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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review *

Malta

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document was not edited before being sent to the United Nations translation services.

**RESPONSES OF MALTA TO THE RECOMMENDATIONS CONTAINED IN
PARAGRAPH 80 OF THE REPORT OF THE WORKING GROUP ON THE
UNIVERSAL PERIODIC REVIEW (A/HRC/WG.6/5/L.6)**

Malta thanks all delegations for their recommendations, comments and questions. Malta takes note of recommendations numbers: 8, 10, 13, 14, 15, 16, 23, and 47; whilst Malta cannot accept recommendations 29, 30 and 40. The remaining recommendations have been addressed as follows:

Recommendation 1: Malta does not intend to accede, at least for the time being, to the Convention on the Protection on the Rights of all Migrant Workers.

Recommendation 3: Malta is not in a position to ratify the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women, in view of the wide reservations made by Malta upon signature. Malta will be ratifying the Optional Protocol to the Convention on the Rights of the Child on the Sale of children, child prostitution and child pornography, as the required amendments to the criminal law provisions to allow such ratification have been made. Malta will withdraw the declaration made upon signature to the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, following a revision of the relevant legislation; and ratify this Optional Protocol.

Recommendation 4: Malta is actively seeking the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol. As a result of the “Inclusive and Special Education Review” of 2005, the Ministry of Education, Culture, Youth and Sport, provided training to around 500 Learning Support Assistants to upgrade their qualifications and therefore improve the quality of support they offer to students with disability; furthermore, a “Special and Inclusive Education Network” is studying recommendations that emerged in the said Review to improve the quality of services offered.

Recommendation 5: The Convention on the Rights of Persons with Disabilities was published in Maltese and in an Easy to Read version. Every year, the National Commission Persons with Disability (KNPD) organizes an awareness raising ‘Disability Week’ that includes various activities such as a national conference, Disabled People’s Parliament, adverts, posters etc. KNPD published: a manual called ‘Rights not Charity’ providing service providers with guidelines on how they can be accessible to all in various settings; and, four reading books for children.

Recommendation 6: At present Malta does not consider that the Convention for the Protection of all persons from Enforced Disappearance should be ratified, particularly in view of the fact that there have been no cases of enforced disappearance. Malta is not in a position to sign the Optional Protocol to the International Covenant on Economic Social and Cultural Rights.

Recommendation 7: Although Malta has not ratified Articles 11, 13 and 15 of the Convention on the Elimination of Discrimination against Women, parts of these articles have been enshrined into national legislation and others are currently being discussed. The Government of Malta stands by its position in the original reservation of Articles 11 and 16.

Recommendation 9: Malta gives full consideration to all recommendations made by the UNHCR, human rights treaty bodies and special procedures, in order to implement those which are considered appropriate within Malta's context, and particularly in view of Malta's practical circumstances.

Recommendation 11: Malta addressed this issue in paragraph 10 of A/HRC/WG.6/5/L.6, in addition to paragraphs 5-11 in the National Report, A/HRC/WG.6/5/MLT/1.

Recommendation 12: The National Preventive Mechanism is provided with all the necessary resources, in the same way as other boards established pursuant to national legislation.

Recommendation 17: Malta addressed this issue in paragraph 42 of A/HRC/WG.6/5/L.6.

Recommendation 18: Malta transposed Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Indeed, Legal Notice 85 of 2007 – *Equal Treatment of Persons Order* safeguards equality on grounds of race or ethnic origin in relation to: social protection (including social security and healthcare); social advantages; education; access to and supply of goods and services which are available to the public (including housing); and access to any other service as may be designated by law for the purposes of this regulation. Moreover, Legal Notice 86 of 2007 – *Equal Treatment in Self-Employment and Occupation Order* prohibits discrimination in relation to conditions for access to self-employment or occupation. Furthermore, Subsidiary Legislation 452.92 *Equal Treatment in Employment Regulations* delineates the illegality of direct and indirect discrimination, as well as harassment, on various grounds, including race and ethnic origin in the access and conditions of employment; access to vocational guidance; and membership of organizations of employees and employers. Moreover, persons who feel discriminated against on the grounds of their race or ethnic origin in employment or in the provision of goods and services can lodge a complaint to the Industrial Tribunal or NCPE respectively.

