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Committee on the Rights of the Child

Concluding observations on the second periodic report of Malta, adopted by the Committee at its sixty-second session (14 January–1 February 2013)

1. The Committee considered the second periodic report of Malta (CRC/C/MLT/2) at its 1762nd and 1763rd meetings (see CRC/C/SR.1762-1763) held on 17 January 2013, and adopted, at its 1784th meeting, held on 1 February 2013, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party (CRC/C/MLT/2) and the written replies to its list of issues (CRC/C/MLT/Q/2/Add.1). However, the Committee regrets that these written replies which were due for submission on 16 November 2012 were only submitted on 16 January 2013, impeding the Committee's insight on the latest situation in the State party. The Committee expresses appreciation for the constructive dialogue held with the multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations adopted on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/MLT/CO/1).

II. Follow-up measures undertaken and progress achieved by the State party

4. The Committee welcomes the adoption of the following legislative measures:

(a) Act XVIII of 2004 amending the Civil Code (Chapter 16 of the Laws of Malta) to remove the distinction between legitimate and illegitimate children;

(b) The Overseas Adoption (Definition) Order of 2004 bringing Maltese legislation on adoption in line with the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; and

(c) The Refugees Act of 2001 (Chapter 420 of the Laws of Malta), which allows for any child or young person below the age of 18 years to apply for asylum.

5. The Committee also welcomes the accession to or ratification of:

- (a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure in April 2012;
 - (b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in September 2010;
 - (c) The Convention on the Rights of Persons with Disabilities in March 2007;
 - (d) The Optional Protocol to the Convention on the Rights of Persons with Disabilities in March 2007;
 - (e) The International Convention for the Protection of All Persons from Enforced Disappearance in February 2007;
 - (f) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in September 2003; and,
 - (g) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in 2011.
6. The Committee also welcomes the following institutional and policy measures:
- (a) The highly commendable range of measures undertaken for children with disabilities, resulting in over 99 per cent of them receiving education that is customized according to their needs and in inclusive schools;
 - (b) The National Sexual Health Policy in 2010;
 - (c) The National Policy and Strategy for the Attainment of Core Competences in Primary Education in 2009;
 - (d) The establishment of the National Commission for the Promotion of Equality in 2004;
 - (e) The establishment of an office of mediators and children's advocates to represent children in legal proceedings in 2003; and,
 - (f) The establishment of the Office of the Commissioner for Children in 2003.

III. Factors and difficulties impeding the implementation of the Convention

7. The Committee recognizes the substantial number of persons seeking asylum and/or refugee status in the State party. The Committee notes that this has had a negative impact on the implementation of the rights enshrined in the Convention, particularly for children in an asylum and/or refugee seeking situation.

IV. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)

The Committee's previous recommendations

8. The Committee, while welcoming the State party's efforts to implement the Committee's concluding observations of June 2000 on the State party's initial report (CRC/C/15/Add.129), notes with regret that some of the recommendations contained therein have not been fully addressed.

9. **The Committee urges the State party to take all necessary measures to address those recommendations in the concluding observations of the initial periodic report under the Convention that have not been implemented or sufficiently implemented, particularly those related to legislation, allocation of resources, best interests of the child, corporal punishment, abuse and neglect and adolescent health.**

Legislation

10. The Committee welcomes the adoption of the Commissioner for Children Act in 2003 (Chapter 462 of the Laws of Malta) which seeks to strengthen protection for children, promote child rights and improve the provision of services to children. However, the Committee is concerned that the State party has not undertaken a comprehensive review of its legislation to ensure compliance with the Convention and not all national laws are in full compliance with the Convention.

11. **The Committee recommends that the State party consider enacting a comprehensive child rights act at the national level, which fully incorporates the principles and provisions of the Convention and its Optional Protocols and provides clear guidelines for their consistent and direct application in the State party. This should also include the provision of adequate budget allocations for the implementation of legislation and all other measures adopted to end violence against children.**

Comprehensive policy and strategy

12. While noting that the State party does have national child-related policies, the Committee is concerned that there is no comprehensive strategy to implement the Convention.

