



**REPUBLIC OF MALTA**

**Introduction of the National Report of the Republic of Malta**

**delivered by**

**Hon. Helena Dalli, Minister for Social Dialogue, Consumer  
Affairs and Civil Liberties**

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**of the**

**Universal Periodic Review**

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*Check against delivery*

Excellencies

Ladies and Gentlemen

Good Afternoon, I am Helena Dalli, Minister for Social Dialogue, Consumer Affairs and Civil Liberties and a member of the Government that was elected in March this year. It is an honour and duty to address you today and give you an update on the progress Malta has made on the human rights front since the last review in 2009. The change in administration last March brought along a fresh impetus towards the advancement of human rights in Malta. It is the first time in the history of Malta that a Minister responsible for Civil Liberties was appointed and as I will outline in my intervention, work is ongoing on many new fronts. These initiatives show the commitment this administration has pledged towards the safeguard and furthering of civil rights and equality.

We endorse the state-driven approach upon which the UPR is based and look forward to a constructive dialogue and interaction with all our partners. Malta continues to reaffirm the human rights enshrined in the universal declaration of human rights and other landmark documents so that together, as an international community, we can help further the human rights of all humankind.

Numerous challenges on a global scale hamper the international community's commitment to human rights. The harsh reality of immigration, turmoil, financial challenges and actors that defy the fundamental principles of human rights are real situations that we all have to face in upholding our international commitments. No matter how hard, Malta continues to strive for the equal and inalienable rights of all.

#### **Malta and the Universal Periodic Review**

In Malta, the provisions for specific rights, together with protective provisions that guarantee their enjoyment, have been progressively implemented in our constitutional development. Respect for the fundamental rights and freedoms of the individual are in fact enshrined in the first article of our Constitution therefore placing them at the very core of Maltese society, governance and international commitment.

As a member of the European Union, Malta remains strongly committed to the Universal Periodic Review as a strong mechanism addressing all human rights and applicable to all UN Member States without distinction or discrimination.

Malta's national report has taken as its point of departure the recommendations which emanated from the 2009 review. We have duly taken note of these recommendations and we have endeavoured to follow them up and make improvements. The report submitted in July this year was formulated following broad consultations with Government entities and civil society engaged in the promotion and protection of human rights. We believe that the periodic review's success depends not only on the quality, relevance and pertinence of the recommendations, but also on the commitment and ownership of each receiving State.

Our dialogue with civil society has been critical to the preparation of this review. The Maltese Government recognises the importance of civil society organisations especially since these are operating at grass roots level and continuously gather intelligence and feedback on situations as they evolve. In the frank communications we had, civil society representatives expressed their concerns and outlined their positions on a number of contentious issues.

#### **Human Rights developments since the last review**

The national report submitted by Malta also features initiatives that are new and ongoing. The following are highlights of these developments and of the human rights initiatives currently being perused by the Maltese Government. They also touch upon issues that have been raised in advance of this review by member states and refer to the most pertinent human rights issues at hand.

- **Rights of the Child**

Malta continues to put the rights of the child at the top of its human rights agenda. As a state party to the Convention on the Rights of the Child and in line with the Universal Declaration of Human Rights, Malta fully subscribes to the notion that childhood is entitled to special care and assistance, and in this context, continues to initiate policies and adopt legislation that extends the rights of the child.

In 2010 Malta submitted its second national periodical report to the Committee on the Rights of the Child and earlier this year an inter-ministerial delegation was in Geneva to elaborate on the state of play of the rights of the child in Malta.

On that occasion, Malta outlined its ongoing commitment in safeguarding children's rights and also gave a detailed presentation on legislation enacted and projects undertaken by the various Ministries that secured and furthered children's rights.

The Committee on the Rights of the Child welcomed the detailed assessment provided by the Maltese delegation and the clear commitment shown by the Government of Malta to protect and preserve the rights of the child on all fronts. It is the intention of the Government of Malta to continue furthering these rights.

