years for trafficking of women for prostitution purposes and for living off the earning of prostitution. Additionally he was jailed for an additional year for committing a crime during the term of a conditional discharge. The Case is still *sub judice* due to a pending appeal.

Reply to question 17(b)(iii)

124. None of the victims claimed compensation; however in one case, a potential victim of human trafficking for domestic servitude was assisted by the Social Agency Appoġġ to retrieve unpaid salaries.

125. In Malta, so far no refugees or persons granted subsidiary protection were identified as victims or potential victims of human trafficking. The victims encountered to date entered Malta with regular documents and related working permits.

VI. Right to a fair trial, independence of the judiciary and juvenile justice (arts. 14 and 23)

Issue 18

126. The reform of the Justice System started in March 2014 following an evaluation of the final report by the Justice Reform Commission. The reform process is to be implemented over a 3 year period (2014–2016) and the first tangible results to be reported upon, at the end of 2014.

127. The members of the Refugee Appeals Board (RAB) are appointed by the Prime Minister. Moreover, the members of the RAB are appointed for a period of 3 years and may also be reappointed. Members of RAB may only be removed from office by the Prime Minister on the grounds of gross negligence, incompetence, or acts, omissions or conduct unbecoming a member of the Board. It is therefore considered that the members of the RAB enjoy security of tenure, thereby safeguarding the RAB's independence.

128. The fact that only a small number of first instance negative decisions have been overturned by the RAB should not lead to the inference that the process is not adequate. On the contrary, it reflects the fact that the asylum determination process at first instance is carried out in a thorough manner and is not restrictive in granting international protection where it is due. The small number of overturned decisions should be seen within the context of the fact that recognition rate at first instance consistently reaches and exceeds 60 per cent. This high asylum recognition rate at first instance demonstrates that the Maltese authorities have granted international protection to all applicants who indeed required it, at first instance, avoiding the need for applicants with well-founded claims to resort to an appeal.

129. Furthermore, in order to ensure transparency of procedures before the RAB, although the decision is made in camera, any party may request a hearing in the presence of the parties instead, in accordance with Article 7(6) of the Refugees Act.

Issue 19

130. This has been addressed by means of an amendment to Article 35(1) of the Criminal Code (Chapter 9, Laws of Malta) and by means of an amendment to Article 37(1) of the Criminal Code (Chapter 9, Laws of Malta).

131. The Juvenile Act remains applicable to minors aged 16 and under.

Issue 20

132. This has been addressed with the inclusion of Article 534AB(1) of the Criminal Code, effected by means of Act IV of 2014.

VII. Right to privacy, marriage and family life (art. 17)

Issue 21

133. The Civil Union Bill was adopted on 14 April 2014, and is now CAP 530 of the laws of Malta. New regulations and a new bill were subsequently submitted to parliament to amend other laws to ensure that all of the effects of marriage are available to civil partners.

134. The Public Registry requires the same documents to be submitted in relation to an application for the publication of marriage banns by all Third Country Nationals who are visiting or residing in Malta, including persons who do not qualify for refugee status or subsidiary protection.

135. The documents requested are:

- A legalized birth certificate;
- A legalized free status certificate;
- An identification document (passport or Identity card);
- A valid visa or residence document.

136. Furthermore, all documents are requested in terms of Art. 7(5) of the Marriage Act (Cap 255), reproduced hereunder:

“7(5) A request for the publication of banns shall not be entertained unless it is delivered to the Registrar earlier than six weeks before the date of the intended marriage, or than such shorter period as the Registrar may in his discretion accept in

special circumstances, and unless and until, in addition to all other relevant information, there are delivered to the Registrar-

(a) the certificate of birth of each of the persons to be married;

(b) a declaration on oath made and signed by each of the persons to be married stating that to the best of his or her knowledge and belief there is no legal impediment to the marriage or other lawful cause why it should not take place:

Provided that if it is shown to the satisfaction of the Registrar that it is impracticable to obtain a certificate of birth required to be delivered by this sub-article, the Registrar may accept instead such other document or evidence as he may deem adequate for the purpose of this article.”

