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

**Malta**

The present report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents. 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), other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review. In the absence of recent information, the latest available reports and documents have been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty and/or to a low level of interaction or cooperation with international human rights mechanisms.

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\* Late submission.

## I. BACKGROUND AND FRAMEWORK

### A. Scope of international obligations<sup>1</sup>

<i>Core universal human rights treaties<sup>2</sup></i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>
ICERD	27 May 1971	Yes (article 4; 6)	Individual complaints (article 14): Yes
ICESCR	13 September 1990		-
ICCPR	13 September 1990	Yes (articles 13, 14 (2), 14 (6), 19, 20, 22)	Inter-State complaints (article 41): Yes
ICCPR-OP 1	13 September 1990		-
ICCPR-OP 2	29 December 1994		-
CEDAW	8 March 1991	Yes (articles 11 (1), 13, 15, 16 (1) (e))	-
CAT	13 September 1990		Inter-State complaints (article 21): Yes Individual complaints (article 22): Yes Inquiry procedure (article 20): Yes
OP-CAT	24 September 2003		-
CRC	30 September 1990		-
OP-CRC-AC	9 May 2002	Binding declaration under art. 3: 17 years and six months <sup>3</sup>	-
<i>Core treaties to which Malta is not a party: OP-ICESCR<sup>4</sup>, OP-CEDAW, OP-CRC-SC (signature only, 2000), ICRMW, CRPD (signature only, 2007), CRPD-OP (signature only, 2007), CED (signature only, 2007).</i>			

<i>Other main relevant international instruments</i>	<i>Ratification, accession or succession</i>
Convention on the Prevention and Punishment of the Crime of Genocide	No
Rome Statute of the International Criminal Court	Yes
Palermo Protocol <sup>5</sup>	Yes
Refugees and stateless persons <sup>6</sup>	Yes, except 1954 and 1961 Conventions
Geneva Conventions of 12 August 1949 and Additional Protocols thereto <sup>7</sup>	Yes, except Additional Protocol III
ILO fundamental conventions <sup>8</sup>	Yes
UNESCO Convention against Discrimination in Education	Yes

1. In 2004, the Committee on the Elimination of Discrimination against Women (CEDAW) urged Malta to ratify OP-CEDAW<sup>9</sup> and ICRMW.<sup>10</sup> While commending the legal reforms undertaken since ratification of the Convention, CEDAW urged the Government to review and expedite withdrawal of the reservations to articles 11, 13, 15 and 16.<sup>11</sup> In 2000, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) recommended ratification of the amendments to article 8 of ICERD.<sup>12</sup> The Committee on Economic Social and Cultural Rights (CESCR), in 2004, encouraged Malta to ratify ILO Conventions Nos. 102, 117, 118 and 122 and the Prevention of Major Industrial Accidents Convention (No. 174).<sup>13</sup>

### B. Constitutional and legislative framework

2. CEDAW, CESCR and CRC regretted that the respective treaties had not been incorporated into domestic law and urged the State to take all necessary action to ensure that they are fully incorporated.<sup>14</sup>

3. CERD welcomed amendments to the Press Act, but expressed concern that article 4 of the Convention was not fully covered by legislation, recommending that Malta take into account all aspects of article 4 in the elaboration of new legislation and review its declaration in relation to this article.<sup>15</sup> It noted with satisfaction the amendment to the Citizenship Act which allows dual citizenship and entitles foreign spouses of Maltese nationals to be registered as nationals, and the law establishing procedures regarding refugees and asylum-seekers.<sup>16</sup>

4. A 2008 report by the Joint United Nations Programme on HIV/AIDS (UNAIDS) noted that individuals are rarely able to challenge the denial of rights set out in ICESCR, such as the right to health, in national courts. Separate national legislation is required in Malta to enforce the Covenant, but has not been introduced.<sup>17</sup>

### **C. Institutional and human rights infrastructure**

5. As of 20 February 2008, Malta does not have a national human rights institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).<sup>18</sup> CESCR encouraged Malta to establish an independent national human rights institution in accordance with the Paris Principles, mandated to protect and promote all human rights, including economic, social and cultural rights.<sup>19</sup>

6. CERD encouraged increasing efforts to disseminate information about the Ombudsman and about the procedure for launching complaints concerning racial discrimination.<sup>20</sup>

7. CRC was concerned about the limitations of the Social and Family Welfare Department in performing its mandate effectively. It recommended that Malta continue to strengthen coordination of the implementation of the Convention, and take effective measures to guarantee broader representation of all actors involved.<sup>21</sup> It also encouraged establishment of an independent mechanism to strengthen monitoring of the implementation of the Convention, and that the mechanism be easily accessible for children, deal with complaints in a child-friendly manner and provide effective remedies. It further suggested awareness campaigns to facilitate the effective use by children of the mechanism.<sup>22</sup>

