



Human Rights Council
Working Group on the Universal Periodic Review
Forty-fifth session
22 January–2 February 2024

Malta

Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the outcome of the previous review.¹ It is a compilation of information contained in relevant United Nations documents, presented in a summarized manner owing to word-limit constraints.

II. Scope of international obligations and cooperation with human rights mechanisms

2. The Committee on the Rights of the Child recommended that Malta ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and that it consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.² The Working Group on discrimination against women and girls also recommended acceding to that Convention and to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.³

3. The Committee on the Rights of Persons with Disabilities expressed concern about the interpretative declaration that Malta had made on article 25 (a) of the Convention on the Rights of Persons with Disabilities, regarding abortion. It urged Malta to withdraw the declaration.⁴ The Working Group on discrimination against women and girls recommended that Malta withdraw its reservations to the Convention on the Elimination of All Forms of Discrimination against Women.⁵

4. The Committee on the Rights of Persons with Disabilities was concerned that Malta maintained its reservation to article 29 (a) (i) and (iii) of the Convention. It recommended that Malta withdraw that reservation; take measures to empower persons with disabilities to participate in political and public life; ensure that all electoral procedures were accessible to them; and promote their participation in political and public life and decision-making.⁶

5. Malta contributed financially to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2020, 2021 and 2022.⁷



III. National human rights framework

1. Constitutional and legislative framework

6. The Committee on the Rights of Persons with Disabilities noted with concern that the Constitution stated only that “disabled persons and persons incapable of work are entitled to education and vocational training”. It recommended that Malta amend the Constitution to bring it into conformity with article 27 of the Convention on the Rights of Persons with Disabilities.⁸

7. The United Nations Educational, Scientific and Cultural Organization (UNESCO) recommended that Malta consider enshrining the right to education and the right to seek information in the Constitution.⁹

2. Institutional infrastructure and policy measures

8. The Committee on the Rights of the Child reiterated its recommendation that Malta strengthen the independence of the Office of the Commissioner for Children by ensuring that it was provided with adequate resources and the immunities required for it to effectively carry out its function.¹⁰

9. The Committee on the Rights of Persons with Disabilities was concerned about the lack of independence and transparency of the Commission for the Rights of Persons with Disability, inasmuch as the appointment of its members under the Equal Opportunities (Persons with Disability) Act was undertaken by the executive branch. It recommended that Malta: repeal and/or amend that Act to ensure sufficient representation and engagement of representative organizations of persons with disabilities, accountability and transparency; and review the bill on human rights and the equality commission to ensure that the planned national human rights institute adhered to the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).¹¹ The Working Group on discrimination against women and girls recommended establishing a fully-fledged, independent national human rights institution that was in compliance with the Paris Principles.¹²

IV. Promotion and protection of human rights

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

1. Equality and non-discrimination

10. The Committee on the Rights of the Child recommended that Malta adopt a comprehensive strategy addressing all forms of discrimination, strengthen its efforts to combat racism, racial discrimination, xenophobia and related intolerance, which negatively affected children, especially asylum-seeking, refugee and migrant children, and take affirmative action for children.¹³

11. The Committee on the Rights of Persons with Disabilities expressed concern that persons with disabilities were deprived of their legal capacity and subject to discrimination, pursuant to legislative provisions on substitute decision-making regimes, and that persons with psychosocial and/or intellectual disabilities were placed under interdiction and incapacitation orders. It recommended that Malta: amend all discriminatory legal provisions to abolish such regimes; restore the legal capacity of all persons with disabilities and review its guardianship system and all remaining interdiction and incapacitation orders; introduce supported decision-making mechanisms and adopt a personal autonomy bill; and improve related data collection and disaggregation.¹⁴

2. Right to life, liberty and security of person, and freedom from torture

12. The same Committee was concerned that some national legislation was not aligned with the Convention on the Rights of Persons with Disabilities, particularly the Mental Health

Act, which allowed for non-consensual psychiatric treatment and hospitalization. It recommended revising the legal provisions that legitimized forced internment and non-consensual psychiatric treatment, and fully harmonizing them with the Convention.¹⁵