13. **The Committee recommends that the State party develop and implement a comprehensive policy and strategy which will embrace all the other sectoral and regional plans of action relating to children. The Committee also urges the State party to provide all the necessary human, technical and financial resources for an effective implementation of such a comprehensive strategy and ensure regular and broad consultations to assess the effectiveness of its implementation.**

Coordination

14. The Committee notes the establishment of the Department of Social Welfare Standards (DSWS) as the central authority with overall authority for coordinating the implementation of the Convention. However, the Committee remains concerned that with its primary focus on social and childcare services provision, DSWS lacks a clear mandate and adequate resources for effectively coordinating the overall implementation of the Convention.

15. **The Committee recommends that the State party further strengthen its capacity for coordinating the implementation of the Convention. In doing so, the Committee recommends that the State party consider establishing a specific department within DSWS or a separate agency for coordinating the implementation of the Convention and ensure that it has sufficient authority and adequate human, technical and financial resources to effectively coordinate actions for the implementation of children's rights across different sectors.**

Allocation of resources

16. The Committee notes the general increase in financial resources allocated to areas related to the implementation of the Convention. However, the Committee remains

concerned at the lack of separate, clearly identifiable and monitored budget allocations for the implementation of the Convention.

17. In the light of the Committee's recommendations during its Day of General Discussion in 2007 on "Resources for the Rights of the Child – Responsibility of States", the Committee recommends that the State party establish a budgeting process which adequately takes into account child needs, with clear allocations for children in the relevant sectors and agencies, as well as specific indicators and a tracking system. In addition, the Committee recommends that the State party establish mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the Convention.

Independent monitoring

18. The Committee welcomes the State party's establishment of its Office of the Commissioner for Children under its Commissioner for Children Act of 2003. However, the Committee notes that the Commissioner for Children is under the Ministry of Justice and that its funding is also drawn from the budget of this Ministry. Furthermore, the Committee is concerned that conditions provided for the Commissioner for Children are not in full compliance with the Paris Principles, particularly with regard to its independence and investigatory powers.

19. Taking into account the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2) and the Paris Principles, the Committee recommends that the State party take appropriate measures to strengthen the independence of its Office of the Commissioner for Children by ensuring that it is provided with adequate specific and separate human, technical, and financial resources as well as the immunities required for it to effectively carry out its function, including dealing with complaints from or for children in a child-sensitive and expeditious manner.

Dissemination and awareness-raising

20. The Committee welcomes the increased engagement of the State party and its media in raising awareness about children's rights and the Convention at the national level. However, the Committee is concerned that awareness of the Convention remains limited among children and the public at large.

21. The Committee recommends that the State party include mandatory modules on human rights and the Convention in its school curriculum. Furthermore, the Committee recommends that the State party continue to increase media engagement in raising awareness of the Convention in a child-friendly manner, in particular through greater use of the press, radio, television, the Internet and other media, and the active involvement of children in public outreach activities.

Training

22. The Committee takes note of the training and education activities on domestic violence and child protection conducted by the State party for parts of its judiciary, law enforcement professionals and civil service. However, the Committee is concerned that such training does not reach all professionals working with or for children, particularly immigration and border control personnel.

23. The Committee reiterates its previous recommendation (CRC/C/15/Add.260, para. 24) to provide adequate and systematic training and/or sensitization on children's rights for professionals working with and for children, in particular law

enforcement, migration and border control officials, as well as parliamentarians, judges, lawyers, health personnel, teachers, school administrators and others as required.

Child rights and the business sector

24. The Committee is concerned that, while tourism constitutes one of the main pillars of the State party's economy, the State party has not yet adopted measures to protect children from violations of their rights arising from tourism activities.