Recommendation 20: The Employment and Industrial Relations Act (EIRA), Chapter 452 of the Laws of Malta – has provisions in its articles 26-32 on the protection against discrimination related to employment, including the principle of equal treatment at all stages of the employment life; the right to be paid equally for work of the same value. Moreover, regulation 3A of the Equal Treatment in Employment Regulations makes it the duty of the employer to ensure that there is no direct or indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration. The Director of Industrial and Employment Relations is empowered by law to enforce both the provisions of EIRA and its subsidiary legislation to safeguard these principles.

Malta's National Reform Programme 2008-2010 aims at increasing the female employment rate by training and engaging mothers absent from the labour market. The Employment and Training Corporation (ETC) is working amongst other things, on increasing female participation through more provision of childcare services at the workplace. Additionally, in order to motivate women to remain or return to the labour market, fiscal measures are available to female employees and inactive women.

Recommendation 21: Malta will not use the Yogyakarta principles as a guide for policy making; these principles were discussed and adopted by a number of experts acting on their own behalf.

Recommendation 22: Malta feels that whether or not to legislate to recognize the relationship between two partners, irrespective of their sex, remains a matter of national competence to be decided upon by the Maltese government.

Recommendation 27: The police force continuously carries out raids and inspections with a view to ascertaining that no persons are being held or employed against their will. In 2007, Malta also adopted legislation implementing Council Directive 2004/81/EC providing for permission to reside for third country nationals who are victims of trafficking of human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Seminars are also organised in cooperation with the International Organisation for Migration in order to provide training on the prevention, identification and protection of trafficking victims, to persons in various relevant fields of activity, including persons working in the field of migration and social workers. Vide also paragraph 76 of A/HRC/WG.6/5/L.6.

Recommendation 28: Maltese law does not allow the recruitment of persons under the age of 15 into the armed forces.

Recommendation 29: The current legislation on criminal responsibility is considered appropriate.

Recommendation 30: The intervention made by the Maltese delegation on 6 May 2009 explained that this was a misconception and in fact there is nothing to suggest that corporal punishment is permitted under Maltese Law, vide also paragraph 77 of the draft report on Malta (A/HRC/WG.6/5/L.6). If any reasonable chastisement tantamounts to even slight bodily harm, this is an offence against the person. Hence, Malta cannot accept this recommendation.

Recommendation 31: In relation to law enforcement, members of the Malta Police Force receive regular training by the Police Academy.

Recommendation 32: Although the Position of the Government of Malta was expressed in paragraph 38 of A/HRC/WG.6/5/L.6, Malta reiterates that the right to life is an inherent right of every human being – this includes the unborn child, from its conception. Abortion is a direct contradiction to the right to life.

Recommendation 33: The position of the Government of Malta on this issue is clearly stated in paragraph 34 of A/HRC/WG.6/5/L.6; namely that Marriage can only be contracted by people of opposite sex and there are no plans to change this.

Recommendation 34: The political system per se does not discriminate against female representation in politics in the Maltese Islands. Citizens who wish to contest local or national elections are confirmed or otherwise as candidates after a preliminary vetting by the respective parties. Although female participation in politics has always been low, the amount of females that are elected in Local Council elections is gradually increasing (currently stands at 20 per cent). As a follow-up to a 2007 study by the National Council of Women (NCW) and the National Statistics Office, entitled “*Perceived obstacles to the*

participation of women in decision-making positions”, the NCW offered training in political decision making for women considering a political career.

Recommendations 35, 36 and 37: The Government of Malta set-up an Education-Health Committee, made up of experts from the Ministry for Social Policy and the Ministry for Education, Culture, Youth and Sport, which are in the process of finalising a policy on sexual health including sexual education to keep with national legislation and public policy.