13. The same Committee noted with concern provisions in the Mental Health Act that allowed for the use of restraints and seclusion of persons with psychosocial or intellectual disabilities, which might amount to torture. It also noted that organizations of persons with disabilities were not systematically involved in the two national preventive mechanisms to implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It recommended that Malta repeal legislation allowing for the use of restraint and seclusion in the case of “mental disorder”, and ensure the involvement of those organizations in implementing the Optional Protocol.¹⁶

14. The same Committee noted with concern that persons with disabilities were subject to violence and abuse, that related laws lacked a disability perspective and monitoring mechanisms, and that shelters for persons exposed to violence were not fully accessible. It recommended that Malta: review the Gender-based Violence and Domestic Violence Act to ensure that it had a disability perspective; enact other relevant legislation; ensure that perpetrators of abuse were prosecuted and given penalties commensurate with the gravity of their acts; and ensure the availability of accessible support services for the psychological and physical recovery of persons with disabilities subjected to violence.¹⁷

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

15. While welcoming the amendment to the Criminal Code that increased the age of criminal responsibility of children to 14 years of age, the Committee on the Rights of the Child expressed concern that: children co-accused with persons older than 16 years of age were treated as adults; children between 16 and 18 years of age were subject to criminal law and criminal courts for adults; there were cases of children held with adults in detention facilities; children who had allegedly hijacked a vessel that had rescued them in March 2019 were not being charged before the Juvenile Court; and provisions providing alternatives to deprivation of liberty were not being fully implemented. The Committee urged Malta to bring its juvenile justice system fully into line with the Convention on the Rights of the Child and to: review its legislation to ensure that all children aged below 18 years were treated as children and were referred to the juvenile justice system; further limit the use and length of pretrial detention of children; ensure that detention was used as a measure of last resort and for the shortest possible period of time; where detention was unavoidable, ensure that children were not detained with adults; and promote non-judicial measures and non-custodial sentences.¹⁸

16. The Committee on the Rights of Persons with Disabilities recommended that Malta: guarantee the provision of procedural and gender- and age-appropriate accommodations and establish safeguards to enable the participation of persons with disabilities in all legal proceedings on an equal basis with others; provide free or affordable legal aid for persons with disabilities; increase its efforts to empower persons with disabilities to participate in the justice system; and provide related mandatory capacity-building programmes for members of the judiciary and the legal profession.¹⁹

4. Fundamental freedoms and the right to participate in public and political life

17. The Committee on the Rights of the Child expressed deep concern about instances in which search and rescue operations for refugees and migrants conducted by civil society organizations had been criminalized. It urged Malta to guarantee the rights and freedom of action of civil society and to ensure that rescuing migrants was not considered a crime.²⁰

18. Two Special Rapporteurs sent a communication to Malta in May 2019 concerning allegations of acts of intimidation against a human rights defender by Maltese officials during a United Nations event in December 2018, following her statement on the public inquiry into the assassination of the journalist Daphne Caruana Galizia.²¹ In its response, the Government expressed regret for the incident and noted that the official concerned had written to the human rights defender to apologize. It rebutted any allegation that human rights defenders and civil society organizations were subjected to acts of intimidation in Malta. It stated that

it continued to condemn the murder of Ms. Caruana Galizia and had taken several measures to strengthen good governance and safeguard the right to freedom of expression.²²

19. UNESCO recommended that Malta reform its Freedom of Information Act to ensure the right to access information of public interest held by public authorities and that it assess the appointment system of the Broadcasting Authority to ensure its independence.²³

5. Right to privacy

20. The Special Rapporteur on the right to privacy sent a communication to Malta in December 2019 asserting that its laws needed to be reformed to introduce greater accountability and better safeguards to protect democracy, privacy and the rule of law. He made recommendations designed to tighten safeguards and avoid the existing potential for conflicts of interest, including introducing the position of independent Security Commissioner, creating a Security Service Oversight Board and elevating the Security Committee to a standing parliamentary committee.²⁴ In April 2021, he sent a follow-up communication expressing regret that he had not received a substantive response.²⁵

