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Malta

The present report is a compilation of the information contained in the reports of treaty bodies and special procedures, including observations and comments by the State concerned, and of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and in other relevant official United Nations documents. It is presented in a summarized manner due to word-limit constraints. For the full text, please refer to the document referenced. This report does not contain any opinions, views or suggestions on the part of OHCHR other than those contained in public reports and statements issued by the Office. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

I. Background and framework

A. Scope of international obligations¹

International human rights treaties²

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified/not accepted</i>
<i>Ratification, accession or succession</i>	ICERD (1971)	OP-CRC-SC (2010)	ICRMW
	ICESCR (1990)	CRPD (2012)	CPED
	ICCPR (1990)		
	ICCPR-OP 2 (1994)		
	CEDAW (1991)		
	CAT (1990)		
	OP-CAT (2003)		
	CRC (1990)		
	OP-CRC-AC (2002)		
	CPED (signature only, 2007)		
<i>Reservations, declarations and/or understandings</i>	ICERD (declarations, arts. 4 and 6, 1971)	CRPD (interpretative statement, art. 25(a); reservation, art. 29 (a) (i) and (iii), 2012)	
	ICESCR (declaration, art. 13, 1990)		
	ICCPR (reservations, arts. 13, 14, para.2, 14 para. 6, 19, 20 and 22, 1990)		
	ICCPR-OP1 (declarations, arts. 5 para.2 and 1, 1990)		
	ICCPR-OP 2 (withdrawal of reservation, art. 2, 2000)		
	CEDAW (declaration 11(1), reservations, arts. 13, 15 and 16 para.1(e), 1991)		
<i>Complaint procedures, inquiry and urgent action³</i>	ICERD, art. 14 (1998)	OP-CRC-IC (signature only, 2012)	OP-ICESCR
	ICCPR, art. 41 (1990)		OP-CEDAW
	ICCPR-OP 1 (1990)	OP-CRPD, art. 6 (2012)	ICRMW
	CAT, arts. 20, 21 and 22 (1990)		OP-CRC-IC (signature only,

CPED (signature only, 2007)

2012)

Other main relevant international instruments

	<i>Status during previous cycle</i>	<i>Action after review</i>	<i>Not ratified</i>
<i>Ratification, accession or succession</i>	Palermo Protocol ⁴		Convention on the Prevention and Punishment of the Crime of Genocide
	Rome Statute of the International Criminal Court		
	Conventions on refugees ⁵		Conventions on stateless persons ⁸
	Geneva Conventions of 12 August 1949 and Additional Protocols I and II ⁶		ILO Conventions Nos. 169 and 189 ⁹
	ILO fundamental conventions ⁷		Additional Protocol III to the 1949 Geneva Conventions ¹⁰
	UNESCO Convention against Discrimination in Education		

1. The Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC) encouraged Malta to consider ratifying CPED.¹¹ The Committee on the Elimination of Racial Discrimination (CERD) and CRC encouraged Malta to ratify ICRMW.¹² CEDAW reiterated its recommendation to accede to OP-CEDAW.¹³ CRC encouraged Malta to ratify OP-CRC-IC.¹⁴

2. CEDAW and the United Nations High Commissioner for Refugees (UNHCR) requested Malta to accede to the 1954 and 1961 Conventions on statelessness.¹⁵ CRC recommended that Malta ratify ILO Convention No. 189 on domestic workers.¹⁶

3. CEDAW urged Malta to withdraw its declaration to article 11 and its reservations to articles 13, 15 and 16, paragraph 1(e) of the Convention.¹⁷ CERD recommended that Malta ratify the amendments to article 8, paragraph 6, of the Convention.¹⁸

B. Constitutional and legislative framework

4. CRC was concerned that in numerous areas of legislation, such as the provision of child welfare services and support, Malta did 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. It urged Malta to harmonize the definition of the child in its national legislation and the implementation thereof with the Convention.¹⁹ Furthermore, CRC recommended that Malta enact a comprehensive child rights act at the national level which fully incorporates the provisions of the Convention and its Optional Protocols.²⁰

C. Institutional and human rights infrastructure and policy measures

5. While noting the creation of the National Commission for the Promotion of Equality (NCPE) and the Office of the Parliamentary Ombudsman, CERD, in 2011, was concerned that Malta had not yet established a national human rights institution in full compliance with the Paris Principles. It recommended that Malta establish a national human rights institution in full compliance with the Paris Principles, or consider expanding the mandate of the structures and procedures of NCPE for it to be in full compliance with the Paris Principles.²¹ Likewise, the Working Group on Arbitrary Detention (WGAD), in 2010, recommended that

Malta strengthen the status, powers and functions of the Office of the Ombudsman in accordance with the Paris Principles.²²

6. UNHCR recommended that Malta strengthen the capacity of the NCPE to follow up and monitor responses in all cases of racial violence and discrimination and institute legal proceedings in this regard.²³ CEDAW requested Malta to secure sustainable resources from the State budget for the work of the NCPE in all its aspects, as well as for the relevant ministries working on gender equality.²⁴