137. In 2009, the Ombudsman in Malta recommended that the Registrar alter the current policy, suggesting that it infringed on the migrants’ fundamental right to marry, stating that this is discriminatory since it might be difficult to obtain documents required. However, the Marriage Registrar notes that marriage can only take place between identifiable people. In the case of people granted refugee or subsidiary protection status, the registrar issues the banns on the strength of documentation issued by the Refugee Commissioner and no birth certificate is required. On the other hand, the Marriage Registrar upholds the notion, that rejected asylum seekers may obtain the necessary documentation.

138. The Marriage Registry being the regulator of all marriages in Malta, was, and still is, of the opinion that rejected asylum seekers should not have an advantage over all other applicants and therefore should first regularize their position with the Police Immigration authorities and submit the documents described above prior to submitting an application for marriage banns. One should also note that the Marriage Registry receives many other requests from “over stayers” who do not have valid visas requesting to get married in Malta. Such requests are always denied until the persons regularize their immigration position.

139. Furthermore, Malta implements Article 12 of the European Convention of Human Rights effectively, which states that:

“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

140. Thus, the Convention also clearly stipulates that national laws are to be observed.

141. the Registrar thus applies such a policy in order to achieve consistency in its requirements and to have a fair procedure which is not discriminatory against one group or other.

Issue 22

142. This matter is under consideration and discussions will be taking place with the Electoral Commission with a view to finding a solution.

VIII. Freedom of expression, freedom of conscience and religious belief (arts. 18 and 19)

Issue 23

143. The position on defamation has remained unchanged, as highlighted in paragraphs 308–311 of the Second Periodic report (CCPR/C/MLT/2).

144. The fact that the Criminal Code provides for the said offences in no way detracts from the rights and freedoms to one's beliefs and freedom of expression as enshrined in the Constitution. Moreover, under Article 83B of the Criminal Code this freedom is further protected in that if an offence is found to be motivated by the victim's religious beliefs.

IX. Children's rights (arts. 23 and 24)

Issue 24

Reply to question 24(a)

145. Maltese law specifically provides for foster care in order that a child may be brought up in a family environment according to the child's best interests. However, in order to further protect children who are deprived of a family environment the Maltese Parliament is currently debating the Child Protection Act. This Act, apart from establishing Child Court Services and introduces child protection orders, provides for special care and protection for children removed from their parents and placed in out-of-home care.

146. The Child Protection Services is one of the services set up under this proposed Act, which deals with cases of children who need to be removed from their parents to be placed in out-of-home care. This service may provide for the placement of the child with a member of his/her family, or with other siblings, provides the appropriate attention to the particular needs of the child and appoints a social worker.

147. Moreover, the proposed Act provides that where any interested party shows to the Court that foster care has been ongoing for more than four care reviews and appears to be long term, and the views and wishes of the child have been considered, it may decree permanent foster care. The Court may also decree that a child placed under a child protection order, issued by the Court itself, may be freed for adoption, with the parents' right to oppose these adoption proceedings or to consent to the adoption. The Court may also decree to free the child for adoption if evidence is brought to show that the parent or parents are unlikely to be able or are unwilling to provide the child with appropriate care and the Court has ascertained that freeing the child for adoption is in the child's best interests. In considering the child's best interests the Court shall take into consideration the child's views and wishes in a manner that is appropriate to the child's maturity and understanding and any particular needs and the child's attachment to the natural family.

148. This proposed Act also puts the onus of responsibility on the State to ensure that when a child has been removed from the care of his parents and placed in out-of-home care the child receives special care and protection. In fact the State needs to have all appropriate measures in place in order that the Court may be able to count on them and this with the aim of promoting the well-being and care of children who are placed in out-of-home care. The promotion of well-being entails a family environment which best suits the child after all the relative circumstances are taken into consideration by a Court which represents impartiality, independence and expertise and presided over by a Family Court judge.

149. The Child Protection (Out of Home Care) Bill, which aims to put the interest of the child as a priority has had its First Reading in the House of Representatives.

Reply to question 24(b)

150. The age of consent for civil marriage is 16 years. In the case where a person is over 16 years of age, but younger than 18, the parents have to provide a written approval of the wedding.

151. No decision to raise this age is foreseen

X. Dissemination of information relating to the Covenant (art. 2)

Issue 25

152. No dissemination of information initiatives on the Covenant and its First Optional Protocol were undertaken by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties.

153. The national equality body (NCPE) has provided input in the preparatory process for the report.