8. CEDAW, while appreciating the work by the national machinery for gender equality, sought detailed information on the results of this work, including the machinery's role in mainstreaming gender perspectives into laws, programmes and policies of individual ministries, departments and public entities; on the results of the Strategic Policy Direction 2004-2006; and on the impact of the work of the National Commission for the Promotion of Equality for Men and Women on the non-discrimination against women.<sup>23</sup> CESCR recommended providing adequate support to the National Commission.<sup>24</sup>

9. CERD expressed concern that the Employment Commission of Malta is empowered to consider only allegations of discrimination based on political opinion and recommended that the State consider expanding its scope of competence to cover all aspects of racial discrimination.<sup>25</sup>

## II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### A. Cooperation with human rights mechanisms

#### 1. Cooperation with treaty bodies

<i>Treaty body<sup>26</sup></i>	<i>Latest report submitted and considered</i>	<i>Latest concluding observations</i>	<i>Follow-up response</i>	<i>Reporting status</i>
CERD	January 1999	March 2000	-	Fifteenth to eighteenth reports overdue from 2000 to 2006 respectively
CESCR	February 2003	November 2004	-	Second report due on June 2009
HR Committee	May 1993	November 1993	-	Second report overdue since December 1996
CEDAW	August 2002	July 2004	-	Fourth report overdue since April 2004
CAT	September 1998	November 1999	-	Third and fourth reports overdue since 2000 and 2004
CRC	December 1997	May 2000	-	Second to fourth reports overdue from 1997 to 2007 respectively
OP-CRC- AC	November 2005	September 2006	-	To provide information together with the report to CRC

#### 2. Cooperation with special procedures

<i>Standing invitation issued</i>	Yes
<i>Latest visits or mission reports</i>	Working Group on Arbitrary Detention (19-23 January 2009)
<i>Visits agreed upon in principle</i>	
<i>Visits requested and not yet agreed upon</i>	None
<i>Facilitation/cooperation during missions</i>	n/a
<i>Follow-up to visits</i>	n/a
<i>Responses to letters of allegations and urgent appeals</i>	One communication was sent during the four-year periodicity. The Government replied to it.
<i>Responses to questionnaires on thematic issues<sup>27</sup></i>	Malta responded to 2 of the 13 questionnaires sent by special procedures mandate holders <sup>28</sup> during the period under review, within the deadlines. <sup>29</sup>

#### 3. Cooperation with the Office of the High Commissioner for Human Rights

10. Malta made a financial contribution to the United Nations Voluntary Fund for Victims of Torture in 2008.<sup>30</sup>

### B. Implementation of international human rights obligations

#### 1. Equality and non-discrimination

11. CEDAW and CESCR expressed concern about the persistence of traditional stereotypes in the roles and responsibilities of women and men in family and society which, despite women's generally high level of education, negatively affect full enjoyment of rights by both women and men. They strongly recommended organizing awareness-raising campaigns.<sup>31</sup> CEDAW also recommended that the media be encouraged to project positive images of women and men in

non-traditional activities. It encouraged Malta to assess unpaid work done by women in the family, to recognize such work in national account statistics and in pension entitlements and social benefits.<sup>32</sup> CEDAW called on Malta to revisit the regulation requiring the Director of Social Security to determine the head of household, concerned that it may result in unintentional discrimination against women and may contradict civil law that gives parental authority to both parents.<sup>33</sup>

12. In 2008, the ILO Committee of Experts on the Application of Conventions and Recommendations (the ILO Committee of Experts) asked the Government to provide detailed information, including statistics disaggregated by sex, on the results achieved by projects to promote equality in the labour market. It asked how these projects have helped to improve women's participation in private sector employment, including in jobs with career prospects and in posts of responsibility.<sup>34</sup> The Committee recalled in 2008 that pursuant to the Employment and Industrial Relations Act (No. 22), the Minister may adopt regulations to give better effect to the principle of equal remuneration for men and women for work of equal value. The Committee asked whether any special regulations are envisaged or have been adopted to this end.<sup>35</sup>

13. The Committee noted in 2008 the new legislation providing for equality of opportunity and treatment and prohibiting discrimination in employment and occupation on the basis of all the grounds in ILO Convention No. 111, except social origin. The Committee asked for information on concrete measures to ensure and promote, in practice, equality of opportunity and treatment and protection against direct and indirect discrimination in recruitment and training on the grounds of race, colour, religion, national extraction and political opinion.<sup>36</sup>