7. While noting that the Parliamentary Ombudsman had a mandate to address racial discrimination involving the government and State entities, CERD regretted that its powers were limited and did not extend to the private sphere. It recommended that Malta revise the mandate of the Parliamentary Ombudsman in order to address racial discrimination in the private sphere.²⁵

8. CRC recommended that Malta strengthen the independence of the Office of the Commissioner for Children by ensuring that it is provided with adequate specific and separate resources as well as the immunities required for it to effectively carry out its function, including dealing with complaints from or on behalf of children.²⁶

9. CRC was concerned that there was no comprehensive strategy to implement the Convention. It recommended that Malta develop a comprehensive policy and strategy to embrace all other sectoral and regional plans of action relating to children and provide the necessary resources for its effective implementation and ensure regular and broad consultations to assess the effectiveness of the implementation.²⁷

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies²⁸

1. Reporting status

<i>Treaty body</i>	<i>Concluding observations included in previous review</i>	<i>Latest report submitted since previous review</i>	<i>Latest concluding observations</i>	<i>Reporting status</i>
CERD	March 2000	2010	September 2011	Twenty-first and twenty-second reports due in 2014
CESCR	November 2004	–	–	Second report overdue since 2009
HR Committee	November 1993	2012	–	Second report pending consideration in 2014
CEDAW	July 2004	2009	October 2010	Fifth report due in 2014
CAT	November 1999	–	–	Third to sixth reports overdue since 2000, 2004, 2008 and 2012 respectively
CRC	May 2000 on CRC/September 2006 on OP-CRC-AC	2010	June 2013	Third to sixth reports due in 2017. Initial OP-CRC-SC overdue since 2012

CRPD – – – Initial report due in 2014

2. Responses to specific follow-up requests by treaty bodies

Concluding observations

<i>Treaty body</i>	<i>Due in</i>	<i>Subject matter</i>	<i>Submitted in</i>
CERD	2012	Hate speech; situation of immigrants; – and riots by detained immigrants ²⁹	–
HR Committee	–	–	–
CEDAW	2012	Withdrawal of reservations; and family – relations ³⁰	–
CAT	–	–	–

B. Cooperation with special procedures³¹

	<i>Status during previous cycle</i>	<i>Current status</i>
<i>Standing invitation</i>	Yes	Yes
<i>Visits undertaken</i>	Arbitrary Detention (19-23 January 2009)	
<i>Visits agreed to in principle</i>	None	None
<i>Visits requested</i>	None	None
<i>Responses to letters of allegations and urgent appeals</i>	During the period under review no communication was sent.	
<i>Follow-up reports and missions</i>		

10. In 2012, WGAD noted information received from the Government in reply to its follow-up letter.³²

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

11. CEDAW remained concerned about the persistence of patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and society. It was concerned that women continued to be stereotyped as mothers and caregivers, while men were stereotyped as breadwinners, which undermined women's social status, as reflected in women's disadvantaged position in a number of areas. It called upon Malta to put in place a comprehensive policy to overcome traditional stereotypes. Such a policy should include legal, administrative and awareness-raising measures and involve public officials, church authorities, civil society and media. CEDAW also recommended that Malta consider applying temporary special measures in areas in which women are underrepresented

or disadvantaged and allocate additional resources to accelerate the advancement of women.³³

12. CEDAW was concerned that domestic and family responsibilities were primarily borne by women, many of whom interrupt their careers or engage in part-time jobs to meet family responsibilities. It also noted with concern that the lack of childcare facilities, particularly their unequal quality and the lack of flexibility in terms of operating hours, and the lack of afterschool programmes might constitute an impediment to women's participation in the labour market.³⁴ Similarly, CRC was concerned about inadequate availability of child care and insufficient family support services.³⁵ CEDAW encouraged Malta to assist women and men in striking a balance between family and employment responsibilities; improve the availability of childcare facilities for school-age children; encourage men to avail themselves of parental leave; and facilitate childcare services for all working parents.³⁶

13. CEDAW was concerned that there was no articulated national plan to monitor progress towards gender equality in all educational structures and processes. It noted with concern that at the tertiary level women were underrepresented in critical areas such as engineering, manufacturing and construction. CEDAW encouraged Malta to systematically monitor policies on gender equality identified in the National Strategic Plan for the implementation of the National Minimum Curriculum.³⁷ UNESCO encouraged Malta to adopt further measures aimed at combating discrimination in education and protecting minority groups, reflecting the international commitment under the Convention against Discrimination in Education.³⁸

14. CERD welcomed several legislative developments to combat racism, including the legal amendments that: introduced the offence of incitement to racial hatred and racial violence into the Criminal Code; increased the punishment of a public officer for a racism offence; introduced the concept of aggravation of an offence whenever it was motivated by xenophobia; and reversed the burden of proof in civil proceedings involving racial discrimination. It recommended the effective implementation of such legislation and other institutional and policy measures to combat racial discrimination.³⁹

