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**SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C) OF THE
ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1***

Malta

The present report is a summary of five stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

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

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. The Council of Europe (CoE) reported that Malta ratified the Revised European Social Charter on 27 July 2005.²
2. The Council of Europe Commissioner for Human Rights (The Commissioner) urged the Maltese authorities to sign and ratify the Third Protocol to the European Social Charter providing for a system of collective complaints. It added that this must be seen not just as an international instrument but also as a useful tool for negotiation and dialogue with civil society and trade unions in the country.³

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Implementation of international human rights obligations

1. Equality and non discrimination

3. According to the European Commission against Racism and Intolerance of the Council of Europe (ECRI/CoE), since 2002, the legal and institutional framework against racism and racial discrimination has been strengthened. However, ECRI/CoE reported that irregular migrants, asylum seekers, persons with humanitarian protection and refugees remain vulnerable to racial discrimination in accessing different services and to exploitation on the labour market, where they are predominantly employed illegally. The legal provisions against racist expression, racially-motivated offences and racial discrimination are not yet fully applied. There is still little awareness of the need to actively monitor racism and racial discrimination in order to identify and address them properly. In its 2007 Third Report on Malta, ECRI/CoE recommended, *inter alia*, that the Maltese authorities promote a more balanced debate on immigration that reflects the human rights dimension of this phenomenon; improve the implementation of the provisions in force against racism and racial discrimination and; strengthen the independence of the National Commission for the Promotion of Equality. It also recommended further action such as ratifying Protocol No. 12 to the ECHR; introducing data collection systems to monitor the extent of racism and xenophobia in Malta; and countering the exploitation of members of vulnerable groups on the labour market.⁴

4. The Malta Gay Rights Movement and ILGA-Europe (MGRM&ILGA-Europe) noted that legal protection for lesbian, gay, bisexual and transgender/transsexual (LGBT) persons in the area of employment exists through legislation on equal opportunities and equal treatment of men and women in matters of employment and occupation. However, MGRM&ILGA-Europe noted that recent research conducted by MGRM illustrates that in the past two years discrimination against LGBT persons remains widespread in a number of areas, such as employment, provision of goods and services, healthcare and education. MGRM&ILGA-Europe urged the Maltese Government to adopt legislation to prohibit all forms of discrimination – including discrimination based on sexual orientation and gender identity - in all areas of life.⁵

2. Right to life, liberty and security of the person

5. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment of children in Malta is lawful in the home and in alternative care settings. This is despite the recommendations of the Committee on the Rights of the Child in 2000⁶ and the Committee on Economic, Social and Cultural Rights⁷ in 2004, who expressed concerns at the

'reasonable chastisement' provisions allowing corporal punishment, and who recommended explicitly to prohibit corporal punishment within the family. GIEACPC also made reference to the 2005 conclusions of the European Committee of Social Rights that Malta is not in conformity with article 17 of the European Social Charter because corporal punishment in the home is not prohibited (Conclusions XVII-I).⁸

6. During his 2003 visit to Corradino Prison, the Commissioner found that sexual offenders and homosexual prisoners were kept in a separate wing so as to avert any risk of attack or violence from other prisoners. That building had cells which received no direct light and were extremely damp. In his report, he recommended transferring those prisoners to a vacant part of the prison offering better detention conditions.⁹ In his follow-up report on Malta (2003-2005), the Commissioner regretted that no substantial changes had been made to improve the living and detention conditions of vulnerable prisoners, repeating his suggestion that this small group of prisoners be moved to another part of the prison where detention conditions were more in line with the recent recommendation on the European Prison Rules, so as to allay all suspicion that their harsh conditions are being allowed to continue because of the nature of their offences.¹⁰

3. Administration of justice and the rule of law

7. The Commissioner was greatly concerned by the events of January 2005 -during a peaceful demonstration at the Hal Safi military detention centre by 90 or so immigrants, who were protesting against their detention conditions and length of detention - and thus welcomed publication, albeit late, of the Depasquale report, an extremely detailed outcome of evidence taken from 170 witnesses. The Commissioner invited the Maltese authorities to take administrative measures as speedily as possible, prosecute those already identified as responsible for the use of excessive violence and conduct a thorough investigation with a view to prosecuting any additional culprits not yet identified. The publication of the Depasquale report should likewise prompt the authorities to improve training and supervision of members of the armed forces dealing with detention of foreigners.¹¹