14. CERD recommended that, although only a few cases of offences of a racial nature are reported, the State investigate them carefully and take preventive steps.<sup>37</sup> It also noted with concern that the Police Code (Malta Police Force Act) provides that officers found to have treated persons in a discriminatory manner in the course of their duties are subjected to disciplinary action only. It recommended that the State take the necessary measures to ensure that criminal charges are brought against police officers for violations of the Convention.<sup>38</sup>

15. CESCR expressed concern, echoing CRC, at the distinction made between "legitimate" and "illegitimate" children in the Civil Code, and the fact that children born out of wedlock do not have the same rights as children born in wedlock. CESCR urged Malta to expedite the planned revision of the Civil Code so as to abolish such terminology and ensure equality in this regard. CRC also expressed concern at alleged reports that expressions with racial connotations have been used by officials to refer to children from immigrant families in an irregular situation, recommending that Malta take effective measures to combat and prevent acts of racial discrimination against children belonging to immigrant families.<sup>39</sup>

16. While noting the National Policy on Special Education for children with disabilities, CRC expressed concern at the considerable social stigma attached to such children, representing a barrier to their social integration. Concern was also expressed about limitations faced by voluntary organizations in addressing, in a comprehensive manner, all the needs of children with disabilities. It recommended that the State implement alternative measures to the institutionalization of children with disabilities; envisage awareness-raising campaigns to eliminate discrimination against them; establish special education programmes and encourage the inclusion and social reintegration of disabled children in the educational system and into society; and establish adequate monitoring of private institutions for children with disabilities.<sup>40</sup>

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

17. CEDAW was concerned that, under the Criminal Code, the crime of rape must be associated with violence and that rape as well as violent assault is considered in the Criminal Code under the title “Of Crimes against the Peace and Honour of Families and against Morals”. CEDAW called upon Malta to define the crimes of rape and violent assault as crimes against the physical and mental integrity of women and as a form of discrimination that seriously inhibits women's ability to enjoy human rights and fundamental freedoms in equality with men.<sup>41</sup>

18. CESCR noted that while corporal punishment is prohibited in schools and other institutions, it is not prohibited by law in the form of “reasonable chastisement” within the family. It encouraged the State to consider such an explicit prohibition within the family.<sup>42</sup>

19. CRC expressed concern at the lack of specific legislation criminalizing the compulsory recruitment of persons under 18 or any other violations of the OP-AC. It noted that the State does not assume extraterritorial jurisdiction over the war crime of conscripting or enlisting children under the age of 15 into the armed forces or using them to participate actively in hostilities. It recommended, inter alia, explicit prohibition by law of the recruitment of children under the age of 15 years into armed forces/groups and their direct participation in hostilities, and of violations of OP-AC regarding recruitment and involvement of children in hostilities.<sup>43</sup>

20. CRC also noted that the Armed Forces Act prohibits recruitment of a person under the age of 17 years and 6 months, “unless consent to the enlistment has been given in writing” by the parents or by any other person in whose care the person offering to enlist may be. It regretted the lack of a minimum age under which it would not be possible to recruit children under any circumstance, and recommended establishing by law such a minimum age, under which recruitment would be prohibited with no exceptions.<sup>44</sup>

21. While noting measures taken to investigate and protect children from abuse, CRC expressed concern at the limited information available to determine the scope of child abuse; at the limited measures for the rehabilitation of victims; and at insufficient social awareness of the harmful consequences of ill-treatment and abuse, including sexual abuse of children. It recommended taking effective measures, including the establishment of multi-disciplinary programmes and rehabilitation measures, to prevent and combat child abuse and ill-treatment of children within the family, at school and in society at large. It suggested, inter alia, that law enforcement should be strengthened with respect to such crimes; that adequate child-friendly procedures and mechanisms should be reinforced to provide children with prompt access to justice and investigative procedures to avoid double victimization; and that perpetrators of such crimes should be brought to justice. Educational programmes should be established to combat traditional attitudes on this issue.<sup>45</sup>

22. While aware that child labour is prohibited by law, CRC remained concerned at reports of under-age employment in family businesses and tourism-related activities during the summer holiday season. It recommended full enforcement of child labour laws and that labour inspectorates be strengthened and penalties imposed in cases of violation.<sup>46</sup> The ILO Committee of Experts noted in 2006 that it seemed there was no national programme of action to eliminate the worst forms of child labour. The Committee asked about measures to design such programmes and about the consultations held thereon with relevant Government institutions and employers' and workers' organizations.<sup>47</sup>

23. The Committee noted in 2007 the concerns of CRC<sup>48</sup> over the insufficient data and awareness of commercial sexual exploitation of children in Malta, recommending a national study on the nature and extent of the problem with a view to designing policies and programmes to prevent and combat it, and for care and rehabilitation. The Committee requested information on measures taken or envisaged to prevent the commercial sexual exploitation of children, and effective measures taken to remove children from such situations, to provide for their rehabilitation and social integration. The Committee noted the Government's information in this regard, inter alia, about a 24-hour helpline and about school visits to increase awareness of all forms of child abuse.<sup>49</sup>