15. Noting the measures taken by Malta to combat racial discrimination, CERD was concerned that immigrants, particularly refugees, asylum seekers and irregular migrants, faced discrimination in the enjoyment of their economic, social and cultural rights, particularly regarding access to housing and employment.⁴⁰ UNHCR and CRC expressed similar concerns.⁴¹ Furthermore, UNHCR stated that incidents of racial violence were not frequent but nevertheless of serious concern and that some individuals were reluctant to report violent attacks to the police, since there was a perception that the perpetrators would not be prosecuted in court or that the remedy would ultimately be ineffective.⁴²

16. CRC urged Malta to adopt a comprehensive strategy to eliminate discrimination on any ground, including by considering targeted programmes for addressing discrimination against children in irregular migration situations.⁴³ CERD recommended that Malta strengthen its efforts to: apply its legislation to combat direct or indirect racial discrimination with regard to the enjoyment of economic, social and cultural rights by immigrants, in particular refugees and asylum seekers, including access to private rental housing and the labour market; and eliminate stereotyping of immigrants, particularly refugees and asylum seekers.⁴⁴ CERD also recommended training for prosecutors, judges, lawyers, police officers and other law enforcement officials on how to detect and provide redress for acts of racial discrimination.⁴⁵

17. CERD was concerned about discriminatory discourse and hate speech by some politicians; and the phenomenon of dissemination of racism and racial discourse in the media, including through the Internet. It recommended that Malta take measures to counter and condemn racism and hate speech by politicians as well as manifestations of racism in the

media, in particular by prosecuting those responsible.⁴⁶ CRC urged Malta to develop, in consultation with the media, a code of conduct for the media, to eliminate stereotyping and stigmatization of persons in irregular migration situations.⁴⁷

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

18. CERD was concerned about the detention and living conditions of immigrants in detention centres, particularly women and families with children.⁴⁸ WGAD stated that the conditions of detention at the closed centres of Safi and Lyter Barracks were appalling, adversely affecting the health, including the mental health, of some of the detainees. It also noted that those detention centres were overcrowded.⁴⁹

19. CRC was concerned about reports of unrelated female, male and children asylum seekers being accommodated in the same premises, with joint usage of common showers and toilets.⁵⁰ The WG made a similar observation.⁵¹ CERD recommended that Malta continue its efforts to improve the detention and living conditions of immigrants detained, particularly by modernizing detention centres and placing families with children in alternative open accommodation centres.⁵²

20. In 2011, CERD was concerned about the recurrence of riots by detained immigrants, for example at Safi Barracks; and the excessive use of force to counter the riots.⁵³ In 2013, CRC was concerned about reports of frequent acts of violence and excessive use of force, especially in quelling peaceful demonstrations in immigration detention centres.⁵⁴ CERD recommended that Malta improve detention conditions and refrain from the excessive use of force to counter riots.⁵⁵ CRC urged Malta to 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 principles of proportionality.⁵⁶

21. CEDAW remained concerned at the high prevalence of violence against women and persistence of sociocultural attitudes condoning domestic violence and deterring women from reporting cases to the police. It urged Malta to continue to put emphasis on comprehensive measures to address violence against women in the family and in society. CEDAW recommended that Malta ensure that female victims of violence have immediate protection, including the possibility of expelling the perpetrator from the family home, effective recourse to a shelter and access to free legal aid and psychosocial counselling.⁵⁷

22. CEDAW reiterated its concern that the crime of rape must be associated with violence and that rape and violent assault were considered in the Criminal Code under the title “Of crimes against the Peace and Honour of Families and against Morals”. It urged Malta to define rape and violent assault as crimes against women’s physical and mental integrity and as a form of sex and gender based-discrimination; and review the definition of rape so as to place the lack of consent at its centre.⁵⁸

23. CRC recommended that Malta develop a comprehensive national strategy to prevent and address violence against children and address the gender dimension of violence.⁵⁹

24. CRC reiterated its concern about the underreporting of child abuse, 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 of the family. It recommended that Malta strengthen measures to encourage reporting of child abuse and prosecute perpetrators. CRC also reiterated its previous recommendation to strengthen awareness-raising and education programmes to prevent and combat child abuse.⁶⁰

25. CRC recommended that Malta adopt effective measures to prevent the sexual exploitation of children and provide for their rehabilitation, recovery and social integration;

and establish a specific mechanism for the detection, investigation and prosecution of child sexual exploitation and abuse.⁶¹

26. CRC regretted that, notwithstanding its previous recommendation to explicitly prohibit corporal punishment, Malta continued to lack legislation explicitly prohibiting corporal punishment in all settings. It was particularly concerned that corporal punishment was permitted and prevalent in the home and alternative care contexts as so-called “reasonable chastisement” under the Criminal and Civil Codes.⁶²