25. **The Committee recommends that the State party:**

(a) **Examine and adapt its legislative framework (civil, criminal and administrative) to ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State party's territory, especially in the tourism industry, regarding abuses to child and human rights;**

(b) **Establish monitoring mechanisms for the investigation and redress of such abuses, with a view to improving accountability, transparency and the prevention of violations to the Convention and its Optional Protocol on the sale of children, child prostitution and child pornography;**

(c) **Undertake awareness-raising campaigns with the tourism industry and the public at large on the prevention of child sex tourism and widely disseminate the charter of honour for tourism and the World Tourism Organization global code of ethics for tourism among travel agents and in the tourism industry;**

(d) **Strengthen its international cooperation against child sex tourism through multilateral, regional and bilateral arrangements for its prevention and elimination; and**

(e) **Comply with international and domestic standards on business and human rights with a view to protecting local communities, particularly children, from any adverse effects resulting from business operations, in line with the United Nations "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights that were adopted by the Human Rights Council in 2008 and 2011, respectively, and by the Committee's own general comment on State obligations regarding the impact of the business sector on children's rights (2013).**

B. Definition of the child (art. 1 of the Convention)

26. The Committee is concerned that in numerous areas of legislation, such as the provision of child welfare services and support, the State party does not provide for the coverage of children above the age of 16 years, resulting in a de facto definition of the child being a person under 16 years of age in these cases. Furthermore, the Committee is concerned that the age of marriage is set at 16 years.

27. **The Committee urges the State party to take all necessary measures to harmonize the definition of the child in its national legislation and the implementation thereof with the Convention. Furthermore, the Committee urges the State party to raise the minimum age of marriage to 18 years.**

C. General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

28. The Committee notes as positive the amendment of the Civil Code which aims at ensuring equality of rights for children regardless of the marital status of their parent(s). However, the Committee remains deeply concerned about serious instances of discrimination against children in irregular migration situations.

29. **In accordance with article 2 of the Convention, the Committee urges the State party to increase its efforts to adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds, including by considering targeted programmes for addressing discrimination against children in irregular migration situations. Furthermore, the Committee recommends that the State party develop, in consultation with the media, a code of conduct for the media with a view to eliminating stereotyping and stigmatization of persons in irregular migration situations. Furthermore, the Committee requests that the State party provide specific information in its next periodic report on the measures and programmes relevant to the Convention undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account general comment No. 1 on article 29, paragraph 1, of the Convention on the aims of education (CRC/GC/2001/1).**

Best interests of the child

30. The Committee notes that the Commissioner for Children is empowered to promote and advocate the rights of children and the paramount consideration of the best interests of the child. However, the Committee reiterates its previous concern (CRC/C/15/Add.129, para. 25) on the principle of the best interests of the child not being systematically incorporated in all relevant legislation affecting children. Furthermore, the Committee is particularly concerned at the inadequate understanding and application of the principle of the best interests of the child in asylum-seeking, refugee and/or immigration detention situations.

31. **The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is widely known and appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and all policies, programmes and projects relevant to and with an impact on children, particularly those deprived of a family environment, asylum seeking, refugee and/or in immigration detention. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate them to public and private social welfare institutions, courts of law, administrative authorities and legislative bodies. The legal reasoning of all judicial and administrative judgements and decisions should also be based on this principle.**

Respect for the views of the child

32. The Committee notes as positive that the 2003 Civil Court and Family Court Regulations provide for an office for mediators and children's advocates to represent the best interests of the child in legal proceedings. However, the Committee is concerned that effective implementation of legislation recognizing the rights of children to express their views in relevant legal proceedings is not systematically practised. In particular, the Committee is concerned at the limited access that children have as parties to legal

proceedings and that the age of hearing the children, including in adoption proceedings, is often too high, frequently resulting in limitations of the right of the child to be heard.

33. **The Committee draws the State party's attention to its general comment No. 12 (2009) on the right of the child to be heard (CRC/C/GC/12) and recommends that it take measures to strengthen the right of the child to be heard in accordance with article 12 of the Convention. In so doing, it recommends that the State party take measures to ensure the effective implementation of legislation recognizing the rights of the children to express their views in relevant legal proceedings, including by considering establishing systems and/or procedures that ensure the possibility for the children to fully exercise this right.**

D. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)

Birth registration and nationality

34. The Committee is concerned that there continue to be cases of children, including those in irregular migration situations, who are not provided with birth registration. Furthermore, the Committee is concerned that there is no provision in the Maltese Citizenship Act for the acquisition of citizenship by a child born in the State party who would otherwise be stateless.