- **LGBTI Rights**

On the occasion of this year's International Day Against Homophobia and Transphobia, I signed a Declaration calling for a comprehensive policy approach - at European Union level and across the European Union - on LGBT issues aiming at improving human rights and mainstreaming equality for LGBT people.

The new administration is fully committed to the rights of LGBTI persons. A few weeks after being elected, the Maltese Government reached an out-of-court agreement with a transgender person who was previously prevented from marrying by the Maltese Marriage Registrar. In a case which spanned over a number of years, the Maltese Court of Appeal had previously acknowledged that the fundamental rights of Ms Joanne Cassar, a person who had undergone gender reassignment surgery, were breached when she was denied the right to marry. The previous administration appealed the Constitutional Court's ruling and Ms Cassar had to seek justice at the European Court of Human Rights. In April this year, a settlement - which included compensation - between the Government and Ms Cassar was reached.

With regard to same-sex relationships, the Government is committed to introduce legal recognition of same-sex couples with equal legal rights like those of married couples. Once enacted, same-sex as well as different-sex couples will be able to register their union and be granted equal marriage rights including the right to apply for adoption. The law will also provide for the recognition of civil marriages contracted by same-sex partners outside of Malta.

The necessary legislative machinery has been put in motion to affect the necessary intervention to provide for the possibility that same sex couples are joined in a civil union. In this respect, reference is made to the Bill entitled the 'Civil Unions Act' (Bill number 20 of 2013) which was published in the Government Gazette of the 14th October 2013. The object of the Bill is the introduction of the right of persons, whether of the same or of opposite sex, to contract a civil union. The underlying principle of the Act is to equate civil unions with marriages, in terms of procedure and substance in a manner that guarantees equal rights to parties in a civil union as are granted to spouses in a marriage. The approach envisaged in

the Act is to guarantee the enjoyment of equal rights and obligations across all areas of law and social life. The Bill is currently in its second reading in Parliament.

The drafting of the Civil Union Act was one of the tasks assigned to the newly founded Consultative Council on LGBTI rights. The Council, founded by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, has the role to advise government on issues pertaining to the LGBTI community. The Council is made up of all Maltese NGOs representing the LGBTI community.

A Gender Identity Bill was drafted by the Consultative Council and shall be published in the coming weeks.

The Ministry for Health founded a working group on Transgender Issues with the aim of launching a Gender Clinic within Malta's public hospital and start providing gender services.

Furthermore, the Agency for the Welfare of Asylum Seekers (AWAS) in collaboration with the United National High Commission for Human Rights (UNHCR) is currently finalising guidelines for the prevention, identification, intervention and follow-up of victims and perpetrators of sexual and gender-based violence.

- **Corporal punishment of minors**

An amendment to the Criminal Code was drafted in order to ensure that corporal punishment of any form on minors is considered as a criminal offence. This will ensure that such punishment will be sanctioned without any reservation.

The amendment to the Criminal Code will expose the parent to criminal sanction in all cases of corporal punishment, irrespective whether it is minor or grave. The added 'sanction' of deprivation of parental authority will also apply in the case of corporal punishment exceeding the bounds of reasonable chastisement.

This amendment forms part of the Bill which also includes the increase in the age of criminal responsibility of minors.

- **Age of criminal responsibility of minors**

A Bill has been drafted in order to amend the Criminal Code to provide for an increase in the age of criminal responsibility of minors. The amendments are principally aimed at increasing the age of criminal responsibility from that of nine years to fourteen years. This means that minors under fourteen years will be deemed incapable of formulating the requisite criminal

intent. Minors under the age of sixteen will also be exempt from criminal responsibility if the minors act without mischievous discretion.

This Bill was published in the Government Gazette on 22nd October 2013.