8. The Commissioner noted that following his 2003 visit, he had recommended adopting appropriate measures to reduce the backlog in the courts, particularly the civil courts, and ensure proper administration of justice. He likewise advised that the possibility of increasing the number of judges and magistrates should not be ruled out. In his follow-up report on Malta (2003-2005), the Commissioner noted that in the criminal sphere, various changes have been made to facilitate or speed up case handling; in civil litigation, the Maltese authorities have overhauled the workings of the court system, though without recruiting any more judges or magistrates and; the Maltese authorities have also set about "outsourcing" a proportion of petty civil disputes to non-professional judges. The Commissioner welcomed the reforms undertaken to improve the effectiveness and speed of Maltese justice. He indicated, however, that such action must not be at the expense of protection of the individual's rights, in particular basic rights. The Commissioner accordingly repeated his recommendation to consider recruiting more judges and magistrates and that the independence of the judiciary should be fully guaranteed.¹²

9. ICJ stated that the Immigration Law allows for administrative detainees to apply for judicial review of the removal, deportation or detention order to the Immigration Appeals Board. The Board's decision is final, unless the same Board decides to grant an appeal on points of law to the ordinary Court of Appeal. The Board may grant release on grounds of unreasonableness of the order concerning duration of detention and lack of real prospect of deportation. But in a considerable number of cases, including many cases where the identity of the detainee cannot be ascertained, it cannot release the person even when the detention is unreasonable. Serious doubts

arise as to the independence and impartiality of the Immigration Appeals Board, in particular since its members are appointed by the President on advice of a Minister and serve for three-year terms, renewable. Moreover, the legislation provides for cases when the Executive authorities can re-apply administrative detention on the “prohibited immigrant”, notwithstanding the order of the Board.¹³

10. In addition to review by the Immigration Appeals Board, the Constitution (article 46) and the European Convention Act (article 4) provide for a remedy of amparo before the courts for violation of Constitutional and European Convention rights. There is no legislative provision for a regular periodic review of the justification and proportionality of the detention. The ICJ called on the Working Group to recommend that Malta: provide by way of legislation for alternatives to administrative detention, the application of which must be decided discretionally on a case-by-case basis; provide in legislation that administrative detention shall be resorted to only where it is necessary and that in no case should it be automatic, and that it should be subject to a clear maximum duration; provide for regular periodic judicial review; provide for free legal assistance to those subject to administrative detention and/or alternative measures, regardless of their status of asylum-seeker and of the appeal or review proceedings; give competence and jurisdiction to courts - or alternatively to other effective, independent and impartial bodies authorised by law to exercise judicial power – to review on the merits, promptly and without delay, the grounds and the procedure of administrative detention, to ensure observance of domestic and international law; and become party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.¹⁴

11. In this connection, the CPT/CoE stated that it had also indicated that appeal proceedings brought against detention measures imposed on foreign nationals must always include a hearing of the person concerned, who must also be given legal aid and, if necessary, the free services of an interpreter. Moreover, detained foreign nationals must be expressly informed of the existence of this appeal procedure.¹⁵

12. In his follow-up report on Malta (2003-2005) on the assessment of the progress made in implementing the recommendations of the Commissioner,¹⁶ he concluded that while detention is no longer unlimited as it was in 2003, but the current periods of maximum detention of asylum seekers and aliens in an irregular situation still appear excessive and inappropriate. The Commissioner further welcomed the special arrangements applied to vulnerable groups but stressed the need for the Maltese authorities to apply them transparently to all persons requiring specific attention. He further noted that no legislation on the subject had been passed.¹⁷ The Commissioner called on the Maltese authorities to stop using military methods of conducting searches – use of handcuffs, early-morning searches, etc. – and to respect detainees’ human dignity.¹⁸ He further noted that a special body has been given competence to rule on the length of aliens’ detention and to release them in appropriate cases and that the application of this Act in practice will have to be carefully monitored, particularly with regard to the protection of the rights of aliens, who are sometimes detained for over a year. The Commissioner pointed out that detention of asylum seekers should be warranted only in special circumstances and last as short as possible.¹⁹ The Commissioner further noted that detention conditions, in particular sanitary conditions, had scarcely improved, and in some cases had even deteriorated.²⁰