35. **The Committee urges the State party to ensure that all children born in its territory are registered at birth, regardless of the status of their parents, with particular attention to children in single-parent families and/or irregular migration situations. Furthermore, the Committee urges the State party to ensure that a child born in the State party to parents who are foreigners, but unable to pass on their nationality, or to parents who themselves are stateless or whose nationality is unknown, is granted citizenship.**

E. Violence against children (articles 19, 37(a) and 39 of the Convention)

Corporal punishment

36. The Committee notes as positive the Foundation for Social Welfare Services "Blue Ribbon" campaign to promote positive parenting that was launched in 2010. However, the Committee regrets that, notwithstanding its previous recommendation (CRC/C/15/Add.129, para. 30) to explicitly prohibit corporal punishment, the State party continues to lack legislation explicitly prohibiting corporal punishment in all settings. The Committee is particularly concerned that corporal punishment is permitted and prevalent in the home and alternative care contexts as so-called "reasonable chastisement" under articles 229 and 339 of the State party's Criminal Code and article 154 of its Civil Code.

37. **The Committee recommends that the State party take all appropriate measures to explicitly prohibit corporal punishment in all settings and ensure that this prohibition is adequately monitored and enforced. Furthermore, it recommends that the State party strengthen and expand awareness-raising and education campaigns, in order to promote positive and alternative forms of discipline and respect for children's rights, with the involvement of children, while raising awareness about the adverse consequences of corporal punishment on children.**

Abuse and neglect

38. The Committee notes as positive the various initiatives undertaken by the State party to combat abuse, including its adoption of a Child Protection Policy for Schools and its successful prosecution of two priests for perpetrating abuse at the Saint Joseph Home in the State party. The Committee reiterates its previous concern (CRC/C/15/Add.129, para 33) at the under-reporting of child abuse and limited information available for determining the scope and frequency of it, the limited measures for the rehabilitation of child victims, and the insufficient awareness within society regarding the harmful consequences of ill-treatment and abuse, including sexual abuse, both within and outside the family.

39. **The Committee recommends that the State party undertake concrete measures to establish a national database on all cases of domestic abuse and/or violence against children with a view to undertaking a comprehensive assessment of the extent, causes and nature of it. The Committee also reiterates its previous recommendations (CRC/C/15/Add.129, para. 34) to the State party to strengthen awareness-raising and education programmes including campaigns with the involvement of children in order to prevent and combat child abuse. In addition, the State party should strengthen measures to encourage reporting of instances of child abuse and prosecute perpetrators of these acts.**

Sexual exploitation and abuse

40. The Committee notes the State party's initiatives, such as the Aġenzija Appoġġ and Supportline 179, for addressing sexual abuse and exploitation. However, the Committee regrets that the State party report provides no information on the extent and causes of child sex exploitation and is concerned about the insufficient data and awareness of the sexual exploitation of children in the State party. Furthermore, the Committee is concerned that the State party does not have adequate mechanisms for ensuring the detection, investigation and prosecution of perpetrators of child sexual exploitation and abuse.

41. **The Committee recommends that the State party:**

(a) **Undertake a national study on the nature and extent of the sexual abuse and exploitation of children with a view to designing policies and programmes to prevent and combat it;**

(b) **Adopt effective measures to prevent the sexual exploitation of children, remove children from such situations, and provide for their rehabilitation, recovery and social integration;**

(c) **Establish a specific mechanism for the detection, investigation and prosecution of child sexual exploitation and abuse; and,**

(d) **In doing so, ensure that these programmes and policies for the prevention, recovery and reintegration of child victims are in accordance with the outcome documents adopted at the 1996, 2001 and 2008 World Congress against Sexual Exploitation of Children held in Stockholm, Yokohama, Japan, and Rio de Janeiro, Brazil, and specifically provide information on these in its next report to the Committee.**

