

The Platform of Human Rights Organisations in Malta (PHROM) on Human Rights in Malta

SUBMISSIONS TO THE UNIVERSAL PERIODIC REVIEW (UPR) OF MALTA, DURING ITS 31ST SESSION (2018)



PHROM is a network of over 30 human rights NGOs, being an independent, voluntary and non-profit NGO established “*to provide a national forum for human rights organisations in Malta to develop, promote and advocate for the values of human dignity and equality more effectively.*”

PHROM believes that effective human rights recognition and enjoyment by all persons in Malta strengthens and empowers the whole of Maltese society.

PHROM holds that the multitude of human rights can only be fully realised if they are endorsed as interrelated and interdependent, embracing all civil, political, economic, social and cultural rights.

Established in 2014.

Member Organisations:

aditus foundation, African Media Association Malta, Amputees4Amputees, Breaking Limits, Deaf People Association (Malta), Din l-Art Helwa, DRACHMA, Fondazzjoni Mid-Dlam Ghad-Dawl, Foundation for Support and Shelter to Migrants, Gender Liberation, Inspire Foundation Malta, Integra Foundation, Jesuit Refugee Service, KSU, Libya Foundation for Rehabilitation, Malta Gay Rights Movement, Malta Humanist Association, Migrant Women Association, National Foster Care Association, Organisation for Friendship and Diversity, PRISMS, Richmond Foundation, SOS Malta, St. Jeanne Antide Foundation, Troupe 18:45, UpBeat Music House, Victim Support Malta, We Are, Why Not?, Women’s Rights Foundation, YMCA Homeless, Spark15.

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Introduction and Sources

1. PHROM is an independent, voluntary and non-profit NGO established “*to provide a national forum for human rights organisations in Malta to develop, promote and advocate for the values of human dignity and equality more effectively.*”
2. The views presented in these submissions do not necessarily reflect the views of all PHROM’s Member Organisations.
3. Concerns, information and recommendations are largely based on the following sources:
 - a. PHROM, *Greener and Cleaner, Annual Human Rights Report 2015*, April 2016, available at <http://humanrightsplatform.org.mt/phromdocuments/2015ahrr.pdf>
 - b. PHROM, *Protecting Human Rights, Curbing the Role of Power*, Annual Human Rights Report 2016, August 2017, available at <http://www.humanrightsplatform.org.mt/phromdocuments/2016ahrr.pdf>.

MALTA’S INTERNATIONAL AND REGIONAL OBLIGATIONS

4. Malta is party to most of the core UN human rights treaties (barring the Migrant Workers Convention and the Convention on Enforced Disappearances) yet retains a number of reservations that raise concern.
5. Malta still has not accepted some individual complaint procedures, such as:
 - a. the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW-OP);
 - b. the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (CESCR-OP);
 - c. the *Optional Protocol to the Convention on the Rights of the Child* (CRC-OP-IC).
6. Malta has not signed or ratified the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
7. Malta is a state party to the Istanbul Convention, also known as the Council of Europe Convention on preventing and combating violence against women and domestic violence. It was ratified by Malta in 2014.
8. At the regional level, Malta is a state party to the European Convention on Human Rights.
9. Human rights provisions in the Maltese Constitution are found in Chapters Two and Four. Chapter Two is entitled ‘*Declaration of Principles*’ and contains economic, social and cultural rights which are non-justiciable. Chapter Four, ‘*Fundamental Rights and Freedoms of the Individual*’ lists justiciable civil and political rights, including protection from discrimination on several grounds.

GENERAL COMMENTS

1. Human rights NGOs feel they are generally less consulted and involved in the discussions of policies related to their areas of expertise. For most civil society groups – especially those more active on the migration-related issues – the relationship with the Ministry of Home Affairs and National Security has been particularly difficult, if not hostile.
2. Besides being seen as a symptom of an unhealthy democratic system, the exclusion of the NGOs from consultation processes risks to undermine the capacity of the Government to develop and implement policies that take into account the fundamental expertise of NGOs and all interested stakeholders.
3. Hate speech and hate crimes continue to be concerning priorities that need to be addressed adequately on both a legal and cultural level. Although, fortunately, no incidents of physical attacks have been reported, verbal violence and racial abuse by groups and individuals seem to be worryingly spreading on social media, particularly on Facebook.
4. Compared to earlier years, NGOs reported that in 2016 they saw an increase of expressions of hatred towards their activities, staff and volunteers, and an even higher increase was noted towards their beneficiaries.
5. However, most PHROM Member Organisations recognise that a very positive step in this direction occurred in 2016 when two people were fined €3,000 each for inciting racial hatred through racist comments posted in a public Facebook page.
6. Access to essential services is considered problematic. Some NGOs providing services to vulnerable groups expressed concern on limited financial resources and lack of coordination with the Government as the main reasons for inadequate service provision. In this regard, it is also relevant to observe that implementation of legal obligations by public entities institutions is considered lacking by a number of PHROM Member Organisations. This is seen in support of the concern regarding the inadequacy of service-provision by the public sector and the difficulties faced by NGOs in supporting vulnerable communities to access fundamental support services. In fact, many Member Organisations comment that despite many positive policy developments in 2016 – such as the introduction of the morning-after pill and the adoption of the *Maltese Sign Language Act* – the translation of the law into effective services seems to be still unsuccessful.
7. The lack of human rights education is a central gap identified by most Member Organisations. Our Member Organisations strongly reiterate the horizontal and comprehensive impact of a national low level of human rights awareness. Linking it directly to most other identified gaps, Member Organisations emphasise their concerns at a strikingly low level of critical thinking and rights-based discourse in Malta. This is referred to by most Member Organisations, ranging from those working with children and youth, to those advocating for rights of women, migrants and refugees, to faith-based Member Organisations and also to those working with vulnerable persons.