4. Right to privacy, marriage and family life

13. MGRM and ILGA-Europe noted that there is no possibility for same-sex couples in Malta to register or legalise their relationship. Same-sex marriage or partnerships registered in countries that allow such unions are not recognized by the Maltese State. Second parent adoption

is also not possible. This lack of legal recognition leads to discrimination in access to housing, inheritance rights, the possibility of joint tax returns, visitation rights, emergency and family leave among other rights. MGRM and ILGA-Europe urged the Maltese Government to adopt legislation to recognize the relationship between two partners, irrespective of their sex and; to take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners.²¹

14. MGRM and ILGA-Europe reported that according to Maltese law, only unmarried transgender persons who have undergone irreversible gender reassignment surgery may change the indication of sex in official documents. The procedure is lengthy and costly and involves a court procedure whereby the post-operative transgender person must undergo a medical examination by court appointed experts. This is the cause of embarrassment and humiliation to the individual concerned. Moreover, MGRM and ILGA-Europe indicated that the change in legal sex is claimed by the state to be purely for reasons of privacy and to prevent embarrassment to the transgender individual concerned and is not recognized for purposes such as marriage. This has been borne out by a recent decision by the Civil Court which revoked a previous ruling that had given a transsexual woman the right to marry. The case is currently before the Maltese Constitutional Court. MGRM and ILGA-Europe urged the Maltese Government to take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity; to ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity of the persons concerned; to ensure that changes to identity documents are recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy, including marriage.²²

5. Right to work and to just and favourable conditions of work

15. The European Committee of Social Rights (ECSR/CoE) noted that even though the 2002 Employment and Industrial Relations Act came into force transposing the EC Directive 93/104/EC, it has not been demonstrated that the right to reasonable daily and weekly hours is guaranteed to workers.²³ The ECSR/CoE concluded, *inter alia*, that the situation in Malta is not in conformity with Article 4§4 of the Charter on reasonable notice of termination of employment, in particular it noted that: one week's notice is insufficient for workers with fewer than six months' service; notice of less than a month is insufficient for certain workers with more than one year's service; one week's notice is insufficient during the probationary period for employees who have worked more than one month; the payment corresponding to the duration of the notice of dismissal that must be paid by employers to employees on fixed-term contracts is insufficient.²⁴

6. Right to social security and to an adequate standard of living

16. MGRM and ILGA-Europe reported that there is a general lack of professional expertise in the area of transgender health and made reference to research that indicates that transgender persons experience difficulty in accessing treatment for financial reasons since hormone therapy and gender reassignment are not covered by the National Health Service and transgender persons avoid doing routine health checks as they fear adverse reaction from healthcare professionals. MGRM and ILGA-Europe urged the Maltese Government to undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment.²⁵

7. Right to education and to participate in the cultural life of the community

17. During his visit to Malta in 2003, the Commissioner noted that foreign children were being detained with their parents at closed centres. Like unaccompanied minors, though to a lesser extent, they had problems obtaining schooling. In his follow-up report on Malta (2003-2005), the Commissioner welcomed the efforts by the Maltese authorities to make schooling more readily available to the children, and in general to enable them to integrate better. He also welcomed the work being done for and with unaccompanied minors. He said it is to be hoped that the tensions over what is sometimes perceived as preferential treatment for foreign children in the school system can be quickly defused so as to avert any upsurge of racism or xenophobia.²⁶

18. The ESCR/CoE further concluded that the situation in Malta is not in conformity with Article 15§1 of the Charter on the ground that persons with disabilities are not sufficiently integrated into mainstream educational institutions and no new information has been provided to indicate that the situation has improved or that measures have been taken to address the issue.²⁷

8. Migrants, refugees and asylum-seekers

19. The International Commission of Jurists (ICJ) reported that Malta is facing a massive arrival of migrants on its shores, mainly due to its geographical position at the centre of the Mediterranean Sea and because it constitutes an entry door to the European Union.