Freedom of the child from all forms of violence

42. **Recalling the recommendations of the United Nations study on violence against children of 2006 (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State party take into account general comment No. 13 on**

the right of the child to freedom from all forms of violence (CRC/C/GC/13, 2011), and in particular:

- (a) **Develop a comprehensive national strategy to prevent and address all forms of violence against children;**
- (b) **Adopt a national coordinating framework to address all forms of violence against children;**
- (c) **Pay particular attention to and address the gender dimension of violence;**
- (d) **Cooperate with the Special Representative of the Secretary-General on violence against children and other relevant United Nations institutions.**

E. Family environment and alternative care (arts. 5, 9-11, 18 (paras. 1-2), 19-21, 25, 27 (para. 4) and 39 of the Convention)

Family environment

43. The Committee welcomes the State party's efforts to better support families through, inter alia, provision of early childhood care for children under the age of three years and subsidies in cases where it is not affordable. However, the Committee is concerned that the availability of such childcare remains inadequate and support services for families are still insufficient.

44. **The Committee recommends that the State party intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including increasing the availability of early childhood care and support facilities to parents.**

Children deprived of a family environment

45. The Committee welcomes the increased availability of foster-care service and placements in lieu of institutional care in the State. However, the Committee is concerned that the availability of alternatives to institutional care remains insufficient, with continuing placements of children in institutions, which are not in the best interests of the child, due to insufficient foster-care capacity. Furthermore, while noting that there are some examples of measures for supporting children in their transition to independent living as adults after they leave institutional care, the provision of such support is not an integral and standard feature of all residential homes for children in the State party.

46. **The Committee calls upon the State party to:**

- (a) **Facilitate and support family-based care for children and give priority to alternative care which is in the best interests of the child wherever possible;**
- (b) **Increase the number of social workers to ensure that the individual needs of each child can be effectively addressed;**
- (c) **In addition to the above, further strengthen its national system for foster care and ensure the provision of adequate funding and support for foster families;**
- (d) **Adequately prepare and support young people prior to their leaving care by providing for their early involvement in the planning of transition as well as by making assistance available to them following their departure;**
- (e) **Provide all the necessary human, technical and financial resources required for improving the situation of children in alternative care placements; and**

(f) **In so doing, take into full account the Guidelines for the Alternative Care of Children annexed to United Nations General Assembly resolution 64/142 of 18 December 2009.**

F. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Mental health

47. The Committee notes that the State party has only one special unit providing residential psychiatric care to children up to the age of 17. The Committee is concerned that the capacity for meeting the needs of children with mental-health needs remains limited, with additional support from non-governmental organizations (NGOs) being required for meeting existing needs for mental health services.

48. **The Committee recommends that the State party further develop and expand its mental health-care system for children and young people to ensure adequate and accessible prevention, treatment of common mental health problems in a primary health-care framework as well as specialized care for more serious disorders, with particular attention to children most at risk, including children deprived of parental care.**

Adolescent health

49. The Committee is concerned that unplanned adolescent pregnancies continue to be a significant problem in the State party. Furthermore, the Committee is gravely concerned that abortion is illegal in all cases and with no exception under the law of the State party and that girls and women who choose to undergo abortion are subject to imprisonment. In this context, the Committee is also concerned at this frequently resulting in girls and women in these situations seeking risky illegal abortions.

50. **Referring to its general comment No. 4 on adolescent health (CRC/GC/2003/4), the Committee recommends that the State party:**

(a) **Develop and implement a policy which addresses the issues faced by adolescent mothers and protects them and their children from discrimination and violations of their rights; and in so doing, pay particular attention to ensuring that pregnant adolescents and adolescent mothers are supported and assisted in continuing their education; and**

(b) **Review its legislation concerning abortion, and consider including specific exceptions which allow for abortions with appropriate counselling and aftercare when this is in the best interests of the pregnant adolescent.**

51. The Committee notes that the State party has a national agency (SEDQA) for prevention, treatment, and rehabilitation services to persons with drug, alcohol, and/or gambling problems, while supporting their families. However, the Committee is concerned that tobacco and alcohol consumption as well as drug and substance abuse among adolescents continue to be a significant problem in the State party.

