



International Covenant on Civil and Political Rights

Distr.: General
16 October 2014

Original: English

Human Rights Committee 112th session

Summary record of the 3106th meeting

Held at the Palais Wilson, Geneva, on Monday, 13 October 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Second periodic report of Malta (CCPR/C/MLT/2; CCPR/C/MLT/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Malta took places at the Committee table.*
2. **Mr. Agius** (Malta), introducing his country's second periodic report (CCPR/C/MLT/2), said that the Maltese legal system ensured that the Covenant rights were fully enforceable, and that the courts did not make any restrictive interpretations of those rights unless expressly permitted by law. Although Malta had ratified the Covenant with reservations, in practice the Government had often adhered more closely to the provisions of the Covenant than those reservations implied. The reservations were reviewed periodically with a view their withdrawal.
3. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had recently conducted its first visit to Malta. Since the submission of the report, Malta had acceded to more international human rights instruments, including the Convention on the Prevention and Punishment of the Crime of Genocide and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. A two-year project titled "Forms of Violence in Malta – a Gender Perspective" had been launched to curb violence against women. In 2014, Malta had become the first country in the world to include gender identity as a ground for protection in its Constitution. It had also adopted the Civil Unions Act, pursuant to which all rights and duties set out in the Marriage Act applied *mutatis mutandis* to civil partners, including same-sex partners, with the sole exclusion of matters related to religious weddings.
4. The Government provided free childcare to all, and it was committed to strengthening its efforts to combat gender discrimination in the workplace and developing work practices that allowed for flexible working conditions. In 2014, Malta had appointed a female president for the second time in its history, and four of the six members of the European Parliament elected in the recent round of elections were women, which indicated the State's commitment to women's political participation.
5. The Government was also committed to the rights of persons with disabilities, as demonstrated by the establishment of the Parliamentary Secretariat for Rights of Persons with Disability and Active Aging. It had enacted new legislation to protect persons with disabilities, such as the Guardianship Act, and it was currently drafting an adult protection act and strengthening the Equal Opportunities Act in close consultation with the Federation of Organizations for Persons with Disability and the National Commission for Persons with Disability. Local councils were being encouraged to carry out infrastructure projects to make their communities more accessible. The Government was considering increasing the involvement of NGOs in the delivery of services for persons with disabilities. In the coming months, Malta would launch its first national disability policy, to be followed by a national disability strategy.
6. The State still maintained that the right to life extended to the unborn child and that termination of pregnancy at any stage and for any reason was an infringement of that right. Malta offered quality health care free of charge before, during and after pregnancy, and it was strengthening the Genitourinary Clinic in order to combat sexually transmitted diseases. A number of sexual and reproductive health-care services were freely available through the national public health-care system.

7. In 2014, the Government had held a public consultation on establishing a national human rights institution, and the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties had then begun a process of international consultation with various bodies. The Government aimed to have an independent national human rights institution that was in line with the Paris Principles.

8. Since 2002, Malta had received large numbers of migrants in an irregular situation from Northern Africa. The asylum recognition rate had consistently exceeded 50 per cent in recent years. A number of legislative instruments had been adopted in 2013 to establish the Common European Asylum System, so as to reduce discrepancies among member States regarding the procedures followed and rights afforded to asylum seekers. The situation constituted a humanitarian crisis, as large numbers of people were taking life-threatening journeys and many of them died at sea. Malta, with its limited absorption capacity and resources, could not deal with the problem alone. Despite its limitations, the Government was doing all it could to improve reception conditions and provide integration-oriented assistance. While the State intended to retain its detention policy, it would introduce reforms in that area and would amend its legislation with a view to achieving full compliance with recent judgements issued by the European Court of Human Rights. It conducted regular maintenance of facilities in open and closed detention centres and ensured that adequate food, clothing and other necessary items were provided in those centres. In September 2014, Malta had welcomed the United Nations High Commissioner for Refugees, and it would continue to extend full assistance to asylum seekers and beneficiaries of international protection. In conclusion, he summarized the Government's written replies to the list of issues (CCPR/C/MLT/Q/2/Add.1).