24. CEDAW encouraged the State to provide comprehensive information on the prevalence of trafficking in Malta as a country of transit and destination and, if required by the findings, on the State's strategy for the prevention of trafficking in women and girls, the support and rehabilitation measures for victims, the prosecution and punishment of offenders, and its international, regional and bilateral cooperation with respect to combating trafficking.<sup>50</sup>

### **3. Administration of justice and the rule of law**

25. The Working Group on Arbitrary Detention noted the high rate of detainees on remand and that more than 50 per cent of the prisoners in Malta are pre-trial detainees. It expressed concern about allegations that the rules of release on bail were not applied by courts equally to foreigners and Maltese citizens.<sup>51</sup>

26. The 2007 UNHCR report noted, on the basis of regular visits to detention centres in Malta, the general lack of procedural safeguards in the detention of asylum-seekers. Access to legal counsel is generally limited to visiting non-governmental organizations offering a voluntary service, and there is limited private access to information, friends and relatives. There is no automatic and regular judicial review of detention, and existing procedures under Maltese law are either not effectively accessible or ineffective due to delays and administrative obstacles.<sup>52</sup>

27. The Working Group on Arbitrary Detention,<sup>53</sup> CRC and CESCR expressed concern at the low age of criminal responsibility (nine years). CRC was also concerned by the assumption in Maltese legislation that a child aged between nine and 14 years could act with "mischievous intent"; and at the exclusion of children between 16 and 18 from the juvenile justice system. It recommended raising the minimum age of criminal responsibility; eliminating the assumption that a child aged between 9 and 14 years could act with "mischievous intent"; and ensuring that the juvenile justice system covers all children under the age of 18.<sup>54</sup>

### **4. Freedom of expression, association and peaceful assembly, and right to participate in public and political life**

28. CRC expressed concern about the insufficient measures taken to promote the participation of children in the family, in the community, at schools and other social institutions, and to ensure the effective enjoyment of their fundamental freedoms. It recommended that further measures be taken to promote such participation and enjoyment of freedoms, including the freedoms of opinion, expression, and association.<sup>55</sup>

29. Noting that the proportion of women represented in local councils as of June 2004 was 17.6 per cent, CEDAW was concerned, as was CESCR, that they are significantly underrepresented at the national level in elected and appointed posts, in the judiciary, and in

political decision-making, including the administration and the foreign service.<sup>56</sup> A 2008 United Nations Statistics Division source indicated that the proportion of seats held by women in the national parliament was 9.2 per cent in 2008.<sup>57</sup> CEDAW recommended the utilization of temporary special measures in all areas of public life. It also suggested that the State continue to offer leadership training programmes to women and carry out awareness-raising campaigns on women's participation in decision-making.<sup>58</sup>

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

30. CEDAW and CESCR were concerned that women are severely underrepresented in the labour market, particularly in senior and decision-making positions. They noted with concern the strong occupational segregation, both horizontal and vertical, the concentration of women in part-time jobs, and the persistent wage gap. CEDAW was concerned about lack of information on women working part-time for less than 20 hours, who seem to be less protected, with access to fewer entitlements. It urged the State to ensure de facto equal opportunities in the labour market and to address the wage gap.<sup>59</sup> CESCR was concerned about the difficulties of balancing employment and family responsibilities and urged further measures to enable working parents to reconcile the two responsibilities, including by ensuring access to affordable childcare and flexible parental leave schemes for workers in public and private sectors.<sup>60</sup> CEDAW, noting that a significant number of women drop out of the labour market by age 25, was concerned about the lack of information on women wanting to re-enter the market. It recommended conducting thorough research and designing a comprehensive policy for counselling, training and retraining these women to reintegrate them into the labour market.<sup>61</sup>

31. CESCR noted with concern the trend of rising youth unemployment rates and the rise in long-term unemployment, recommending that the State strengthen measures to tackle these problems.<sup>62</sup>

32. While noting measures to promote the rights of persons with disabilities, CESCR was concerned about the lack of incentives for employers to hire such persons and recommended that the State continue and strengthen efforts to promote their integration into the labour market and to provide data on the impact of those measures.<sup>63</sup>

33. CESCR noted with concern the high number of industrial accidents, recommending that Malta strengthen measures to prevent accidents in the workplace and ensure that the labour inspectorate has adequate resources and powers to enforce and effectively monitor compliance with safety regulations.<sup>64</sup>