52. **The Committee recommends that the State party systematically analyse information that it collects through its participation in the European School Survey Project on Alcohol and Other Drugs on the consumption of alcohol, tobacco and illegal drugs amongst adolescents with the aim of using this information to formulate awareness-raising and education campaigns against substance abuse. Furthermore, the Committee recommends that the State party undertake measures necessary for**

the effective enforcement of the prohibition of the sale and marketing of such products to children; the Committee also recommends that the State party consider prohibiting all forms of advertisements promoting alcohol and tobacco products in media and/or information commonly accessed by children.

Breastfeeding

53. The Committee welcomes the increase in duration of maternity leave to 18 weeks as well as the enactment of regulations on the marketing of breast-milk substitutes in the State party. However, the Committee remains concerned about the low rates of breastfeeding in the State party and the lack of data on the root causes of this and its potential linkages with infant obesity. Furthermore, the Committee is concerned that no hospitals in the State party have achieved baby-friendly status under the Baby-Friendly Hospital Initiative (BFHI).

54. **The Committee recommends that the State party:**

(a) **Strengthen its awareness-raising efforts on the importance of breastfeeding and promote exclusive breastfeeding of children up to the age of six months; and collect data on breastfeeding with a view to developing a national policy to promote and facilitate breastfeeding;**

(b) **Strengthen the monitoring of existing marketing regulations relating to breast-milk substitutes and ensure that such regulations are monitored on a regular basis and action is taken against those who violate these regulations; and**

(c) **Undertake measures to ensure that all its maternity hospitals meet the required standards and are certified as baby-friendly under BFHI;**

(d) **Undertake measures, including training for mothers and health professionals, on healthy infant and child nutrition.**

G. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)

Education including vocational training and guidance

55. While noting that the State party has compulsory education for children between the ages of 5 and 16, the Committee is concerned at the high rate of children discontinuing schooling after the completion of compulsory education at the age of 16.

56. **The Committee recommends that the State party undertake a study to determine the root causes of why children choose to cease schooling after the completion of compulsory education. In so doing, the Committee recommends that the State party use the findings of the study to recommend specific improvements and reform measures of its education syllabus and teacher training to ensure that children are provided with quality education. This should include adequate vocational training options that are relevant to improving the quality and coverage of education services for all children.**

H. Special protection measures (arts. 22, 30, 32-36, 37 (b)-(d), 38-40 of the Convention)

Asylum-seeking and refugee children

57. The Committee notes the difficulties posed by the substantial number of asylum and/or refugee seeking persons that the State party has received and the measures taken by it to attempt to address their needs. However, the Committee is deeply concerned that:

(a) Pursuant to the State party's Immigration Act (Chapter 217 of the Laws of Malta), foreigners on Maltese territory without the right of entry, transit or residence are subject to mandatory immigration detention until removal from Malta is carried out, resulting in the detention of children pending age determination;

(b) There are no legislative time limits for such immigration detention, frequently resulting in children being detained with unrelated adults for weeks or months pending age assessment, despite the possibility of accommodating them in alternative facilities;

(c) Age determination takes place during detention and in instances where age cannot be determined by a psychosocial interview panel, bone density analysis by way of carpal X-rays (Greulich and Pyle method) is the main method of age determination, which is known to have margins of error of up to five years;

(d) Children in such situations receive no guidance on the content of the procedure, and have no possibility to appeal the outcome of the age determination;

(e) There is no systematic and regular judicial review of detention, and existing procedures are frequently inaccessible and ineffective;

(f) While in detention, children are only permitted minimal time for leisure activities in the open air;

(g) There are reports of unrelated female, male and children asylum seekers being accommodated in the same premises, with joint usage of common showers and toilets;

(h) There are reports of frequent acts of violence and excessive use of force, especially in quelling peaceful demonstrations in immigration detention centres; and

(i) There are inadequate health services and assistance in these detention centres.