21. Also in April 2021, the same Special Rapporteur sent a communication to Malta concerning allegations that the Superintendent of Public Health had used powers under the Public Health Act that risked leading to infringements of fundamental rights, particularly the right to privacy. The Superintendent had reportedly delegated authority to the police and other officers to enter houses and conduct inspections on the basis of a report or reasonable suspicion that there were a number of people gathering together, in breach of regulations relating to the coronavirus disease (COVID-19) pandemic. The Special Rapporteur asserted that, if adequate safeguards and remedies were not already provided for in the national legal system, he urged the Superintendent to immediately retract her instructions until such safeguards and remedies had been provided for by law.²⁶ In response, the Government stated that, given its size and dense population, the spread of infectious disease posed a higher risk than in any other State; that the legal regime could not be considered comparatively; and that the law needed to safeguard public health effectively. To that end, the Superintendent of Public Health had been invested with certain powers. Malta had had to balance the right to privacy with its obligation to prevent the spread of COVID-19.²⁷

6. Right to marriage and family life

22. The Committee on the Rights of Persons with Disabilities was concerned about discriminatory laws relating to the right to marry and found a family. It recommended that Malta amend or repeal all legislation that did not respect and protect the right of persons with disabilities to marry and found a family, particularly the Marriage Act.²⁸

7. Prohibition of all forms of slavery, including trafficking in persons

23. The Committee on the Rights of the Child noted that children in the most marginalized situations, including asylum-seeking, refugee and migrant children, were at particular risk of being trafficked for the purposes of sexual or economic exploitation. It recommended that Malta: integrate a comprehensive child rights perspective into the next action plan on combating trafficking of children, with particular focus on children in the most marginalized situations; review its victim referral mechanism and standard operating procedures and establish mechanisms to identify and protect child victims of trafficking and sexual exploitation; strengthen the capacity of police officers, border guards and social workers to identify and protect child victims of trafficking; and promptly prosecute child trafficking suspects, duly sanction perpetrators and ensure redress and rehabilitation for child victims.²⁹

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

24. The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (ILO) recalled that it had previously observed that section 51 of the Employment and Industrial Relations Act, 2002, provided that a trade union or an employers' association and any member, officer or official thereof could not perform any act in furtherance of any of the purposes for which it had been formed unless it had first been registered, and that the penalty for contravention of that provision was a fine. The

Committee recalled that the exercise of legitimate trade union activities should not be dependent upon registration or subject to penalties. It reiterated its request for Malta to repeal section 51 of the Act.³⁰

25. The Committee on the Rights of Persons with Disabilities was concerned about the low level of employment of persons with disabilities, despite the quota system provided for in the Persons with Disability (Employment) Act and other policy measures, and about the high number of employers who did not employ persons with disabilities. It was also concerned that the quota system was applicable only to employers employing 20 or more employees, and that Malta used medicalized criteria to assess the suitability of persons with disabilities to work, in violation of the Convention on the Rights of Persons with Disabilities. The Committee recommended that Malta: adopt further enforcement mechanisms and incentives to ensure implementation of the quota system and other measures to support persons with disabilities to work in the open labour market; review the quota system to make it applicable to enterprises with fewer than 20 employees; replace any assessment of suitability to work with one that considered the needs for reasonable accommodation at work for persons with disabilities; and step up efforts to raise awareness among employers about the rights of persons with disabilities to work in the open labour market.³¹

9. Right to health

26. The Working Group on discrimination against women and children noted that, in June 2023, the parliament had passed a bill that amended the Criminal Code, decriminalizing abortion only when the woman's life was at immediate risk.³² The Committee on the Rights of the Child recommended that Malta develop a sexual and reproductive health policy for adolescents and ensure that sexual and reproductive health education was part of the mandatory school curriculum, that adequate related health services were available for adolescents and that adolescent girls had access to safe abortion and post-abortion services.³³

27. The same Committee recommended that Malta continue to increase the availability and accessibility of child and adolescent mental health services, in particular for asylum-seeking, refugee and migrant children; allocate adequate resources to such services; and ensure that children diagnosed with attention deficit hyperactivity disorder were thoroughly examined, that prescribing drugs was used as a measure of last resort and only after assessing the best interests of the individual child, and that children and parents were informed about the possible side effects and non-medical alternatives.³⁴

28. While welcoming the adoption of the Drug Dependence (Treatment not Imprisonment) Act and the National Alcohol Policy (2018–2023), the same Committee recommended that Malta continue to address alcohol, drug and tobacco use among adolescents, including by providing children with accurate information and life skills education on preventing substance abuse, and develop youth-friendly drug dependence services.³⁵