34. CESCR encouraged the State to review laws on industrial labour disputes with a view to removing the compulsory arbitration procedure, which it was concerned unduly restricts the right to strike, in conformity with the observations made by the ILO Committee of Experts in 2002.<sup>65</sup> In 2005, the ILO Committee of Experts also noted with concern that the Employment and Industrial Relations Act entitles the Minister to refer an unresolved trade dispute to the Industrial Tribunal at the request of one party and that the Tribunal's decision will be binding. The ILO Committee recalled that it is generally contrary to the principle of voluntary negotiation of collective agreements in ILO Convention No. 98, and thus contrary to the autonomy of the bargaining parties, that binding arbitration be imposed by authorities at the request of one party. The Committee requested the Government to consider amending these provisions to ensure compatibility with the Convention.<sup>66</sup>



35. In 2007, the ILO Committee of Experts noted that it is unclear which workers are excluded from the definition of “worker” in section 2 of the Employment and Industrial Relations Act and are accordingly denied the right to organize. Given that ILO Convention No. 87 guarantees all workers the right to establish and join trade unions, with the possible exception of the police and the armed forces, the Committee requested an indication of measures to ensure that all workers covered by the Convention may organize for the promotion and defence of their interests.<sup>67</sup> The Committee noted also that the Act gives wide discretion to the registrar to cancel registration of an organization. Recalling that the dissolution of trade union organizations constitutes an extreme form of interference and should be accompanied by necessary guarantees through a normal judicial procedure with the effect of a stay of execution, the Committee requested clarification on whether the process of an appeal would result in suspension of the decision to cancel registration.<sup>68</sup> Also in 2007, the Committee asked whether, in practice, the onus is on the worker to prove that a dismissal pursuant to section 36(14) of the Act was for reasons of anti-union discrimination.<sup>69</sup> In 2005, the Committee asked the Government whether any procedures are in place to protect workers' and employers' organizations from acts of interference by one another, as required by ILO Convention No. 98.<sup>70</sup>

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

36. CESCR recommended that the State strengthen education programmes on sexual and reproductive health and support sexual and reproductive health services, expressing concern at the lack thereof.<sup>71</sup> CRC expressed concern at the increasing rate of teenage pregnancy; at insufficient access by teenagers to reproductive health education and counselling services, including outside school; and at the lack of a structured policy on health education.<sup>72</sup> CESCR observed with concern that abortion is illegal in all cases under Maltese law and urged it to review its legislation and consider exceptions to the general prohibition for cases of therapeutic abortion and when the pregnancy is the result of rape or incest.<sup>73</sup>

37. Expressing concern about adolescent mental health, alcohol consumption and a shortage of psychologists, CRC recommended that effective measures be taken to develop adolescent-friendly health policies, strengthen reproductive health education, counselling services and programmes on adolescent mental health, as well as effective educational campaigns to discourage alcohol consumption among children.<sup>74</sup>

38. A 2008 UNAIDS report noted that the Government allocates no money for HIV-related research.<sup>75</sup>

39. CERD noted with concern that there have been claims of racial discrimination in housing, particularly regarding rental accommodation, and recommended that Malta review the situation.<sup>76</sup>

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

40. A 2008 United Nations Statistics Division source indicated that the net enrolment ratio in primary education decreased from 94.7 per cent in 2004 to 91.3 in 2005.<sup>77</sup> The ILO Committee of Experts noted in 2007 that the CRC recommended implementing additional measures to encourage children to stay in school particularly during the period of compulsory education.<sup>78</sup> The Committee requested information on measures taken or envisaged in this regard, thereby preventing children's engagement in the worst forms of child labour.<sup>79</sup>

## 8. Migrants, refugees and asylum-seekers

41. A 2006 UNHCR report noted that there has been an increase in the number of boatloads of illegal immigrants landing on Malta, and stated that it is of grave concern that many lives are lost at sea in these hazardous voyages. UNHCR has assisted Malta in coping with the large number of arrivals of illegal immigrants.<sup>80</sup> The report stated that, in 2006, the number of asylum claims increased by 20 per cent in Malta.<sup>81</sup>

42. The Working Group on Arbitrary Detention, while noting the safeguards against arbitrary detention in Malta, expressed concern about the detention of immigrants in an irregular situation, adding that the detention regime applied to them is not in line with international human rights law.<sup>82</sup>

43. A 2007 UNHCR report noted that Malta's policy on detention of asylum-seekers is at times applied to vulnerable persons, namely children, pregnant and lactating women, elderly persons, persons with disabilities and victims of torture/trauma. The procedure for their fast-track release often suffers from administrative hindrances, resulting in unnecessarily long detention and related negative consequences, a problem also noted by the Working Group on arbitrary detention.<sup>83</sup> Whilst in detention, minors do not generally receive education and are permitted minimal time for leisure activities in the open air. Females, males and minors are accommodated in the same premises, with joint use of showers and toilets.<sup>84</sup> The UNHCR report stated that medical services are not sufficient to meet all the needs, often urgent, of detained asylum-seekers, and that health risks are present. It stated that the Detention Service makes extensive use of inappropriate cells as a means of punishment, and the use of violence and offensive language, including threats is common.<sup>85</sup> The report noted that UNHCR is not aware of any analysis by the Government to explore alternatives to the detention of asylum-seekers.<sup>86</sup>