Recommendation 38: With regard to training, Detention Service personnel, working with asylum-seekers in detention centres, receive appropriate training in humanitarian law and the treatment of asylum seekers and immigrants in custody. Apart from ongoing in-service training, in 2008 all members of the Detention Service also received training as part of a project implemented in collaboration with the UNHCR, JRS, and Red Cross. Personnel from the Office of the Refugee Commissioner also receive appropriate training, including through participation in EU fora dealing with asylum matters.

Recommendation 40: It is considered that the current legislation and policy concerning undocumented asylum-seekers are best suited in view of Malta’s particular circumstances.

Recommendation 43: Given that the Immigration Board reviews only the reasonableness of the duration of administrative detention, it is not considered that the absence of free legal assistance in this context can operate to the disadvantage of those subject to detention.

Recommendation 44: Malta has to date always fulfilled its moral and legal obligation to coordinate search and rescues services and operations to all vessels in distress within the area for which it is responsible and facilitates the necessary arrangements for rescued persons to reach the nearest safe port. Furthermore, it is continuously seeking to improve its cooperation with neighbouring countries. Malta has SAR Agreements with Libya, Greece and seeks to increase its interoperability and training through the Canale Exercises as well as Phoenix Express Exercises. Malta’s Search and Rescue Training Centre is considered a centre of excellence and enables Malta to further promote interoperability and training with neighbouring countries.

Recommendations 2, 19, 24, 25, 26, 39, 41, 42, 45 and 46: Further to information provided in paragraphs 22-32 in A/HRC/WG.6/5/L.6; and paragraphs 86-96 in A/HRC/WG.6/5/MLT/1; Malta wishes to add the following information in reaction to the comments, recommendations and/or questions of delegations in connection with the issue of migration.

All asylum seekers are entitled to have legal representatives assist them at any stage of the procedure. Many NGO representatives are very active in providing assistance in legal proceedings; however, this complements the free legal aid provided by the State for proceedings before the Refugee Appeals Board which hears appeals regarding asylum applications. Furthermore, an immigrant may, if s/he so wishes, make use of private legal counsel.

Asylum proceedings have 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, i.e. where an appeal has been lodged, the outcome of that appeal must be awaited.

The detention of illegal immigrants finds its legal basis in the Immigration Act. Pursuant to the decriminalisation of illegal entry, illegal immigrants 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 woman 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 illegal immigrants does not infringe international standards.

Administrative detention is also limited in its duration. It is subject to a maximum period of 18 months for illegal immigrants and failed asylum seekers, and to 12 months for asylum seekers. The latter is established in the Regulations transposing directive 2003/9/EC on the minimum standards of reception conditions for asylum seekers, which grant the said applicants access to the labour market after one year. With regard to the 18-month maximum it should be noted that this too has been agreed upon at EU level.

For failed asylum seekers, it must be underlined that their extended stay in detention is frequently due to difficulties in obtaining travel documents enabling return, due particularly to lack of cooperation by the migrants themselves. Where rejected migrants cooperate in the obtaining of travel documents from their country of origin, their return may occur sooner upon the rejection, avoiding the need to spend the rest of the 18 months in detention in Malta. For this purpose, the authorities, with the assistance of NGOs and the International Organisation for Migration (IOM) are implementing Assisted Voluntary Return and Reintegration (AVRR) programmes, whereby rejected migrants who cooperate with the authorities for their repatriation, will not only have their travel arrangements made, but will also receive training and financial assistance in order to facilitate a humane return and their successful reintegration into their own society. Failing the use of AVR, rejected asylum seekers are detained for a maximum of 18 months in order to enable escorted return.

Despite the fact that it may be difficult during certain periods, due to pressures imposed by the number of migrants in question; refurbishment of centres is carried out regularly, while basic needs are met with the provision of adequate food, clothing, cleaning materials, and so forth. Unfortunately however, repeated acts of vandalism as well rioting lead to the deterioration of the facilities. Additional space has also been provided over the years in order to cater for a larger number of migrants and address overcrowding, however, the continuing increase in the number of illegal immigrants reaching Malta, has rendered this a continuing challenge.