20. The ICJ recalled that States must respect the obligation of non-refoulement as provided in international human rights law, as well as in international refugee law. Under international human rights law, the obligation of non-refoulement applies where there are substantial grounds for believing that an individual faces a real risk, following removal, of torture and cruel, inhuman or degrading treatment or punishment or other violations of the most fundamental human rights, including arbitrary detention and flagrant denial of the right to a fair trial. The right to non-refoulement cannot be overridden by considerations of national security or on grounds of the offences committed by the concerned person. People subject to removal and deportation orders have the right to contest such measures, in light of this principle, before an independent and effective judicial mechanism.²⁸

21. ICJ also indicated that Malta provides for the grant of refugee status, in accordance with the 1951 Geneva Convention qualifications requirements, and, if this is denied, for “subsidiary protection status” for people at risk of the death penalty, torture, inhuman or/and degrading treatment or punishment, or threats to the person caused by indiscriminate violence in international and internal armed conflicts. Nevertheless, according to ICJ, some categories of people are automatically excluded from this subsidiary protection: those who committed, instigated or participated in crimes against peace, war crimes or crimes against humanity, a serious crime, acts contrary to the purposes and principles of the United Nations, or that constitute a danger to the community or to the security of Malta. In addition, such protection can be excluded by executive authorities on grounds of having committed one or more crimes which would be punished with imprisonment if they were committed in Malta and if the applicant left his country of origin solely in order to avoid sanctions resulting from these crimes, or of national security and public order.²⁹

22. Of particular concern are, as indicated by ICJ, the policies and legislation on administrative detention and the expulsion of “prohibited immigrants” and asylum-seekers, some aspects of which are at risk of breaching Malta’s international human rights obligations. Under

immigration legislation, executive authorities have the power to order their deportation and removal and to arrest and detain them. The ICJ is concerned at Malta's automatic resort to administrative detention of immigrants, and at the apparently excessive and disproportionate length of such detention. ICJ also indicated that in Maltese law, the term "prohibited immigrants" refers to migrants entering the territory irregularly. Since most asylum-seekers enter the country as "prohibited immigrants", they are often subject to the same measures, in particular administrative detention.³⁰ ICJ's concerns on the rights of judicial review were also referred to above.

23. The CoE also stated that one of the main problems noted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the CoE (CPT/CoE) during its visit in 2004 was the Maltese authorities' policy to systematically detain all irregular immigrants.³¹ The CPT/CoE reported that at the beginning of 2005, the Maltese Government had published its policy on irregular immigrants, refugees and their integration and it had decided, among other things, that a task force should be set up to prepare a 'national policy on irregular immigration.' It also noted that the CPT/CoE had been informed that a Cabinet Sub-Committee, chaired by the Minister of Justice and Interior, had been set up to follow questions relating to irregular immigration and provide ongoing operational coordination, and among other things, this Sub-Committee reportedly drew up an 'emergency plan' and set up a new 'Detention Service'. The CPT asked for more detailed information on this matter.³²

24. In the same report of its visit in 2004, the CPT/CoE further stated that it had taken note of the Maltese authorities' decision to provide a new remedy before the Immigration Appeals Board, allowing any detained foreign national to contest the "reasonable" character of the period of detention being imposed on him/her. While noting that this is certainly a step in the right direction, the CPT/CoE pointed out that it does not entirely satisfy its earlier recommendation on this subject. In fact, significant restrictions were from the outset imposed on the Board's powers. In particular, the CPT/CoE indicated that it should be noted that, although these restrictions are indeed exceptions of the kind referred to in the revised Guidelines on the detention of asylum-seekers, issued by the Office of the United Nations High Commissioner for Refugees in February 1999, detention of asylum-seekers should be the exception, and not the rule. In other words, the exceptions provided for by the HCR are being used "against the grain". The CPT recommended that the Maltese authorities amend the Immigration Act in light of the above comments.³³ The CPT/CoE also referred to the appeal proceedings, as reflected above.

25. On asylum procedures, in his follow-up report on Malta (2003-2005), the Commissioner welcomed the increase in the Refugee Commissioner's staff and the positive impact which this has had on processing time for asylum requests. However the Commissioner expressed reservations about the changes to the Refugees Act, notably as regards the risks created by the new admissibility criterion for asylum requests. The Commissioner indicated that the Refugee Commissioner and the appeal body will have to apply that criterion in accordance with the principles governing individual treatment of asylum requests and with the rights guaranteed by the Geneva Convention on Refugees and the European Convention on Human Rights. Lastly, if asylum seekers have their applications rejected, the Commissioner asks the Maltese authorities, in actual practice, to keep them on national territory until the decision of the Refugee Appeals Board.³⁴ The Commissioner also welcomed the introduction of an effective arrangement that provides free legal aid to asylum seekers challenging an adverse decision of the Refugee Commissioner and the improvement regarding statements of reasons for the Board's decisions. However, he regretted that free legal aid is not available to asylum seekers before the Refugee Commissioner.³⁵

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

N/A.