44. In 2005, the Special Rapporteur on the human rights of migrants transmitted allegations to the Government concerning mandatory detention for foreigners without visas.<sup>87</sup> It was alleged that all such foreigners, including vulnerable persons, such as unaccompanied children and the elderly, are detained, including in camps, military barracks, or tents. There are reports of persons kept in detention for prolonged periods; overcrowding, inadequate sanitary conditions and difficulties in accessing medical care; and that armed forces and police personnel running the facilities have inadequate training. Detainees have complained about severe delays in asylum applications procedures; lack of transparency in the appeals process; failures to keep them informed of their rights and progress in their applications; and inadequate access to legal counsel. The Working Group on Arbitrary Detention also raised concerns about automatic and mandatory detention of all foreigners, and the lack of a legally binding maximum term.<sup>88</sup>

45. The Special Rapporteur referred to reports regarding the violent repression by members of the armed forces of a demonstration by detainees, related to the issues above, on 13 January 2005 at Safi army barracks.<sup>89</sup> Similarly, UNHCR stated in 2005 that it was deeply concerned about the apparent use of excessive force by Maltese soldiers when breaking up the peaceful demonstration by asylum-seekers and irregular immigrants on a football pitch inside Safi. The inmates refused to re-enter the centre at the end of an exercise period. Soldiers, armed with batons and shields charged the protestors, resulting in numerous injuries. The military intervention reportedly led to some 26 asylum-seekers and migrants being hospitalized. While lamenting what appears to have been an unnecessary use of force, UNHCR appreciated the speed with which the Government announced an inquiry into the events.<sup>90</sup>

46. In response to the communication from the Special Rapporteur, the Government stated that the allegation that all persons without a valid visa are placed in mandatory detention was incorrect, and that the reports transmitted referred mainly to boat people arriving in a clandestine manner. The Government also addressed concerns about, inter alia, conditions of detention and asylum procedures. The Special Rapporteur thanked the Government for its prompt and detailed reply.<sup>91</sup>

47. The 2007 UNHCR report stated that the stipulated maximum detention duration of twelve months for asylum-seekers is excessive and unjustifiable and that the great majority of asylum-seekers arriving in Malta do not choose to breach immigration legislation, but are rescued at sea by the Maritime Squadron and brought to Malta, where they are detained for entering in an irregular manner. UNHCR also observed that a very large percentage of such persons are in fact recognized as being in need of international protection.<sup>92</sup> The Working Group on Arbitrary Detention added that those who do not apply for asylum or whose claim is rejected may end up in custody for 18 months under appalling conditions, generally at the closed centres of Safi and Lyster Barracks. It noted that the Immigration Appeals Board, where asylum and detention decisions can be challenged, is not deemed to be very effective and has limited powers.<sup>93</sup>

48. While noting legal provisions to care for unaccompanied minors and that the residential set-up “Dar is Sliem” offers shelter and services to unaccompanied asylum-seekers under 18, CRC was concerned at the practice of automatic detention of all persons entering Malta in an irregular manner. Despite the policy that children should not be detained, the Committee was concerned that - in practice - some children and unaccompanied minors, including from countries affected by armed conflict, are detained pending finalization of the process for their release. It recommended, inter alia, that Malta identify at the earliest possible stage refugee, asylum-seeking and migrant children who may have been involved in armed conflicts; carefully examine their situation, prohibit their detention in any case and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and social reintegration in accordance with CRC OP-AC.<sup>94</sup> CRC recommended enacting legislation on asylum procedures and family reunification of refugees; continuing undertaking effective measures to provide refugee children with access to education, health services and housing; and establishing measures to assist refugee children who are victims of neglect, exploitation or abuses.<sup>95</sup>

49. CERD sought information on the criteria for granting temporary refugee status, specifically regarding European and non-European asylum-seekers. It asked about the implementation of legislation regarding refugees and asylum-seekers and the effect of the withdrawal by Malta of the geographical limitation clause relating to non-European refugees.<sup>96</sup>

### **III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

50. In response to the above-mentioned communication from the Special Rapporteur on the human rights of migrants, the Government stated, inter alia, that Malta was a small country with limited resources located in one of the principle migration routes between Africa and Europe. It stated its readiness to cooperate fully with the Special Rapporteur in this regard.

## IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

### Specific recommendations for follow-up

51. A number of recommendations have been reflected in the relevant sections above.

## V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

52. CRC recommended that the State ensure that training on the OP-CRC-AC is provided to the armed forces. It recommended developing systematic awareness-raising, education and training programmes on the Optional Protocol specifically addressed to all relevant groups working with and for children, particularly professionals working with asylum-seeking, refugee and migrant children entering Malta from countries affected by armed conflict.<sup>97</sup>

### Notes

<sup>1</sup> Unless indicated otherwise, the status of ratifications of instruments listed in the table may be found in *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2006* (ST/LEG/SER.E.25), supplemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://treaties.un.org>.

<sup>2</sup> 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
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 Convention on the Rights of Persons with Disabilities
CED	International Convention for the Protection of All Persons from Enforced Disappearance

<sup>3</sup> Declaration of Malta: “Under the Malta Armed Forces Act (Chapter 220 of the Laws of Malta), enacted in 1970, enlistment in the Armed Forces of Malta shall be made on a voluntary basis and no person under the age of seventeen years and six months may be so enlisted. A person under 18 years may not be enlisted unless consent to the enlistment is given in writing by the father of such person or, if such person is not subject to paternal authority, by the mother or by another person in whose care the person offering to enlist may be.”

<sup>4</sup> Adopted by the General Assembly in its resolution 63/117, in which it recommended that a signing ceremony be organized in 2009. Article 17, para 1 of OP-ICESCR states that “The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant”.

<sup>5</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>6</sup> 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

<sup>7</sup> 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); Convention relative to the Treatment of Prisoners of War (Third Convention); 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](http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html).

<sup>8</sup> 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 Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize 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.

<sup>9</sup> A/59/38(SUPP.), Part two, para. 119.

<sup>10</sup> Ibid., para. 122.

<sup>11</sup> Ibid., paras. 99-100.

<sup>12</sup> CERD/C/304/Add.94, para. 14.

<sup>13</sup> E/C.12/1/Add.101, paras. 34 and 36.

<sup>14</sup> A/59/38(SUPP.), Part two, paras. 97-98, E/C.12/1/Add.101, paras. 10 and 26, CRC/C/15/Add.129, paras. 8 and 9.

<sup>15</sup> CERD/C/304/Add.94, paras. 3 and 6.

<sup>16</sup> Ibid., para. 4.

<sup>17</sup> UNAIDS, *Progress on Implementing the Dublin Declaration on Partnership to Fight HIV/AIDS in Europe and Central Asia*, Geneva, 2008, p. 196, available at: [http://www.euro.who.int/Document/SHA/Dublin\\_Dec\\_Report.pdf](http://www.euro.who.int/Document/SHA/Dublin_Dec_Report.pdf) (accessed on 28 October 2008).

<sup>18</sup> For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/10/55, annex 1.

<sup>19</sup> E/C.12/1/Add.101, para. 28.

<sup>20</sup> CERD/C/304/Add.94, para. 11.

<sup>21</sup> CRC/C/15/Add.129, paras. 10-11.

<sup>22</sup> Ibid., para. 12.

<sup>23</sup> A/59/38(SUPP.), Part two, paras. 103-104.

<sup>24</sup> E/C.12/1/Add.101, para. 29.

<sup>25</sup> CERD/C/304/Add.94, para. 10.

<sup>26</sup> The following abbreviations have been used for this document:

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

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<sup>27</sup> The questionnaires included in this section are those which have been reflected in an official report by a special procedure mandate holder.

<sup>28</sup> See (a) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006; (b) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in 2006; (c) report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons sent in 2006; (d) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005; (e) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous people sent in August 2007; (f) report of the Special Rapporteur on trafficking in persons, especially in women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the demand for commercial sexual exploitation sent in July 2005; (g) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005; (h) report of the Working Group on mercenaries (A/61/341), questionnaire concerning its mandate and activities sent in November 2005; (i) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent on July 2006; (j) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004; (k) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2004/9), questionnaire on the prevention of child sexual exploitation sent in July 2003; (l) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices; (m) report of the Special Rapporteur on the right to education (A/HRC/8/10), questionnaire on the right to education in emergency situations sent in 2007.

<sup>29</sup> A/HRC/4/24, para. 9 and A/HRC/4/31, para. 24.

<sup>30</sup> OHCHR 2008 Report on Activities and Results (forthcoming).

<sup>31</sup> A/59/38(SUPP.), Part two, paras. 105 and 106 and E/C.12/1/Add.101, paras. 11 and 29.

<sup>32</sup> A/59/38(SUPP.), Part two, para. 106.

<sup>33</sup> Ibid., paras. 101-102.

<sup>34</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092008MLT111, para. 3.