27. While noting that the Young Persons (Employment) Regulations of 2003 prohibited work by children and adjusted the minimum employment age to correspond to the minimum age at which compulsory full-time schooling ends, CRC was concerned that the regulations did not apply to occasional and short-term work frequently taken up by adolescents during the school holidays. It recommended that Malta ensure that the involvement of children is in full compliance with international child labour standards; and that all its employment legislation, including occasional and short-term employment, is in conformity with ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.⁶³

28. CRC was concerned that Malta had not adopted measures to protect children from violations of their rights arising from tourism activities. It recommended that Malta examine and adapt its legislative framework to ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from Malta, especially in the tourism industry, regarding abuses of child and human rights; and establish monitoring mechanisms to investigate and redress such abuses.⁶⁴

29. CRC remained concerned that Malta remained a significant source and destination country for women and children subjected to sex trafficking.⁶⁵ CEDAW called upon Malta to ensure better identification and investigation of trafficking cases, particularly through the establishment of a mechanism to proactively ensure identification of and support for trafficked persons.⁶⁶ UNHCR and CRC made similar recommendations.⁶⁷ Furthermore, CEDAW invited Malta to strengthen its measures to combat all forms of trafficking in women and children. It urged Malta to ensure not only the prosecution and punishment of individuals involved in trafficking, but also the protection and recovery of victims of trafficking.⁶⁸

C. Administration of justice, including impunity, and the rule of law

30. WGAD recommended that Malta strengthen the status, powers and functions of the Board of Visitors of the Prisons and the Board of Visitors for Detained Persons to provide for more effective monitoring of detention facilities. This would include the extension of their respective mandates to the aspect of legality of detention which is not ordered by a court, including administrative detention.⁶⁹

31. WGAD observed the relatively long periods which the accused spend in pretrial detention and the high rate of detainees on remand in comparison to the overall prison population.⁷⁰ It was also concerned that persons arrested on suspicion of having committed a criminal offence did not enjoy the right to access to lawyers for up to 48 hours while they were in police custody, during the crucial initial stage of the criminal investigation.⁷¹ WGAD recommended that they be allowed such access during the first 48-hour period while in police custody.⁷²

32. CRC reiterated its concerns that: the age of criminal responsibility remained at nine years; children in conflict with the law between 16 and 18 years were tried as adults and subjected to criminal law; and the Criminal Code allows for an assumption that a child aged between nine and 14 years could act with “malicious intent” and subjects them to trial.⁷³

WGAD expressed similar concerns.⁷⁴ Furthermore, CRC was concerned that there were inadequate alternatives to deprivation of liberty.⁷⁵ It recommended that Malta inter alia: bring the juvenile justice system in line with international standards; adopt new legislation to explicitly exclude children under the age of 14 years and in conflict with the law from criminal proceedings; consider extending the scope of its juvenile justice legislation to include all children under the age of 18 years; introduce alternatives to deprivation of liberty; and train juvenile court judges on the requirements of international standards.⁷⁶ WGAD made similar recommendations.⁷⁷

33. CERD recommended that Malta inform the public, particularly immigrants, of all available remedies, legal assistance and the reversal of proof in civil proceedings regarding racial discrimination.⁷⁸

D. Right to privacy, marriage and family life

34. CRC was concerned that the age of marriage was set at 16 years. It urged Malta to raise the minimum age of marriage to 18 years.⁷⁹

35. CRC was concerned that availability of alternatives to institutional care remained insufficient, with continuing placements of children in institutions. It called upon Malta to support family-based care for children and give priority to alternative care; further strengthen its national foster care system; ensure the provision of adequate funding and support for foster families, and provide the necessary resources required for improving the situation of children in alternative care placements.⁸⁰

36. CRC was concerned that there continued to be cases of children, including those in irregular migration situations, who were not provided with birth registration. It urged Malta to ensure that all children born in Malta were registered at birth, regardless of their parents' status, with particular attention to children in single-parent families and/or irregular migration situations.⁸¹

37. CRC was concerned that there was no provision in the Citizenship Act for the acquisition of citizenship by a child born in Malta. It urged Malta to grant citizenship to children born in Malta to foreign parents unable to pass on their nationality, or to stateless parents or whose nationality is unknown.⁸²

E. Freedom of expression and right to participate in public and political life

38. The United Nations Educational, Scientific and Cultural Organization (UNESCO) reported that defamation remained criminalized under the Criminal Code whereby, once convicted, a person would be liable for imprisonment of up to three months. It encouraged Malta to decriminalize defamation and make it part of the Civil Code in accordance with international standards.⁸³

39. UNESCO encouraged Malta to introduce a freedom of information law in accordance with international standards.⁸⁴

40. CEDAW remained concerned that women were underrepresented in the National Parliament and were absent in the European Parliament. It was also concerned that women remained underrepresented in senior positions within the public administration, including the diplomatic service, the judiciary and the private sector. CEDAW urged Malta to strengthen women's representation in leadership roles and in decision-making positions in political bodies and in the private sector; and take temporary special measures so as to accelerate the achievement of women's full and equal participation at all levels and in all areas.⁸⁵