10. Right to education

29. The Committee on the Rights of the Child expressed concern about children in marginalized situations continuing to face barriers in their access to quality education, and about bullying and cyberbullying in the school environment and beyond. It recommended that Malta: take measures to improve the accessibility and the quality of education, including for asylum-seeking, refugee and migrant children and children with disabilities, and implement a human rights-based approach to the education system; allocate adequate resources to the Framework for the Education Strategy (2014–2024); implement the Alternative Learning Programme, and promote quality vocational training; strengthen measures to combat bullying and raise awareness of its harmful effects, including by implementing the Safe Schools Programme and allocating resources to the Child Safety Service and Anti-Bullying Unit; and revise the curricula and the educational methodology to emphasize the value of embracing diversity.³⁶

30. Noting the absence of relevant legal provisions, UNESCO recommended that Malta introduce at least a year of free and compulsory pre-primary education, and explicitly prohibit the use of corporal punishment in educational institutions.³⁷

31. The Committee on the Rights of Persons with Disabilities was concerned that: inclusive education was not fully applied in Malta; the number of learning support educators was insufficient; there were reports of children being denied access to educational institutions on the basis of disability and reports of a lack of accessible mechanisms to obtain redress when such discrimination occurred; and many students with disabilities undertook training at centres located a considerable distance from their homes. It recommended that Malta: ensure the implementation of its laws on education and accelerate adoption of the bill on the Convention on the Rights of Persons with Disabilities; ensure that students with disabilities were provided with reasonable accommodation at all education levels, and allocate the necessary resources to guarantee reasonable accommodation according to individual requirements; ensure accessible mechanisms for accountability and redress in cases of discrimination against students on the basis of their disability; review the curriculum of students with disabilities to ensure it allowed them to learn the skills required to access the job market on an equal basis with others; and conduct research on compliance with accessibility standards.³⁸

11. Development, the environment, and business and human rights

32. The Committee on the Rights of the Child was concerned about the harmful effects of the high level of air pollution in Malta on the climate and on children's health. It recommended that Malta ensure the effective implementation of its regulatory framework and expedite the implementation of plans to reduce air pollution, including the National Air Quality Plan. It also recommended that Malta place the rights of children at the centre of national and international climate change adaptation and mitigation strategies.³⁹

33. The same Committee was also concerned at the lack of information on measures Malta had taken to implement its recommendations on children's rights and the business sector, especially to combat sexual exploitation of children in the travel and tourism context. It recommended that Malta: adapt its legislative framework to ensure that business enterprises and their subsidiaries operating in or managed from Malta did not negatively affect children's rights and to explicitly prevent and aim to eliminate child sexual exploitation; establish monitoring mechanisms for the investigation and redress of such abuses; undertake awareness-raising programmes with the tourism industry and the public; and strengthen its international cooperation against sexual exploitation of children in the travel and tourism context.⁴⁰

B. Rights of specific persons or groups

1. Women

34. The Working Group on discrimination against women and girls noted that, while Malta had made significant strides in several aspects of gender equality, especially women's economic participation, it still faced considerable challenges. Those shortcomings encompassed deep-rooted gender stereotypes, the persistent underrepresentation of women in leadership positions, the need for improved work-life balance, the prevalence of violence against women and the existence of a gender pay and pension gap. Despite its comprehensive legal, policy and institutional framework for the protection and promotion of women's and girls' human rights, Malta lagged in implementation.⁴¹ While welcoming developments such as the incorporation into domestic law of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the Working Group encouraged Malta to continue implementing temporary special measures to increase women's representation at the highest levels of public life, to strengthen approaches where gender equality was prioritized as a core value of educational institutions, and to provide compulsory, regular, gender-responsive training based on international and regional human rights standards and jurisprudence to all actors in the prevention and protection chain. It stated that the Government had an important role to play in challenging cultural beliefs and practices that promoted discrimination based on gender.⁴²

35. The ILO Committee of Experts noted that the employment rate of women remained substantially lower than that of men, that women were still concentrated in low-paid jobs and

underrepresented in decision-making positions, and that the average salary of women employed in the same economic activity as men was systematically substantially lower than that of men. The Committee urged Malta to strengthen its efforts to raise public awareness, make assessments and enforce the application of the principle of equal remuneration for men and women for work of equal value.⁴³