8. This concern is associated with a dogmatic education system that fails to encourage or coax students into independent thinking and, importantly, sharing of thoughts and views without fear of repercussions. Identified as problematic throughout Malta's education, it is generally defined as a lack of sensibility towards the core human rights values of equality, human dignity, civic participation, mutual respect, transparency and social responsibility. It is further associated with civic apathy in the face of issues of national importance, such as the environment, racism and gender discrimination.
9. Generally, human rights NGOs are concerned that the following areas require further attention from Malta (presented in the priority order in which Member Organisations list the concerns):
 - a. migration;
 - b. access to essential services by vulnerable persons and communities;
 - c. the rise of poverty;
 - d. access to housing;
 - e. violence against women and children;
 - f. environment;
 - g. gender equality;
 - h. access to employment for persons with disability;
 - i. populism;
 - j. respect for diversity;
 - k. marriage equality;
 - l. horizontal anti-discrimination legislation;
 - m. human rights mainstreaming;
 - n. discrimination on the basis of religion, Islamophobia.

RULE OF LAW AND GOVERNANCE

10. Panamagate, and related governance issues, were 2016's most significant human rights development identified by PHROM's Member Organisations¹. Information leaked by the International Consortium of Investigative Journalists² (ICIJ) revealed an intricate web of offshore companies, funds transfers and other dealings involving then Minister for Energy Konrad Mizzi and the Prime Minister's Chief of Staff, Keith Schembri. Member Organisations were extremely critical of the involvement of these two public figures in such dealings but – more importantly – expressed very serious concerns at the manner in which the entire issue was dealt with by the competent authorities.

PHROM Member Organisation:

"The whole treatment of Panama papers is a very serious human rights issue for us: the lack of transparency, accountability, the lack of responsibility on how our government officials deal with their own private or semi-private affairs are all very worrying. It's something we flagged last year as well, but still governance issues were not given a priority."

¹ For a useful summary see The Malta Independent, *A year of the Panama Papers*, 1 May 2017, available at <http://www.independent.com.mt/articles/2017-05-01/panama-papers/A-year-of-the-Panama-Papers-6736173676>.

² For more information see here: <https://panamapapers.icij.org/>.

11. The perception by the majority of PHROM Member Organisations is that the weakening of the democratic system resulting from bad governance may dangerously lower the standards and accessibility of rights (especially for marginalised or vulnerable persons), generate more poverty, and create public distrust in the institutions responsible for protecting rights.
12. Several examples are given, although by no means exhaustive: beneficiaries attempting to access information regarding their files or cases, appointments to public positions on the basis of elements not relevant to the positions, unwritten and unpublished procedures and policies, refusal to divulge information relating to law- and policy-making.
13. On 16 October 2017 Malta's most prominent journalists, Daphne Caruana Galizia, was brutally murdered. Her investigative journalism looked into issues of institutionalised corruption and governance malpractice, alleging serious violations happening at the highest levels of Malta's government. Her murder shocked the nation and resulted in the creation of several movements calling for increased transparency, accountability and removal of political figures associated with Panamagate and other governance scandals. There is a feeling amongst human rights NGOs that justice will not be done, and that the true perpetrators will not be investigated or brought to justice.

SPECIFIC ISSUES

14. Malta has not yet established a National Human Rights Institution that conforms to the Paris Principles. PHROM expressed its concern, by drawing clear red lines, that the proposed *Human Rights and Equality Commission Bill* will establish an entity that is too close to government for it to be truly independent³.
15. Although the prohibition of discrimination is enshrined in the Constitution and other legislation, there is no comprehensive protection of all persons against all forms of discrimination across all sectors. The proposed *Equality Bill*, whilst striving to achieving this comprehensive protection, has not yet been adopted and raises a number of concerns such as its relationship to other equality legislation (also in terms of definitions and redress mechanisms), lack of specific discrimination grounds (e.g. political opinion/activity), limited scope of application (police and judicial activities, sports activities and civic participation are excluded)⁴.
16. Failed asylum-seekers who are not returned to their countries of origin through no fault of their own live in a constant state of legal and social limbo. They might be integrated to the extent that they are working and engaging in basic social interactions, but their undocumented status leaves them prone to abuse and vulnerable to exploitation. Their situation is one characterised by years of

³ See PHROM, *Not Independent Enough? Input on the Human Rights and Equality Commission Bill*, January 2016, available at http://humanrightsplatform.org.mt/phromdocuments/hrecbillinput_jan2016.pdf.