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

41. CEDAW was concerned about the situation of women in the labour market, which was characterized, in spite of women's high level of education, by persistent high female unemployment, the concentration of women in low-paid sectors of employment and the wage gap between women and men. It urged Malta to ensure equal opportunities for women and men in the labour market. CEDAW also recommended that Malta eliminate occupational segregation, both horizontal and vertical; close the wage gap between women and men; and review its legislation to eliminate barriers women face in the labour market, including the obstacles to achieving managerial positions.⁸⁶ The ILO Committee of Experts on the Application of Conventions and Recommendations made a similar recommendation.⁸⁷

42. The ILO Committee of Experts referred to the findings of research showing that the number of workers who were injured or fell ill while at work was significant, with a large number of such cases going unreported and that a number of workers were still not being provided occupational health and safety training as required by law; were not covered by a medical examination; and did not have access to a workers' health and safety representative.⁸⁸

G. Right to health

43. CRC was concerned that unplanned adolescent pregnancies continued to be a problem. It recommended that Malta develop and implement a policy which address the issues faced by adolescent mothers and protects them and their children from discrimination and violations of their rights, thereby ensuring that pregnant adolescents and adolescent mothers continue their education.⁸⁹

44. CEDAW was concerned about insufficient access to reproductive health-care services for women; and the fact that sexual and reproductive health and rights education was not part of the curriculum. It called on Malta to improve the availability of sexual and reproductive health services, including family planning. CEDAW further recommended that the National Policy on Sexual Health promote family planning and reproductive health education, with special attention to the prevention of early pregnancies, including the control of sexually transmitted diseases and HIV/AIDS.⁹⁰

45. CEDAW and CRC were concerned that abortion was illegal in all cases under the law and that women who choose to undergo abortion were subject to imprisonment.⁹¹ CEDAW urged Malta to review its legislation on abortion, consider exceptions to the general prohibition of abortion for cases of therapeutic abortion and when the pregnancy is the result of rape or incest, and to remove from its legislation the punitive provisions for women who undergo abortion.⁹² CRC made a similar recommendation.⁹³

46. CRC noted that Malta had only one special unit providing residential psychiatric care for children up to the age of 17 and it expressed concern that the capacity for meeting the needs of children with mental health needs remained limited. It recommended that Malta 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 and specialized care for more serious disorders, with particular attention to children most at risk.⁹⁴

47. CRC was concerned by low rates of breastfeeding and recommended that Malta strengthen its awareness-raising on the importance of breastfeeding and promote exclusive breastfeeding of children up to the age of six months. It was also concerned that no hospitals achieved baby-friendly status. CRC recommended that Malta ensure that all maternity

hospitals meet the required standards and are certified as baby-friendly under the Baby-Friendly Hospital Initiatives.⁹⁵

48. CRC was concerned about tobacco and alcohol consumption as well as drug and substance abuse by adolescents. It recommended that Malta formulate awareness-raising and education campaigns against substance abuse; enforce the prohibition of the sale and marketing of such products to children; and prohibit advertisements promoting alcohol and tobacco products in the media.⁹⁶

H. Right to education

49. UNESCO encouraged Malta to further elaborate provisions in its legislation and/or report on the justiciability of the right to education in order to increase the potential for the right to education to be respected, protected, fulfilled and monitored.⁹⁷

50. CRC was concerned at the high rate of children discontinuing schooling after the completion of compulsory education at the age of sixteen.⁹⁸

I. Persons with disabilities

51. CRC welcomed measures undertaken for children with disabilities, resulting in over 99 per cent receiving education that was customized according to their needs, in inclusive schools.⁹⁹

J. Migrants, refugees and asylum seekers

52. CERD was concerned about difficulties faced by immigrant women, in particular refugees and asylum seekers, in effectively accessing education, social services and the labour market.¹⁰⁰ CEDAW called upon Malta to monitor the impact of its laws and policies on women migrants, refugees and asylum seekers with a view to responding to their needs; and integrate a gender-sensitive approach throughout the process of granting asylum/refugee status, including by ensuring the availability of female interpreters.¹⁰¹

53. In 2010, WGAD indicated that migrants in an irregular situation arriving in the country were subjected to mandatory detention without genuine recourse to a court of law.¹⁰² Likewise, UNHCR, in 2013, stated that Malta maintained a policy of mandatory detention for all irregular arrivals and that despite the consistent efforts of UNHCR and other entities over a number of years to positively influence legislation and practice, asylum seekers who arrived in an irregular manner were still systematically and routinely detained, at times facing tough detention conditions in immigration detention facilities, some of which were not in line with basic minimum standards.¹⁰³ CRC made a similar observation.¹⁰⁴ UNHCR considered that the current practice of detaining all asylum seekers who arrive on the territory in an irregular manner was unlawful, as this was not specifically authorized by Maltese, European or international law. It was particularly concerned that this practice was at odds with article 31 of the 1951 Convention and the fundamental rights to liberty and security of person.¹⁰⁵ WGAD made a similar observation.¹⁰⁶