36. The Committee on the Rights of the Child welcomed the amendment to the Criminal Code that criminalized female genital mutilation, forced sterilization and forced marriage, but remained concerned that child marriage and female genital mutilation were prevalent among migrant communities and remained underreported. It urged Malta to strengthen its awareness-raising programmes on the harmful effects of child marriage and female genital mutilation on child health; provide training for civil servants on the identification and referral of potential victims; and strengthen protection and care programmes for victims.⁴⁴

2. Children

37. The same Committee was concerned about cases of sexual abuse of children committed within their family and/or by persons in their circle of trust, including by religious personnel of the Catholic Church, and about the insufficient data on and awareness of sexual abuse and exploitation of children in Malta. It recommended that Malta: conduct awareness-raising activities on child sexual abuse in the home and online; establish child-friendly procedures to ensure reporting of cases; protect children from further abuse by ensuring that persons convicted were prevented from having contact with children; ensure the effective investigation of all cases, the criminal prosecution of alleged perpetrators, and the adequate criminal punishment of those found guilty; establish an independent commission of inquiry to examine cases of sexual abuse reportedly committed by religious personnel of the Catholic Church and ensure the criminal prosecution of alleged perpetrators and adequate criminal punishment of those found guilty; and collect relevant data.⁴⁵

38. The same Committee recommended that Malta: expedite the entry into force of the Minor Protection (Alternative Care) Bill and enforce its child protection measures; formulate a comprehensive strategy for preventing and combating violence against or abuse or neglect of children in all settings; establish a national database on all cases of violence against or abuse or neglect of children; fully operationalize the Children's House concept; ensure the availability of services for the rehabilitation and reintegration of child victims and appropriate compensation; and allocate adequate resources to the Office of the Director Responsible for Child Protection.⁴⁶

39. While welcoming the Criminal Code amendment explicitly prohibiting all forms of corporal punishment, the same Committee recommended that Malta: ensure that the prohibition was enforced in all settings; strengthen its efforts to raise the awareness of parents, professionals working with children and the public about the harm caused by corporal punishment; and promote non-violent forms of child-rearing.⁴⁷

40. The same Committee recommended that Malta amend its Marriage Act and the Civil Unions Act to remove all exceptions that allowed marriage and entering into a civil union under the age of 18 years.⁴⁸ The Working Group on discrimination against women and girls recommended raising the minimum legal age of marriage to 18 years.⁴⁹

41. The Committee on the Rights of the Child expressed concern about the number of children still placed in "residential homes" and that some such centres accommodated children from a wide age range together. It recommended that Malta review its policies on alternative care for children deprived of their family environment in order to reduce their placement in residential care; ensure that children were removed from the family only as a last resort and only after assessment of the best interests of the child, and that younger children were not placed with older children; support family-based care and strengthen the foster care system; and develop a framework for the reunification of children with their families.⁵⁰

3. Persons with disabilities

42. The Committee on the Rights of Persons with Disabilities noted with concern that: the entities that certified disabilities used assessments based on a medical approach; the articles

of the Convention on the Rights of Persons with Disabilities were not all enforceable under national legislation; the National Disability Strategy had not been promulgated; universal design was not explicitly defined in legislation; and representative organizations of persons with disabilities were insufficiently included in related debates and lacked funding. It recommended that Malta: revise all laws, policies and practices to align them with the Convention; ensure that the disability assessment method fully incorporated the human rights model of disability; adopt legislative measures to ensure that the articles of the Convention were judiciable; accelerate promulgation of the Strategy; mainstream universal design in all relevant legislation, policies and regulations; and ensure the inclusion of and funding for representative organizations of persons with disabilities.⁵¹

43. The same Committee recommended that Malta: amend the Equal Opportunity (Persons with Disability) Act to protect persons with disabilities against intersectional discrimination; ensure the provision of adequate resources to the Commission for the Rights of Persons with Disability; and provide persons with disabilities with accessible information on complaint and remedy procedures.⁵²

44. The same Committee was concerned about the institutionalization, under the Civil Code, of some children with disabilities whose families had been identified as being “unable” to take care of their children. It recommended reintegrating those children into communities.⁵³