⁴ See aditus foundation *Improved Human Rights Harmonisation: Input to the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties*, January 2016, available at http://aditus.org.mt/Publications/aditussubmissionsontheequalitybill_29012016.pdf.

anxiety, precarity, lack of certainty, and undignified living⁵.

17. Refugees are a far higher risk of poverty than the national population. This is due to several factors, including difficulties accessing regular employment, vulnerability to labour exploitation, limited access to language education, insufficiency of social protection for persons unable to work, social protection dependant on immigration status rather than on individual need, limited access to psycho-social support for rehabilitation, no regulation of temporary employment⁶.
18. In late 2015, Malta radically revised its administrative detention regime, whereby detention is no longer an automatic and mandatory consequence of the irregular entry or presence of migrants. Clearly an improvement to the previous situation, a number of PHROM Member Organisations express concern at on-going practices, namely:
 - a. Migrants are not provided with information on the reasons for their detention and on the possibility to challenge the legality of their detention in a language that they understand, or in the presence of an interpreter;
 - b. Access to effective remedies to challenge the legality of detention is problematic for various groups of migrants, including asylum-seekers, migrants pending return and migrants denied entry to the territory;
 - c. Physical conditions within the detention centres remain substandard and undignified.
19. According to the Constitution (Article 96), the Prime Minister appoints judges and magistrates. Despite an amendment to the article in 2016, where a Judicial Appointments Committee is required to provide an evaluation of candidates to the judiciary, Article 96(4) states that "*the Prime Minister shall be entitled to elect not to comply with the result of the evaluation*". For many Member Organisation, this provision raises concerns as to the independence and impartiality of Malta's judiciary.

RECOMMENDATIONS

20. Remove the reservations to CEDAW.
21. Ratify the 1954 and 1961 Statelessness Conventions.

⁵ See aditus foundation, African Media Association Malta, The Critical Institute, Foundation for Shelter and Support to Migrants, Gender Liberation, Integra Foundation, International Association for Refugees, JRS Malta, KOPIN, Malta Emigrants' Commission, Maltese-Serbian Community, MGRM, Migrant Women Association in Malta, Migrants' Network for Equality, Moroccan Community in Malta, Moviment Graffitti, Organisation for Friendship in Diversity, the People for Change Foundation, the Platform of Human Rights Organisations in Malta, SKOP, Solidarity with Migrants group, SOS Malta, Spark 15, Sudanese Community, Third Country National Support Network, *Joint NGO input on Temporary Humanitarian Protection N*, November 2016, available at http://aditus.org.mt/Publications/THPNsubmissions_2016.pdf. See also the *This is Home* campaign, at <https://thisishome.org.mt/>.

⁶ JRS Malta and aditus foundation, *Struggling to Survive: an Investigation into the Risk of Poverty among Asylum-Seekers in Malta*, October 2016, available at <http://aditus.org.mt/Publications/strugglingtosurvive.pdf>.

22. Ratify the Optional Protocols to CEDAW, CESCR and CRC.
23. Ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
24. Consider ensuring the justiciability of economic, social and cultural rights.
25. Create an inclusive platform for effective civil society dialogue on issues of national importance.
26. Bolster the resources of the Malta Police Force, through increased budgetary allocation and capacity-building, to enable it to effectively deal with hate crimes and hate speech.
27. Organise national campaigns that condemn racism in all its forms, with a particular focus on institutionalised racism.
28. Include human rights components in the national curriculum and amend the educational approach for it to foster critical thinking, active citizenship and inclusive communities.
29. Adopt and disseminate a public service policy on providing services to vulnerable and/or marginalised persons and groups.
30. Adopt a zero-tolerance approach to corruption, kick-backs, favouritism and nepotism.
31. Ensure full transparency in public funds management, particularly when contracting service providers to government.
32. Adopt equality legislation that protects all persons from all forms of discrimination in all sectors.
33. Explore ways of facilitating and regulating temporary employment, generally and particularly when undertaken by migrants.
34. Increase the minimum wage for it to reflect cost of living in Malta and/or explore alternative measures to reduce poverty.
35. Revise social welfare rates for them to provide effective support to persons unable to secure their own livelihood and consider eliminating the distinction between refugees and beneficiaries of subsidiary protection.
36. Improve the living conditions in the open centres and consider adopting a long-term plan aimed at shutting them down and resorting to a community-based approach to housing.
37. Improve the living conditions in the detention centres.
38. Adopt Standard Operating Procedures on the decision-making process relating to administrative detention, with particular emphasis on provision of information in

a language that is understood by the migrant.

39. Extend the time limit for appealing Detention Orders from three working days to seven working days.
40. Establish a National Human Rights Institution that conforms to the Paris Principles.
41. Amend the Constitution by limited the Executive's absolute discretion over judicial appointments.
42. Regularise failed asylum-seekers who have not been returned to their countries of origin through no fault of their own and who have established clear and real connections with Malta.