54. WGAD observed that the length of detention of migrants in an irregular situation and of asylum seekers had not been clearly defined under law. Asylum seekers were held in detention for a maximum of 12 months if their asylum claim was still pending. Those migrants who did not apply for political asylum or whose applications had been rejected may end up in custody for 18 months at closed detention centres.¹⁰⁷ UNHCR made similar observations.¹⁰⁸

55. WGAD acknowledged the Government's efforts to apply a fast-track procedure for the release of families of migrants with children, unaccompanied minors, pregnant women and breastfeeding mothers and people with disabilities, serious or chronic physical or mental problems.¹⁰⁹ UNHCR stated that procedures for early and exceptional release were regulated by policy and practice rather than by law and that those vulnerable persons were usually released from detention after undergoing a vulnerability or age assessment procedure. There was no judicial oversight procedure for identifying and releasing vulnerable asylum seekers or migrants in detention.¹¹⁰ WGAD recommended that Malta rule out immigration detention of vulnerable groups of migrants.¹¹¹

56. UNHCR stated that both accompanied and unaccompanied children who arrived in Malta in an irregular manner were automatically detained and there were no special facilities in detention to address the needs of children. Release was only possible when age assessment procedures were completed which might take up to several weeks or months. This meant that during the initial reception period, children were detained with adults, sometimes in poor conditions. UNHCR recommended that Malta ensure that children are not detained, regardless of whether they are separated or accompanied by their families, and age assessments are undertaken only in cases of serious doubt, and improve age assessment practices.¹¹² CRC made similar recommendations.¹¹³

57. Furthermore, CRC urged Malta to 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 and community-based contexts while their immigration status is being determined; provide children with adequate support, education, leisure and recreational activities while in migration-related custodial arrangements, and with appropriate gender-separate accommodation, toilet and shower facilities in migration detention centres.¹¹⁴

58. WGAD recommended that Malta: change its laws and policies related to administrative detention of migrants in an irregular situation and asylum seekers, so that detention is decided upon by a court of law, on a case-by-case basis and pursuant to clearly defined criteria in legislation, under which detention may be resorted to, rather than being the automatic legal consequence of a decision to refuse admission of entry or a removal order;¹¹⁵ provide in all cases for automatic periodic review by a court of law on the necessity and legality of detention;¹¹⁶ provide for an effective remedy for detainees to challenge the necessity and legality of detention at any time of the detention period and ex post facto and define the circumstances thereof;¹¹⁷ and where there remains a regime of mandatory administrative detention for migrants in an irregular situation, legally define its maximum period rather than basing it on Government regulations or policy.¹¹⁸ UNHCR recommended that Malta explore alternatives to detention and less coercive measures such as reporting obligations for asylum seekers, residence at open centres, and community supervision arrangements.¹¹⁹

59. WGAD recommended that Malta appeal to the international community to assist the Government in bringing its immigration detention regime into conformity with applicable international human rights law and standards.¹²⁰

60. CRC was concerned that, although Malta was a country of transit and destination for asylum seekers and migrants, including children from countries affected by armed conflict, it had no measures for identifying refugee, asylum-seeking and migrant children who might have been involved in armed conflicts and ensuring their physical and psychological recovery and social reintegration. It urged Malta to establish measures and procedures in that regard.¹²¹

61. UNHCR recommended inter alia that Malta develop a comprehensive integration policy for beneficiaries of international protection and facilitate the right to family unity by

considering all beneficiaries of international protection as eligible to apply for family reunification when fulfilling necessary criteria.¹²²

Notes

- ¹ Unless indicated otherwise, the status of ratifications of instruments listed in the table may be found in the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://treaties.un.org/>. Please also refer to the United Nations compilation on Malta from the previous cycle (A/HRC/WG.6/5/MLT/2).
- ² The following abbreviations have been used for this document:
- | | |
|------------|---|
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| ICESCR | International Covenant on Economic, Social and Cultural Rights; |
| OP-ICESCR | Optional Protocol to ICESCR |
| ICCPR | International Covenant on Civil and Political Rights |
| ICCPR-OP 1 | Optional Protocol to ICCPR |
| ICCPR-OP 2 | Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| OP-CEDAW | Optional Protocol to CEDAW |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| OP-CAT | Optional Protocol to CAT |
| CRC | Convention on the Rights of the Child |
| OP-CRC-AC | Optional Protocol to CRC on the involvement of children in armed conflict |
| OP-CRC-SC | Optional Protocol to CRC on the sale of children, child prostitution and child pornography |
| OP-CRC-IC | Optional Protocol to CRC on a communications procedure, |
| ICRMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| CRPD | Convention on the Rights of Persons with Disabilities |
| OP-CRPD | Optional Protocol to CRPD |
| CPED | International Convention for the Protection of All Persons from Enforced Disappearance. |
- ³ Individual complaints: ICCPR-OP 1, art 1; OP-CEDAW, art. 1; OP-CRPD, art. 1; OP-ICESCR, art. 1; OP-CRC-IC, art. 5; ICERD, art. 14; CAT, art. 22; ICRMW, art. 77; and CPED, art. 31. Inquiry procedure: OP-CEDAW, art. 8; CAT, art. 20; CPED, art. 33; OP-CRPD, art. 6; OP-ICESCR, art. 11; and OP-CRC-IC, art. 13. Inter-State complaints: ICCPR, art. 41; ICRMW, art. 76; CPED, art. 32; CAT, art. 21; OP-ICESCR, art. 10; and OP-CRC-IC, art. 12. Urgent action: CPED, art. 30.
- ⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
- ⁵ 1951 Convention relating to the Status of Refugees and its 1967 Protocol.
- ⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html.