- **Irregular Immigration and Asylum**

Malta experienced a significant irregular migratory influx since 2002. The numbers remained consistently high over the following years, peaking in 2008 when there were over 2,700 arrivals. This has placed considerable challenges on the country's limited resources, be it in terms of reception, provision of services or asylum. It should be recalled that Malta is a small country with a population of a little over 400,000.

It is considered that Malta has progressed significantly since the last UPR. Yet, Malta still faces difficulties. Therefore, Government has repeatedly stressed the need for assistance from EU Member States, particularly via intra-EU relocation. Assistance has indeed been received from some of the Member States, as well as from the USA.

The overwhelming majority of irregular migrants arriving in Malta apply for asylum, which clearly demonstrates that the asylum system is readily accessible. In 2012, 95% of irregular migrants entering Malta by sea applied for asylum. According to UNHCR statistics for 2012, when considering population, Malta received the largest number of asylum applications among the 44 industrialised countries covered by the report, with 4.9 applications per 1,000 inhabitants.

The same report states that Malta also received the largest number of asylum applications per 1,000 inhabitants for the period 2008-2012, with 21.7 applications per 1,000 inhabitants.

Malta's asylum recognition rate is consistently high, at around 50% or over, in view of the needs of persons seeking protection in Malta. The recognition rate reached a record high of 90% in 2012. This demonstrates that the principle of non-refoulement is upheld both legally as well as in practice

Asylum seekers are given all the necessary information about the asylum procedure, including information on their rights and obligations during the entire process and are assisted by interpreters. In its continued effort to ensure the well-being and protection of all migrants reaching Malta illegally Maltese Government ensures that refurbishment of detention and open centres is carried out regularly.

Detention does not apply across the board, as vulnerable persons are not subject to the detention requirement. Minors receive the same rights as Maltese minors, including the right to attend state schools.

Persons who are detained are given literature informing them of their rights. Detainees are also informed that they have a right to appeal their removal order, and their detention order, and that they are entitled to apply for asylum.

With regard to Search and Rescue, Malta continues to fully respect its international legal obligations regarding the rescue of persons in distress at sea. To this effect, it is important to note that such obligations are adhered to regardless of the provenance and legal status of the persons requiring rescue. It should be noted that a total of over 13,000 persons have been rescued through the involvement of the Armed Forces of Malta over the period 2003-2013.

Measures have also been taken to ensure that the Immigration Appeals Board and the Refugee Appeals Board reach their decisions more expeditiously. In this regard, the former Board is now composed of two chambers, whilst the latter is composed of six.

During the present legislature Government will also be transposing and implementing three EU Directives having a direct effect on asylum applicants.

The Qualifications and Procedures Directives will raise asylum standards further, in conformity with the objectives of the Common European Asylum System, including by way of approximation of the rights of beneficiaries of subsidiary protection to those of refugees. The implementation of the Reception Conditions Directive will address different aspects of reception of asylum seekers, including the system of appeals from detention decisions.

The developments that I have outlined in the areas of search and rescue, irregular migration and asylum, illustrate that Malta consistently approaches these sensitive issues with a very strong human rights focus. Notwithstanding a certain degree of criticism, the facts show that in Malta concrete and significant action continue to be taken to improve the situation of irregular migrants and beneficiaries of international protection.

- **National Human Rights Institutions**

Malta currently has a network of specialised entities whose remit covers a wide range of human rights. This network includes the following:

a) The '**Office of the Refugee Commissioner**' was set up by virtue of the Refugees Act (2000), and is responsible for receiving, processing and determining asylum applications. The

work of the Office has increased significantly over the past years due to the rising number of asylum applications.