9. **Mr. Flinterman** welcomed the fact that Malta had ratified the Second Optional Protocol to the Covenant since the submission of its initial report in 1993, though he was surprised to find no mention of that ratification in the second periodic report. He was concerned to note that the Covenant had still not been incorporated into national law and that the State party still seemed to give preference to the European Convention on Human Rights over the Covenant. He wondered whether the absence of any individual communications submitted by Maltese citizens was due to a lack of awareness of that mechanism among lawyers, members of the judiciary and rights holders. He asked whether there was a legal procedure in place to implement the binding decisions handed down by the European Court of Human Rights and, if so, whether that procedure might also be used to implement any views adopted by the Committee on communications submitted by Maltese citizens.

10. He welcomed the fact that the Government had put in place a policy of reviewing its reservations to human rights treaties with a view to withdrawing them. Malta had made six reservations to the Covenant, under articles 13, 14, paragraphs 2 and 6, 19, 20 and 22. Even in 1993, the Committee had noted that some of the reservations might have already become obsolete, but it appeared from the second periodic report that the State party had retained all the reservations and he asked what its justification was. With regard to articles 13 and 14, paragraphs 2 and 6, Malta had ratified Protocols 4 and 7 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms without reservations, although the substance was the same as that of articles 13 and 14 of the Covenant.

11. Similarly, in its earlier reservation to article 20 of the Covenant, Malta had stated that it reserved the right not to introduce further legislation pertaining to the article, but, according to the second periodic report, legislation prohibiting incitement to racial hatred had recently been adopted, so there was no basis for retaining the reservation. As for article 22 of the Covenant, the State party's original reservation referred to existing legislation that might not be fully compatible with the Covenant. He asked what that legislation consisted

of and whether it was still in place. Malta had also made two reservations to article 19 of the Covenant, restricting freedom of expression for civil servants and aliens. Freedom of expression was a crucial human rights issue, dealt with in the Committee's general comment No. 34. He recalled that, at the World Conference on Human Rights in 1993, it had been agreed by all States of the United Nations that reservations to human rights treaties should be withdrawn, where possible, and he urged the delegation to do so in relation to the Covenant.

12. He welcomed the move to extend the mandate of the National Commission for the Promotion of Equality to create the National Commission for Human Rights and Equality. He noted, however, that the Parliamentary Ombudsman had said that his Office would be the ideal human rights institution. It was not for the Committee to dictate what action Malta should take, but it wished to know how the New Commission and the Parliamentary Ombudsman would work together.

13. **Ms. Waterval**, referring to questions 4 and 5 of the list of issues, welcomed the amendments made to the Equality for Men and Women Act and the enactment of Bill No. 18 on anti-discrimination, which added sexual orientation to the lists of grounds on which discrimination was prohibited. She wondered, however, why language was not included in the list. She also asked why there was no analysis of article 27 of the Covenant in the State party's report. Lastly, she noted that the delegation had not responded to question 5 concerning the fact that, under Maltese law, only Maltese or European Union nationals or habitual residents of Malta could apply for compensation for crime, although that was not consistent with the State party's obligations under article 26 of the Covenant.

14. **Ms. Majodina**, speaking with reference to questions 6 and 8 of the lists of issues, said that Malta had made great progress in tackling racism and xenophobia, with its amendment to the Criminal Code and the training provided for police in that regard. She would, however, be grateful for more detail on the impact of training by the National Commission for the Promotion of Equality on the prevention of racism and on the handling of racial discrimination by the police. She asked what assessment and monitoring methods were used. The Commission had an extensive mandate and she asked how many investigations had been held into cases of discrimination related to access to housing, to places of entertainment and to public transport. She asked what findings there had been, if any, and whether there had been any convictions of perpetrators. When would the National Action Plan against Racism and Xenophobia become operational?