- ⁷ International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour; Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise; Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- ⁸ The Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.
- ⁹ International Labour Organization Convention No. 169, concerning Indigenous and Tribal Peoples in Independent Countries and Convention No. 189 concerning Decent Work for Domestic Workers.
- ¹⁰ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html.
- ¹¹ CEDAW/C/MLT/CO/4, para. 43 and CRC/C/MLT/CO/2, para. 67.
- ¹² CERD/C/MLT/CO/15-20, para. 18 and CRC/C/MLT/CO/2, para. 67.
- ¹³ CEDAW/C/MLT/CO/4, para. 11.
- ¹⁴ CRC/C/MLT/CO/2, para. 67.
- ¹⁵ CEDAW/C/MLT/CO/4, para. 39 and UNHCR submission to the UPR on Malta, p. 12.
- ¹⁶ CRC/C/MLT/CO/2, para. 60(c).
- ¹⁷ CEDAW/C/MLT/CO/4, para. 13.
- ¹⁸ CERD/C/MLT/CO/15-20, para. 22.
- ¹⁹ CRC/C/MLT/CO/2, paras. 26-27.
- ²⁰ Ibid., para. 11.
- ²¹ CERD/C/MLT/CO/15-20, para. 9.
- ²² A/HRC/13/30/Add.2, para. 79(m).
- ²³ UNHCR submission to the UPR on Malta, p. 8.
- ²⁴ CEDAW/C/MLT/CO/4, para. 15.
- ²⁵ CERD/C/MLT/CO/15-20, para. 10.
- ²⁶ CRC/C/MLT/CO/2, para. 19.
- ²⁷ Ibid., paras. 12-13.
- ²⁸ The following abbreviations have been used for this document:
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| CERD | Committee on the Elimination of Racial Discrimination |
| CESCR | Committee on Economic, Social and Cultural Rights |
| HR Committee | Human Rights Committee |
| CEDAW | Committee on the Elimination of Discrimination against Women |
| CAT | Committee against Torture |
| CRC | Committee on the Rights of the Child |
| CMW | Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| CRPD | Committee on the Rights of Persons with Disabilities |
| CED | Committee on Enforced Disappearances |
| SPT | Subcommittee on Prevention of Torture. |
- ²⁹ CERD/C/MLT/CO/15-20, para. 25.
- ³⁰ CEDAW/C/MLT/CO/4, para. 44.

- 31 For the titles of special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx and www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.
- 32 A/HRC/22/44, paras. 29-35.
- 33 CEDAW/C/MLT/CO/4, paras. 17-19.
- 34 *Ibid.*, para. 20.
- 35 CRC/C/MLT/CO/2, para. 43.
- 36 CEDAW/C/MLT/CO/4, para. 21.
- 37 *Ibid.*, paras. 30-31.
- 38 UNESCO submission to the UPR on Malta, para. 46.
- 39 CERD/C/MLT/CO/15-20, paras. 5(a)(b)(c)(d) and 8.
- 40 *Ibid.*, para. 16.
- 41 UNHCR submission to the UPR on Malta, p. 7 and CRC/C/MLT/CO/2, para. 28.
- 42 UNHCR submission to the UPR on Malta, p. 7.
- 43 CRC/C/MLT/CO/2, para. 29.
- 44 CERD/C/MLT/CO/15-20, para. 16.
- 45 *Ibid.*, para. 11.
- 46 *Ibid.*, para. 12.
- 47 CRC/C/MLT/CO/2, para. 29.
- 48 CERD/C/MLT/CO/15-20, para. 13.
- 49 A/HRC/13/30/Add.2, paras. 53-54.
- 50 CRC/C/MLT/CO/2, para. 57(g).
- 51 A/HRC/13/30/Add.2, para. 54.
- 52 CERD/C/MLT/CO/15-20, paras. 13-14.
- 53 *Ibid.*, para. 14.
- 54 CRC/C/MLT/CO/2, para. 57(h).
- 55 CERD/C/MLT/CO/15-20, para. 14. See also CRC/C/MLT/CO/2, para. 58(h).
- 56 CRC/C/MLT/CO/2, paras. 58(h).
- 57 CEDAW/C/MLT/CO/4, paras. 22-23.
- 58 *Ibid.*, paras. 24-25.
- 59 CRC/C/MLT/CO/2, para. 42 (a).
- 60 *Ibid.*, paras. 38-39.
- 61 *Ibid.*, para. 41 (b) and (c).
- 62 *Ibid.*, para. 36.
- 63 *Ibid.*, paras. 59-60 (a) and (b).
- 64 *Ibid.*, paras. 24-25 (a) and (b).
- 65 *Ibid.*, para. 61.
- 66 CEDAW/C/MLT/CO/4, para. 27.
- 67 UNHCR submission to the UPR on Malta, p. 10 and CRC/C/MLT/CO/2, para. 62.
- 68 CEDAW/C/MLT/CO/4, para. 27.
- 69 A/HRC/13/30/Add.2, para. 79 (l).
- 70 *Ibid.*, para. 75.
- 71 *Ibid.*, para. 17.
- 72 *Ibid.*, para. 79 (a).
- 73 CRC/C/MLT/CO/2, para. 65(a), (b) and (c).
- 74 A/HRC/13/30/Add.2, para. 31.
- 75 CRC/C/MLT/CO/2, para. 65 (c).
- 76 *Ibid.*, para. 66.
- 77 A/HRC/13/30/Add.2, para. 79(b).
- 78 CERD/C/MLT/CO/15-20, para. 11.
- 79 CRC/C/MLT/CO/2, paras. 26-27.
- 80 *Ibid.*, paras. 45-46.
- 81 *Ibid.*, paras. 34-35.
- 82 *Ibid.*, paras. 34-35.
- 83 UNESCO submission to the UPR on Malta, paras. 40 and 48.
- 84 *Ibid.*, para. 49.
- 85 CEDAW/C/MLT/CO/4, paras. 28-29.