45. Noting the lack of accessibility of numerous public buildings, infrastructure, transport services and information and communications technology for persons with disabilities, the same Committee recommended that Malta: review the relevant monitoring and enforcement mechanisms; ensure adherence to transport agreements and standards; ensure that information and communications were accessible to persons with disabilities; and empower persons with disabilities to participate in monitoring the implementation of accessibility standards.⁵⁴

46. The same Committee was concerned that Malta continued to institutionalize persons with disabilities and that there was limited financial support available to persons with disabilities to employ personal assistance that would allow them to live independently. It recommended that Malta: ensure that residential institutions were closed and that appropriate community-based services were strengthened; adopt legal and other measures to make article 19 of the Convention on the Rights of Persons with Disabilities justiciable; and ensure that financial and other measures were in place to allow persons with disabilities to be provided with personal assistance.⁵⁵

47. The Committee on the Rights of the Child urged Malta to adopt a human rights model of disability and to: develop an efficient system for disability assessment; adopt national minimum standards on early childhood care and education and on staff qualifications suited to the rights of children with disabilities; develop a deinstitutionalization strategy; strengthen the implementation of the Policy on Inclusive Education in Schools; train specialized professionals to provide individual support to children with learning difficulties; and undertake awareness-raising to combat the stigmatization of children with disabilities.⁵⁶

4. Lesbian, gay, bisexual, transgender and intersex persons

48. The same Committee welcomed the amendments made to the Equality for Men and Women Act and to the Criminal Code to include sexual orientation, gender identity and religion as prohibited grounds of discrimination.⁵⁷

49. While also welcoming the adoption of the Gender Identity, Gender Expression and Sex Characteristics Act, which provided for the recognition of gender identity on the basis of self-identification, the same Committee was concerned that there were cases of intersex children who had allegedly been subjected to medically unnecessary surgical and other procedures without their consent, and at the lack of redress and compensation in such cases. It recommended that Malta ensure that intersex children were not subjected to unnecessary procedures, guarantee their bodily integrity, autonomy and self-determination, and provide families of intersex children with support; and investigate incidents of medical treatment of intersex children without informed consent and provide redress to victims.⁵⁸

5. Migrants, refugees and asylum-seekers

50. The same Committee expressed serious concern that: the delays in authorizing the disembarkation in the nearest place of safety of rescued migrants and refugees left them stranded at sea; the age assessment procedure was not multidisciplinary, and there were shortcomings in applying the principles of the best interests of the child; the guardianship system for unaccompanied children did not have adequate resources, and was not independent; the regulations under the Refugees Act still provided for placing asylum-seeking and refugee children in detention as a last resort and for placing unaccompanied children aged 16 years or over in adult accommodation centres; and the temporary humanitarian protection status for unaccompanied children was not regulated by law. The Committee urged Malta to: review relevant laws, regulations, policies and practices to ensure that they did not increase the vulnerabilities of children; implement a multidisciplinary protocol on age determination; ensure that unaccompanied children were assigned a competent guardian who was free from conflict of interest and that best interest determination procedures were carried out at all stages of the asylum procedure; ensure full respect for the principle of non-refoulement; ensure that child protection authorities participated in determining the best interests of the child; prohibit the immigration detention of children in law; adopt sustainable resettlement options for refugees; and transform the humanitarian protection policy for unaccompanied children into law.⁵⁹

51. The Working Group on discrimination against women and children recommended that Malta consider alternatives to immigration detention and, in any case, determine detention on the basis of a judicial decision.⁶⁰

52. Several special procedure mandate holders sent Malta a communication in July 2020 concerning the Government's decision to close the country's ports to prevent the spread of COVID-19. They had received information indicating that, in April 2020, a boat in distress had been left at sea for days despite sending multiple distress calls, resulting in five deaths and seven missing persons, with the survivors returned to the country of departure. The mandate holders stressed that denial of access to territory without safeguards to protect against refoulement could not be justified on the grounds of any health risk.⁶¹ In its response, the Government stated that the allegations fell outside the responsibility of the Maltese authorities, that the decision had not been discriminatory as the ports had been closed to all vessels, and that in May 2020, a magisterial inquiry into the incident had concluded that the members of the Armed Forces had not committed attempted murder and that neither the Head of the Armed Forces nor the Prime Minister was responsible for voluntary homicide.⁶²