15. She commended the progress made in improving the prospects of women, whose representation in senior positions in both public and private sectors was higher than in 1998. It appeared, however, that the proportion of women in Parliament, for example, had remained unchanged — their members were only one tenth that of men — and she requested the delegation to provide updated statistics giving the data up to 2014. She also asked whether women could lodge complaints with the Commission concerning unequal treatment in the workplace. In that connection, she asked how the National Council of Women was supported by the Government, since, although a non-governmental organization (NGO), it seemed to initiate legislation. She also asked what impact free childcare had had on female participation in the labour market and in public life. Lastly, she requested an assurance that the uninterrupted 18 weeks of maternity leave stipulated by law were granted in practice.

16. **Ms. Siebert-Fohr**, speaking with reference to question 7 of the list of issues, commended the fact that, under the 2014 amendment to the Constitution, sexual orientation and gender identity had been included as grounds for non-discrimination. There were, however, reports of homophobic bullying and harassment in schools; simply to "encourage" schools to take steps to deal with such problems was inadequate. She requested the delegation to give details of whether tolerance was taught as part of the

curriculum and whether gender identity and sexual orientation formed a subject of education. She asked how many instances of harassment and bullying had been recorded. Since schools were mostly single-sex establishments, transgender children might be denied access to State schools because of a failure by schools to recognize that a child's gender had changed. She noted that the State party had said that coeducational schools were being opened and she asked how many there were and where they were situated.

17. **Mr. Grech** (Malta) said that the principles of the Covenant were enshrined in the Constitution and thus in all the legislation deriving from it. Malta would, however, do everything possible to extend its work to protect human rights. Significant new legislation had been adopted and special commissions set up to protect vulnerable groups in society, including children and persons with disabilities. With regard to Mr. Flinterman's questions about the six reservations by Malta, he would provide an answer within the next 48 hours.

18. **Mr. Agius** (Malta) said that, in setting up the national human rights commission, Malta was looking at various existing models of human rights institutions, including that of the Netherlands, and taking advice from the Council of Europe Steering Committee for Human Rights. As for the question of how the new commission would work with the Parliamentary Ombudsman, the intention was that the latter would retain his current role, but experience would show whether any change of course would be needed. As for the question of why language had not been included in the list of grounds on which discrimination was prohibited, he said that the delegation would consider any recommendations on language or other matters that the Committee might make in connection with the establishment of the new commission.

19. **Mr. St. John** (Malta) said that the curriculum of the Police Academy included training on dealing with discrimination, racism and xenophobia. Prison officers received similar training.

20. **Mr. Farrugia** (Malta) said that the Government was working to increase the number of women involved in making decisions on policies relating to women.

21. **Mr. Agius** (Malta) said that the Government did not privilege one NGO over others. It engaged in a system of public consultation and supported various NGOs financially and by other means.

22. Malta was proud of the way that it had progressed in the area of lesbian, gay, bisexual, transgender and intersex (LGBTI) issues at both the national and the international level. The LGBTI Council, a consultative body made up of all NGOs and experts in the field, developed legislation and made proposals to ministries. At the international level, Malta had co-hosted the Idaho Forum with Sweden, following which 17 European States had subscribed to a declaration of intent on LGBTI issues. The Minister for Social Dialogue, Consumer Affairs and Civil Liberties had been a keynote speaker at two international conferences devoted to LGBTI issues, which were high on the Government's agenda.

23. **Ms. Pisani** (Malta) said that all schools, both primary and secondary, were being made coeducational; the process would be complete by the school year 2018/19. That development would assist transgender children and would also extend the options for the wearing of uniform. Sexual orientation and gender identity were taken into account in the curriculum and the Government had recently launched guidelines on career development for transgender children and assistance in responding to conflict. Children were encouraged to discuss their problems with teachers.

24. **Mr. Flinterman** said that, while he did not doubt the State party's desire to uphold human rights, he nonetheless considered that, in the interests of its interactive dialogue with the Committee, Malta should not wait 48 hours to say why it retained its reservations, when

they were no longer relevant. He added that the Covenant should be visible within the everyday legal system, even if no specific law enshrining it was adopted.