- ⁸⁶ Ibid., paras. 32-33.
- ⁸⁷ ILO Committee of Experts on the Application of Conventions and Recommendations, Direct request concerning ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Malta, adopted 2011, published 101st ILC session (2012), available from http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699463
- ⁸⁸ ILO Committee of Experts on the Application of Conventions and Recommendations, Direct request concerning ILO Working Environment (Air pollution, Noise and Vibration) Convention, 1977 (No. 148) – Malta, adopted 2012, published 102nd ILC session (2013), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3080688
- ⁸⁹ CRC/C/MLT/CO/2, paras. 49-50 (a).
- ⁹⁰ CEDAW/C/MLT/CO/4, paras. 34-35.
- ⁹¹ Ibid., para. 34 and CRC/C/MLT/CO/2, para. 49.
- ⁹² Ibid., para. 35.
- ⁹³ CRC/C/MLT/CO/2, para. 50(b).
- ⁹⁴ Ibid., paras. 47-48.
- ⁹⁵ Ibid., paras. 53-54 (a) and (c).
- ⁹⁶ Ibid., paras. 51-52.
- ⁹⁷ UNESCO submission to the UPR on Malta, para. 47.
- ⁹⁸ CRC/C/MLT/CO/2, para. 55.
- ⁹⁹ Ibid., para. 6(a).
- ¹⁰⁰ CERD/C/MLT/CO/15-20, para. 15 and CEDAW/C/MLT/CO/4, para. 38.
- ¹⁰¹ CEDAW/C/MLT/CO/4, para. 39.
- ¹⁰² A/HRC/13/30/Add.2, para. 76.
- ¹⁰³ UNHCR submission to the UPR on Malta, pp. 1-2.
- ¹⁰⁴ CRC/C/MLT/CO/2, para. 57.
- ¹⁰⁵ UNHCR submission to the UPR on Malta, p. 3.
- ¹⁰⁶ A/HRC/13/30/Add.2, para. 76.
- ¹⁰⁷ Ibid., para. 77.
- ¹⁰⁸ UNHCR submission to the UPR on Malta, p. 3.
- ¹⁰⁹ A/HRC/13/30/Add.2, para. 78.
- ¹¹⁰ UNHCR submission to the UPR on Malta, p. 4.
- ¹¹¹ A/HRC/13/30/Add.2, para. 79(f).
- ¹¹² UNHCR submission to the UPR on Malta, pp. 8-10.
- ¹¹³ CRC/C/MLT/CO/2, para. 58.
- ¹¹⁴ Ibid., para. 58 (b), (f) and (g).
- ¹¹⁵ A/HRC/13/30/Add.2, para. 79(e).
- ¹¹⁶ Ibid., para. 79(g).
- ¹¹⁷ Ibid., para. 79(h).
- ¹¹⁸ Ibid., para. 79(i). See also UNHCR submission to the UPR on Malta, p. 4.
- ¹¹⁹ UNHCR submission to the UPR on Malta, p. 5.
- ¹²⁰ A/HRC/13/30/Add.2, para. 79(k).
- ¹²¹ CRC/C/MLT/CO/2, paras. 63(b)-64(c).
- ¹²² UNHCR submission to the UPR on Malta, p. 8.
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