The Office now offers individual assistance in filling in registration forms. Information sessions are provided to potential asylum seekers as soon as they enter Malta whereby they are informed about their rights and obligations in relation to applying for asylum. Since 2009, this Office has upgraded its operations through the provision of additional staff and better equipped premises in order to process asylum applications in an efficient manner.

b) The **National Commission for Persons with Disabilities** serves as the watchdog on government initiatives in the disability sector with the capacity to suggest changes to legislation. It is also empowered to investigate complaints falling within its remit. The Commission also carries out needs assessment of persons with disabilities, their families and voluntary entities working in the field in order to feed into policy formulation.

c) The **Commissioner for Children**, appointed by the Commissioner for Children Act (2003), is empowered to exercise her/his functions independently and by not being subject to the direction and control of any other person or authority. The Act also empowers the Commissioner to promote compliance with the UN Convention on the Rights of the Child and other international instruments that further the rights of the Child.

d) The '**National Commission for the Promotion of Equality**' (NCPÉ) works to safeguard and promote equal treatment based on the grounds of sex/gender and family responsibilities, sexual orientation, age, racial or ethnic origin, religion or belief and gender identity in employment, banks and financial institutions as well as education and vocational training. The Commission also works to ensure equality based on racial or ethnic origin and gender in the provision of goods and services and their supply. The Commission disseminates information on rights and responsibilities related to equality on these grounds through training, research and other awareness raising campaigns.

The Commission also carries out training as part of its core work to various groups or entities who request training on equality and non-discrimination issues, including facets related to sexual orientation. The Commission is also empowered to independently investigate complaints within its remit and provide independent assistance to persons facing discrimination. Its role also extends to monitoring the implementation of national policies with respect to the promotion of equality for men and women through gender-mainstreaming.



e) The **Parliamentary Ombudsman**, an Independent Officer of Parliament, can investigate complaints about any decision or action, or lack of action by Government departments and other public authorities. Complaints are submitted by members of the public who feel aggrieved at the hands of a government department or another public body. The Ombudsman may also commence investigations on his own initiative if he is of the opinion that substantial public interest is involved.

The present administration is working to extend the remit of NCPE to a Human Rights Institution in Malta.

- **Sexual and Reproductive Health**

Malta is committed to the promotion of Sexual and Reproductive Health and to the protection of the right of women to have control over and decide freely and responsibly on matters related to their sexuality and the timing, number and spacing of children free of coercion, discrimination and violence.

In this respect, we are also committed to the dissemination of knowledge, including information on safe and effective methods of family planning, to enable women and young girls to make informed and responsible decisions on matters of sexual and reproductive health. These principles together with the values of respect and dignity towards human life from the moment of conception, and the belief that the stable family unit is the cornerstone of a healthy society, respectful of the many aspects of diversity, underpin the National Sexual Health Policy launched in November 2010.

The launch of the Policy was followed by the introduction of the National Sexual Health strategy which was formulated through widespread consultation with all entities, sectors, groups and representatives of the entire society. The strategy sets out the targets, goals and deliverables regarding sexual and reproductive health that are to be achieved over the coming years.

We believe in the protection of the right to life including that of the unborn child. Human life begins at conception and therefore considers that the termination of pregnancy through procedures of induced abortion at any stage of gestation and as an infringement of this right. Malta therefore cannot recognize abortion or any other form of termination of pregnancy as a legitimate measure of family planning.

**In conclusion**, I would like to express appreciation for the sterling work carried out by the Office of the High Commissioner for Human Rights in general, and for the High Commissioner in particular, for their significant contribution as well as the support extended to the UPR mechanism in terms of both capacity building and assistance to States. I thank them also for the preparation of the related documentation which is essential for the successful functioning of the UPR mechanism as a whole.

Thank you for this opportunity to elaborate on Malta's past and current initiatives relating to human rights. I hope that the importance Malta attaches to human rights has been conveyed in my statement and also in Malta's national report. I look forward to your views on these matters.

Finally, a big thank you to my delegation for their priceless support.

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- <sup>1</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), which is to be transposed by 20th July 2015;
  - Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), which is to be transposed by 21st December 2013; and,
  - Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), which is to be transposed by 21st July 2015.
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