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

N/A.

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

26. In 2005, the CPT/COE insisted on the crucial importance of a concerted effort by the international community - and particularly the European Union - to give Malta the help it needs to tackle the problems on irregular immigration that it faces.³⁶

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.

Civil society

GIEACPC	Global Initiative to End All Corporal Punishment of Children
MGRM and ILGA-Europe	Malta Gay Rights Movement and ILGA-Europe*, Malta
ICJ	International Commission of Jurists*, Geneva (Switzerland)

Regional intergovernmental organization

COE	Council of Europe, Directorate of Monitoring, Strasbourg (France): (a) Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), from 15 to 21 June 2005 (b) European Commission against Racism and Intolerance (ECRI), Third report, adopted on 14 December 2007 (c) European Committee of Social Rights, Fact Sheet 2006 and Conclusions XVIII-2 (2007). (d) Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM : 2nd Opinion and Resolution.
The Commissioner/CoE	Council of Europe, Office of the Commissioner for Human Rights, Strasbourg (France). Follow-up report on Malta (2003-2005). Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights.

² European Committee of Social Rights, Conclusions XVIII-2 (2007), section on Introduction, page 2.

³ Council of Europe Commissioner for Human Rights, paragraphs 85 to 88.

⁴ European Commission against Racism and Intolerance of the Council of Europe (ECRI/CoE), Third report on Malta (2007), page 6.

⁵ MGRM and ILGA pages 1 to 3.

⁶ See also CRC/C15/Add.129, paras. 29 and 30

⁷ See also E/C.1/1/Add.101

⁸ GIEACPC, pages 1-2.

- ⁹ Council of Europe Commissioner for Human Rights, paragraph 81.
- ¹⁰ Council of Europe Commissioner for Human Rights, paragraph 84.
- ¹¹ Council of Europe Commissioner for Human Rights, paragraphs 48 to 52.
- ¹² Council of Europe Commissioner for Human Rights, paragraphs 74 to 80.
- ¹³ ICJ, pages 1 - 3
- ¹⁴ ICJ, pages 1 - 3
- ¹⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment/CoE, page 12.
- ¹⁶ See also comments of the Maltese authorities, the Ministry for the Family and Social Solidarity and the Ombudsman to the follow-up report on Malta (2003-2005) of the Council of Europe Commissioner for Human Rights, annexes 1 to 3.
- ¹⁷ Council of Europe Commissioner for Human Rights, paragraphs 14 to 16.
- ¹⁸ Council of Europe Commissioner for Human Rights, paragraph 46.
- ¹⁹ Council of Europe Commissioner for Human Rights, paragraph 20.
- ²⁰ Council of Europe Commissioner for Human Rights, paragraph 31.
- ²¹ MGRM&ILGA-Europe pages 1, 4 and 5.
- ²² MGRM&ILGA-Europe, pages 3 - 4.
- ²³ European Committee of Social Rights, Conclusions XVIII-2 (2007), page 6.
- ²⁴ European Committee of Social Rights, Conclusions XVIII-2 (2007), page 21.
- ²⁵ MGRM&ILGA-Europe pages 3 - 4.
- ²⁶ Council of Europe Commissioner for Human Rights, paragraphs 70 to 73.
- ²⁷ European Committee of Social Rights, Conclusions XVIII-2 (2007), page 35.
- ²⁸ ICJ, page 4.
- ²⁹ ICJ, page 4.
- ³⁰ ICJ, pages 1 - 3
- ³¹ Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment/CoE, page 10, paragraph 11.
- ³² Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment/CoE, paragraphs 8 to 11.
- ³³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment/CoE, page 12.
- ³⁴ Council of Europe Commissioner for Human Rights, paragraphs 63 and 64.
- ³⁵ Council of Europe Commissioner for Human Rights, paragraph 69.
- ³⁶ Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment/CoE, paragraph 8.