25. **Ms. Waterval** said that the delegation had still not responded to question 5 of the list of issues concerning access to compensation for criminal injuries.

26. **Mr. St. John** (Malta) said that he could tell the Committee provisionally, with regard to criminal injuries compensation, that Malta had adopted Council Directive 2004/80/EC relating to compensation to crime victims, which had been transposed into the Criminal Injuries Compensation Scheme Regulations. The Regulations might not, however, fall within the ambit of article 26 of the Covenant. Discrimination was addressed under other legislation.

27. **The Chairperson** said that he was glad that the State party's answer was provisional, since it required further thought. The scope of article 26 of the Covenant was not confined to nationals or habitual residents, since other persons were not barred from compensation on those grounds.

28. **Ms. Waterval** said, with regard to question 9 of the list of issues, that the Government had taken a number of useful measures to deal with violence against women and children. She asked how many shelters for women victims of violence existed and what the State party meant by the last sentence of paragraph 41 of the replies to the list of issues. She also asked whether there were programmes to train violent offenders to change their behaviour. Lastly, she asked about the effectiveness of measures taken to protect women and children from violence and about their impact.

29. **Ms. Seibert-Fohr** wished to know what criminal and disciplinary measures had been adopted in response to the alleged excessive use of force by State officials in immigration detention centres, more specifically what criminal proceedings had been opened against those who had injured detainees during the disturbances at the Safi Barracks Detention Centre and what disciplinary action had been taken against the members of the personnel of the Lyster Detention Centre who had been responsible for the death of a Nigerian immigrant in 2011. Details of the findings of the Board of Inquiry mentioned in paragraph 43 of the replies to the list of issues would be welcome, as would information regarding the outcome of the charges brought against the two soldiers who had allegedly beaten a Malian migrant to death. Had the results of the investigation been published? What findings had been reached by the inquiry into a disturbance that had occurred in the Lyster Detention Centre in February 2014, where detainees had reportedly been beaten and wounded by rubber bullets? Was there any mechanism for the systematic review of the conduct of detention service personnel?

30. She wondered how the absolute ban on abortion, even in cases where the mother's life was in danger, or after rape or incest, could be reconciled with the protection of the mother's right to life or with the prohibition of cruel and inhuman treatment. Were there any exceptions to the general prohibition of abortion? She asked the delegation to describe any measures in place to prevent unwanted pregnancies and teenage pregnancy and requested data on cases where illegal abortions had led to complications. What steps were taken to protect the life and health of the women concerned?

31. **Ms. Majodina** requested clarification of Malta's position on the principle of non-refoulement, since the International Commission of Jurists had described the action taken by Maltese authorities in 2010 to return a number of Eritrean and Somali migrants to Libya as collective expulsion. Had the persons in question received individual assessment before they were removed? If so, what procedure had been followed? If there had been no assessment, what had been the reason for that omission? Lastly, she asked whether there was any national judicial procedure or mechanism for implementing the suspensive effect

of asylum proceedings. She would be pleased to receive statistics on the number of times it had been employed.

32. As she believed that the automatic mandatory detention of asylum seekers and migrants in an irregular situation was inconsistent with the right to liberty, since those people had not committed any crime, and that the period of 18 months of administrative detention was contrary to the requirement of proportionality under article 9 of the Covenant, she wished to know if any reforms of the relevant legislation were planned. Had the reforms outlined in paragraph 67 of the replies to the list of issues already been implemented and did they comply with the principle that detention should be used only as a measure of last resort? Did the national law transposing the European Union's Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast) contemplate the introduction of non-custodial alternatives to detention? Why was the maximum length of detention set at 12 months for asylum seekers and 18 months for migrants in an irregular situation? What happened to an asylum seeker if his or her application was rejected or if the 12-month deadline was exceeded?

33. She questioned the effectiveness of Immigration Appeals Board decisions, since the executive authorities could reapply administrative detention notwithstanding a release order from the board. She would welcome an explanation of how it was possible to ensure that board members remained independent and impartial, given that they were appointed by the President of Malta.