53. In another communication on the above incident sent in December 2020, three Special Rapporteurs noted that the vessel had reportedly drifted into the Maltese search and rescue zone, that 7 passengers had drowned and that 51 survivors had allegedly later been transferred to a detention centre in the country of departure. The Special Rapporteurs expressed grave concern about the alleged pushback of migrants in private vessels under the coordination of the Maltese authorities, that the deployment of private vessels had been used to circumvent international human rights obligations, and that the forced returns by private vessels might amount to collective expulsions.⁶³ The Government responded that there had been no case of collective expulsion or pushback, given that the irregular migrants had never been within the jurisdiction of Malta, that the rescue had been carried out in international waters by a vessel flying the flag of another State, and that Malta had coordinated the rescue operation in compliance with its international law obligations.⁶⁴

54. OHCHR noted that it had received reports of significant delays and failures in providing assistance to migrants on board boats in distress in the central Mediterranean Sea either owing to uncertainty over the responsible coordinating Maritime Rescue Coordination Centre authority or the safe port where migrants would be disembarked. Maltese authorities had conveyed to OHCHR that, unless there was verification that persons were in imminent danger of losing their lives and that those persons required immediate assistance, the authorities did not consider migrants to be in "distress at sea" for the purposes of their legal obligation to render assistance under international maritime law. OHCHR also noted allegations of dangerous rescue and interception practices carried out by Maltese search and rescue authorities and efforts to send migrants back to the country of departure involving private or commercial vessels. It asserted that, while the Maltese search and rescue zone was

part of the high seas and, as such, Malta did not exercise territorial jurisdiction or sovereignty over it, Malta was responsible for coordinating all search and rescue interventions within its search and rescue zone.⁶⁵

55. OHCHR also reported that, during the COVID-19 pandemic, Malta had increasingly frequently resorted to quarantining migrants offshore on ships before allowing them to disembark, which the authorities had indicated had been to protect the health of all persons. Concerns had been raised over the living conditions on board the vessels, the length of mandatory quarantine, the lack of remedies against that measure and its indefinite duration not being compliant with the right to liberty of those on board. OHCHR reported that many migrants had shared information about their prolonged deprivation of liberty in poor conditions in immigration detention facilities in Malta.⁶⁶

6. Stateless persons

56. The Committee on the Rights of the Child was seriously concerned at the cases of children, including asylum-seeking, refugee and migrant children, who were not provided with birth registration and were at risk of statelessness.⁶⁷ The Working Group on discrimination against women and children noted that children of third country nationals who did not enjoy regular status, such as rejected asylum-seekers, experienced or were at risk of experiencing statelessness.⁶⁸ The Committee on the Rights of the Child strongly urged Malta to: strengthen efforts to ensure the birth registration of children whose parents did not have personal documents; strengthen efforts to establish the nationality of children with undetermined citizenship, under the Civil Code and the Maltese Citizenship Act; establish an effective statelessness determination procedure; and seek technical assistance from the Office of the United Nations High Commissioner for Refugees and the United Nations Children's Fund, among others.⁶⁹

Notes

- 1 [A/HRC/40/17](#), [A/HRC/40/17/Add.1](#) and [A/HRC/40/2](#).
- 2 [CRC/C/MLT/CO/3-6](#), paras. 47 and 48.
- 3 See www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf, p. 1.
- 4 [CRPD/C/MLT/CO/1](#), para. 37 and 38.
- 5 See www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf, p. 2.
- 6 [CRPD/C/MLT/CO/1](#), paras. 41 and 42.
- 7 See www.ohchr.org/sites/default/files/Documents/AboutUs/FundingBudget/VoluntaryContributions2020.pdf; www.ohchr.org/sites/default/files/2022-03/VoluntaryContributions-2021.pdf; and www.ohchr.org/sites/default/files/2022-02/VoluntaryContributions2022.pdf.
- 8 [CRPD/C/MLT/CO/1](#), paras. 39 (a) and 40 (a).
- 9 UNESCO submission for the universal periodic review of Malta, paras. 20 (i) and 21.
- 10 [CRC/C/MLT/CO/3-6](#), para. 13.
- 11 [CRPD/C/MLT/CO/1](#), paras. 49 and 50.
- 12 See www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf, p. 2.
- 13 [CRC/C/MLT/CO/3-6](#), para. 19.
- 14 [CRPD/C/MLT/CO/1](#), paras. 19 and 20.
- 15 *Ibid.*, paras. 23 and 24.
- 16 *Ibid.*, paras. 25 and 26.
- 17 *Ibid.*, paras. 27 and 28.
- 18 [CRC/C/MLT/CO/3-6](#), paras. 44 and 45.
- 19 [CRPD/C/MLT/CO/1](#), para. 22 (a)–(d).
- 20 [CRC/C/MLT/CO/3-6](#), para. 15.
- 21 See communication MLT 1/2019, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24558>.
- 22 See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34802>.
- 23 UNESCO submission, paras. 22 and 24.
- 24 See communication MLT 2/2019, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25001>.