58. **Emphasizing that all children are entitled to the full protection and implementation of their rights under the Convention, the Committee urges the State party to ensure that the rights enshrined in the Convention are guaranteed for all children under the State party's jurisdiction, regardless of their or their parents' migration status, and address all violations of those rights. In particular, the Committee urges the State party to:**

(a) **Refrain from criminalizing children in irregular migration situations for their or their parent's migration status and expeditiously and completely cease the detention of children in irregular migration situations;**

(b) **Adopt legislation, policies and practices that subject all custodial accommodation relating to migration status to clear time limits and periodic reviews; and allow children to remain with family members and/or guardians if they are present in the transit and/or destination countries, and be accommodated in non-custodial, community-based contexts while their immigration status is being determined;**

- (c) **Improve and expedite age assessment practices by implementing multidisciplinary and transparent procedures and ensure that age assessments are undertaken only in cases of serious doubt;**
- (d) **Ensure that children are provided with accessible and adequate support and mechanisms for appealing age determination decisions in a timely manner;**
- (e) **Provide adequate human, technical and financial resources for ensuring that children in migration-related custody have access to adequate guardianship and legal representation;**
- (f) **Ensure that, while in migration-related custodial arrangements, children are provided with adequate opportunities and facilities for education, leisure and recreational activities in an open context;**
- (g) **Ensure the provision of adequate appropriate gender-separate accommodation, toilet and shower facilities in migration detention centres;**
- (h) **Respect the right to peaceful assemblies and protests by persons and children in migration detention centres and ensure that any use of force is subject to strict necessity standards and the principle of proportionality; and,**
- (i) **Ensure that adequate human, technical and financial resources are allocated to address the health needs of children and persons in migration detention centres.**

Economic exploitation, including child labour

59. The Committee notes that the 2003 Young Persons (Employment) Regulations (Legal Notice 440) prohibit work by children and adjust the minimum employment age to correspond with the minimum age at which compulsory full-time schooling ends. However, the Committee is concerned that the regulations do not apply to occasional and short-term work which is frequently taken up by adolescents in, inter alia, hotels, catering, food and beverage establishments or domestic work during the school holidays.

60. **The Committee recommends that the State party:**

- (a) **Take all measures to ensure that the involvement of children in all contexts is in full compliance with international child labour standards, in terms of their age, working hours, their working conditions, their education and health;**
- (b) **Ensure that all of its employment legislation and regulations, including that of occasional and short-term employment, particularly in the tourism, hotel, catering, food and beverage, and domestic work sectors, are in conformity with rules set out in International Labour Organization (ILO) Convention No. 182 (1999) concerning the prohibition and immediate action for the elimination of the worst forms of child labour; and**
- (c) **Consider ratifying ILO Convention No. 189 concerning decent work for domestic workers.**

Sale, trafficking and abduction

61. The Committee notes that the State party has legislation criminalizing forced inducement, violence, threats or deceit to coerce prostitution, international trafficking, child labour and sexual exploitation. However, the Committee remains concerned that notwithstanding this, the State party remains a significant source and destination country for women and children subjected to sex trafficking.

62. **The Committee recommends that the State party further intensify its efforts to raise awareness on sex trafficking and proactively identify trafficking victims among vulnerable populations, particularly migrants, women in prostitution, and foreign workers. It further recommends that the State party develop formal procedures for the identification and care of child victims of sale, sex trafficking and forced labour. The Committee recommends that the State party establish mechanisms to detect, investigate and prosecute, with commensurate sanctions, cases of child sale, trafficking and abduction. Furthermore, the Committee recommends that the State party undertake a study on the potential linkages between tourism and sexual exploitation in its territory.**

Children in armed conflict

63. The Committee regrets that the State party has not provided any information in follow-up to the review of the State party's initial report under the Optional Protocol of the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/MLT/CO/1). Reiterating its previous concerns (CRC/C/OPAC/MLT/CO/1, para 6), the Committee regrets that the State party:

(a) Does not assume extraterritorial jurisdiction over the crime of conscripting or enlisting children under the age of 18 into the armed forces or armed non-State groups and their use in hostilities; and furthermore, the Committee is concerned that

(b) Although the State party is a country of transit and destination of asylum seekers and migrants, including children from countries affected by armed conflict, it has no measures for systematically identifying at the earliest possible stage, refugee, asylum-seeking and migrant children who may have been involved in armed conflicts and ensuring their physical and psychological recovery and social reintegration.