34. Referring to paragraph 81 of the replies to the list of issues, she wondered whether the determination procedure could not be speeded up by giving an asylum seeker or a migrant in an irregular situation immediate access to legal aid.

35. **Mr. Bouzid** asked the delegation to provide examples of any "reasonable chastisement" imposed since the amendment of the Criminal Code in 2014. He wished to know whether Malta intended to end the automatic detention of migrant children whether or not they were accompanied. He requested examples of and data on cases where children had been able to lodge an appeal against a decision determining their age. How many unaccompanied minors had received free legal assistance?

36. Turning to the issue of detention conditions, he asked whether the State party intended to contemplate the possibility of separating sentenced and remand prisoners and long-term prisoners and those serving short sentences. He was also eager to learn what measures could be adopted if migrants in an irregular situation broke the detention centre's rules.

37. **Mr. Zlătescu** asked how the age of unaccompanied minors was determined. How long did their initial detention last? Were they still confined in overcrowded premises with adults? He wished to know if there was any mechanism to assess the vulnerability of migrants and their ability to understand where they were and what their rights were. In short, his main question was whether Malta was intending to improve, or whether it had already improved, its treatment of vulnerable migrants, especially those who claimed to be children.

38. **Mr. Shany** requested clarification of the legal basis for the position stated in paragraph 56 of the replies to the list of issues. How was it possible to reconcile Malta's general policy that it assumed no responsibility for would-be migrants rescued at sea, since they never entered Maltese territory, with general comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant?

39. **Mr. Farrugia** (Malta) reiterated the information contained in paragraphs 33, 34, 39 and 40 of the replies to the list of issues in response to the question concerning domestic violence. Five women's shelters had been established.

40. **Ms. Buttigieg** (Malta) said that the possible reason why no one had been arraigned for rape, child abuse or child neglect in 2014 was that the police was still gathering information on reported cases.

41. **Mr. Grech** (Malta) reiterated the State party's position on the right to life as set out in his introductory statement. He added that Malta respected all its obligations under international treaty law. If a mother's life was at risk, clinical situations were managed on a case by case basis and an attempt was made to save the life of both mother and child. Interventions to save the life of the mother were not precluded, even if there was a chance that the child would die, but no intervention that directly killed the foetus was allowed by law. He also repeated what had been said in his introductory statement with regard to the promotion of sexual and reproductive health. Respect for the dignity of human life from the moment of conception and a belief that a stable family unit was the cornerstone of a healthy society respectful of social, sexual, religious and cultural diversity underpinned the national sexual health policy launched in November 2010. A national sexual health strategy had then been formulated after widespread consultation of all segments of society. The strategy set out the targets, goals and deliverables of sexual and reproductive health. A group chaired by the Superintendent of Public Health had been set up to oversee the implementation of that strategy. Health education was an ongoing initiative. In 2007 the Government had set up an education health committee which met regularly to discuss and coordinate school health programmes, including those concerning sexual and reproductive health. He again referred to the health-care services which he had listed in his introduction.

42. **Mr. St. John** (Malta) said that the inquiry launched into the riot at the Lyster Detention Centre in 2011 had produced some recommendations on ways of preventing such riots. Criminal action had been initiated against the officers responsible for the death of the Malian migrant. The last incident at the Lyster Detention Centre in February 2014 had not resulted in any serious injuries as the rubber bullets had been fired into the air.

43. Malta was gradually introducing reforms in its detention system. The aforementioned European Union directive allowed migrants in an irregular situation to be detained for a maximum period of 18 months, although the member State was obliged to hold a periodic review of the need or otherwise for continued detention. Malta was already conducting such reviews and in 2014 it had released some 350 persons from detention, 192 of whom had been freed after less than 15 days of detention. Malta was currently obliged to implement that system in regard to persons who were irregularly present and who were not seeking asylum. In practice, however, the Maltese authorities were also examining the possibility of extending that system to asylum seekers. The relevant provisions would ultimately be embodied in national legislation.

The meeting rose at 6 p.m.