- ²⁵ See communication MLT 2/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26366>.
- ²⁶ See communication MLT 1/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26357>.
- ²⁷ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36337>.
- ²⁸ [CRPD/C/MLT/CO/1](#), paras. 33 and 34.
- ²⁹ [CRC/C/MLT/CO/3-6](#), para. 43.
- ³⁰ See www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4118164,103111.
- ³¹ [CRPD/C/MLT/CO/1](#), paras. 39 (b)–(d) and 40 (b)–(d).
- ³² See www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf, p. 6.
- ³³ [CRC/C/MLT/CO/3-6](#), para. 33.
- ³⁴ *Ibid.*, para. 32.
- ³⁵ *Ibid.*, para. 34.
- ³⁶ *Ibid.*, paras. 38 and 39.
- ³⁷ UNESCO submission, paras. 5, 7 and 20 (ii) and (iii).
- ³⁸ [CRPD/C/MLT/CO/1](#), paras. 35 (a)–(d) and 36.
- ³⁹ [CRC/C/MLT/CO/3-6](#), para. 37.
- ⁴⁰ *Ibid.*, paras. 16 and 17.
- ⁴¹ See www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf, pp. 1 and 2.
- ⁴² *Ibid.*, pp. 3, 5, 7 and 8.
- ⁴³ See www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3999137,103111.
- ⁴⁴ [CRC/C/MLT/CO/3-6](#), paras. 28 (a) and 29 (a)– (c).
- ⁴⁵ *Ibid.*, para. 27.
- ⁴⁶ *Ibid.*, para. 26.
- ⁴⁷ *Ibid.*, para. 25.
- ⁴⁸ *Ibid.*, para. 18.
- ⁴⁹ See www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf, p. 2.
- ⁵⁰ [CRC/C/MLT/CO/3-6](#), para. 30.
- ⁵¹ [CRPD/C/MLT/CO/1](#), paras. 5 and 6.
- ⁵² *Ibid.*, para. 8.
- ⁵³ [CRPD/C/MLT/CO/1](#), paras. 11 and 12 (a).
- ⁵⁴ *Ibid.*, paras. 15 and 16.
- ⁵⁵ *Ibid.*, paras. 29 and 30 (a), (c) and (d).
- ⁵⁶ [CRC/C/MLT/CO/3-6](#), para. 31.
- ⁵⁷ *Ibid.*, para. 19.
- ⁵⁸ *Ibid.*, paras. 28 (b) and 29 (d) and (e).
- ⁵⁹ *Ibid.*, paras. 41 and 42.
- ⁶⁰ See www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf, p. 9.
- ⁶¹ See communication MLT 1/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25394>.
- ⁶² See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35584>.
- ⁶³ See communication MLT 2/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25753>.
- ⁶⁴ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35968>.
- ⁶⁵ See www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf, pp. 10, 11, 16, 21 and 22.
- ⁶⁶ *Ibid.*, pp. 30 and 32.
- ⁶⁷ [CRC/C/MLT/CO/3-6](#), para. 22.
- ⁶⁸ See www.ohchr.org/sites/default/files/documents/issues/women/wg/EoM-Statement-Malta-7July2023.pdf, p. 8.
- ⁶⁹ [CRC/C/MLT/CO/3-6](#), para. 23 (a)–(c) and (e).