64. **The Committee urges the State party to undertake an assessment of its measures, if any, taken in follow-up to the previous concluding observations on the State party's initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/MLT/CO/1) and to ensure the inclusion of detailed information on it in its next report to the Committee. Furthermore, the Committee recommends that the State party:**

(a) **Establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State party;**

(b) **Stipulate explicitly that military personnel should not undertake any act that violates the rights enshrined in the Optional Protocol regardless of any military order to that effect; and,**

(c) **Establish measures and procedures for systematically and promptly identifying at the earliest possible stage, refugee, asylum-seeking and migrant children who may have been involved in armed conflicts and ensuring their physical and psychological recovery and social reintegration.**

Administration of juvenile justice

65. The Committee reiterates its previous concerns (CRC/C/15/Add.129, para. 49) that:

(a) The age of criminal responsibility remains at nine years;

(b) Children in conflict with the law between 16 and 18 years of age are being tried as adults and subject to criminal law; additionally, the Committee is concerned that

(c) The Criminal Code allows for an assumption that a child aged between 9 and 14 years could act with “malicious intent” and subjects them to trial under criminal law;

(d) The policy on so-called *co-accused minors* where children who are co-accused with a person older than 16 years of age can be subject to criminal proceedings; and

(e) There are inadequate alternatives to deprivation of liberty and diversion possibilities, to avoid the prejudicial effects of deprivation of liberty.

66. **The Committee recommends that the State party bring the juvenile justice system fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the Guidelines for Action on Children in the Criminal Justice System recommended by Economic and Social Council resolution 1997/30; and the Committee’s general comment No. 10 (2007) on children’s rights in juvenile justice. Furthermore, the Committee specifically recommends that the State party :**

(a) **Adopt new legislation to, at the minimum, explicitly exclude all children under the age of 14 years and in conflict with the law from criminal proceedings ;**

(b) **Consider extending the scope of its juvenile justice legislation to include all children under the age of 18 years;**

(c) **Eliminate the criterion of “mischievous intent” for children between 14 and 16 years old;**

(d) **Abolish its policy of *co-accused minors* which allows for children who are co-accused with a person older than 16 years of age to be subject to criminal proceedings;**

(e) **Introduce alternatives to deprivation of liberty and diversion possibilities, to avoid the prejudicial effects of deprivation of liberty;**

(f) **Train juvenile court judges on the requirements of international standards; and**

(g) **Consider establishing a comprehensive database on children in conflict with the law with a view to facilitating the analysis of their situation at a national level and use its results to improve the State party’s juvenile justice system; and**

(h) **Make use, where relevant, of the technical assistance tools developed by the United Nations Interagency Panel on Juvenile Justice and its members, including the United Nations Office on Drugs and Crime (UNODC), the United Nations Children’s Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR) and NGOs, and seek technical assistance in the area of juvenile justice from members of the Panel.**

I. Ratification of international human rights instruments

67. **The Committee encourages the State party, in order to further strengthen the fulfilment of children’s rights, to accede to all core human rights instruments, including ratifying the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention for the Protection of**

All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

J. Cooperation with regional and international bodies

68. The Committee recommends that the State party cooperate with the Council of Europe towards the implementation of the Convention and other human rights instruments, both in the State party and in other Council of Europe member States.

K. Follow-up and dissemination

69. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to its Parliament, relevant ministries, the Supreme Court, and local authorities for appropriate consideration and further action.

70. The Committee further recommends that the second periodic report and written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and its Optional Protocols and of their implementation and monitoring.

L. Next report

71. The Committee invites the State party to submit its combined third to sixth periodic reports by 29 October 2017 and to include in them information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the reporting guidelines. In the event that a report exceeding the page limitations is submitted, the State party will be asked to review and eventually resubmit the report in accordance with the above-mentioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, then translation of the report for purposes of examination of the treaty body cannot be guaranteed.

72. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).