<sup>35</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092008MLT100, para. 1.

<sup>36</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092008MLT111, para. 2.

<sup>37</sup> CERD/C/304/Add.94, para. 7.

<sup>38</sup> Ibid., para. 12.

<sup>39</sup> CRC/C/15/Add.129, paras. 23-24, E/C.12/1/Add.101, paras. 20 and 38.

<sup>40</sup> CRC/C/15/Add.129, paras. 37-38.

<sup>41</sup> A/59/38(SUPP.), Part two, paras. 115-116.

<sup>42</sup> E/C.12/1/Add.101, paras. 22 and 40.

<sup>43</sup> CRC/C/OPAC/MLT/CO/1, paras. 6-7.

<sup>44</sup> Ibid., paras. 10-11.

<sup>45</sup> CRC/C/15/Add.129, paras. 33-34.

<sup>46</sup> Ibid., paras. 45-46.

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- <sup>47</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092006MLT182, para. 3.
- <sup>48</sup> CRC/C/15/Add.129, paras. 47-48.
- <sup>49</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092007MLT182, paras. 9-10.
- <sup>50</sup> A/59/38(SUPP.), Part two, paras. 117-118.
- <sup>51</sup> OHCHR press release 26 January 2009.
- <sup>52</sup> United Nations High Commissioner for Refugees, "The detention of refugees and asylum-seekers by reason of their unauthorized entry or presence", July 2007, p. 5, available at <http://www.unhcr.org/refworld/docid/4950f39f2.html> (accessed on 23 December 2008).
- <sup>53</sup> OHCHR press release, annex, 26 January 2009.
- <sup>54</sup> CRC/C/15/Add.129, paras. 49-50, E/C.12/1/Add.101, paras. 21 and 39.
- <sup>55</sup> Ibid., paras. 27-28.
- <sup>56</sup> E/C.12/1/Add.101, para. 11 and A/59/38(SUPP.), Part two, para. 107.
- <sup>57</sup> United Nations Statistics Division coordinated data and analyses, available at: <http://mdgs.un.org/unsd/mdg/Data.aspx> (accessed on 10 August 2008).
- <sup>58</sup> A/59/38(SUPP.), Part two, para. 108.
- <sup>59</sup> Ibid., paras. 109-110, E/C.12/1/Add.101, para. 14.
- <sup>60</sup> E/C.12/1/Add.101, paras. 15 and 33.
- <sup>61</sup> A/59/38(SUPP.), Part two, paras. 111-112.
- <sup>62</sup> E/C.12/1/Add. 101, paras. 12 and 30.
- <sup>63</sup> Ibid., paras. 13 and 31.
- <sup>64</sup> Ibid., paras. 16 and 34.
- <sup>65</sup> Ibid., paras. 17 and 35.
- <sup>66</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092005MLT098, para. 3.
- <sup>67</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092007MLT087, para. 2.
- <sup>68</sup> Ibid., para. 4.
- <sup>69</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092007MLT098, para. 1.
- <sup>70</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092005MLT098, para. 3.
- <sup>71</sup> E/C.12/1/Add.101, paras. 24 and 42.
- <sup>72</sup> CRC/C/15/Add.129, paras. 39-40.
- <sup>73</sup> E/C.12/1/Add.101, paras. 23 and 41.
- <sup>74</sup> CRC/C/15/Add.129, paras. 39-40.
- <sup>75</sup> UNAIDS, *Progress on Implementing the Dublin Declaration on Partnership to Fight HIV/AIDS in Europe and Central Asia*, Geneva, 2008, p. 173, available at: [http://www.euro.who.int/Document/SHA/Dublin\\_Dec\\_Report.pdf](http://www.euro.who.int/Document/SHA/Dublin_Dec_Report.pdf) (accessed on 28 October 2008).
- <sup>76</sup> CERD/C/304/Add.94, para. 9.

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<sup>77</sup> United Nations Statistics Division coordinated data and analyses, available at <http://mdgs.un.org/unsd/mdg/Data.aspx> (accessed on 6 November 2008).

<sup>78</sup> CRC/C/15/Add.129, para. 42.

<sup>79</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, doc. No. (ILOLEX) 092007MLT182, para. 7.

<sup>80</sup> UNHCR, *Global Appeal 2007, Strategies and Programmes*, Geneva, 2006, pp. 77-78, available at <http://www.unhcr.org/static/publ/ga2007/ga2007toc.htm> (accessed on 27 October 2008).

<sup>81</sup> Ibid., p. 278.

<sup>82</sup> OHCHR press release 26 January 2009.

<sup>83</sup> Ibid.

<sup>84</sup> United Nations High Commissioner for Refugees, "The detention of refugees and asylum-seekers by reason of their unauthorized entry or presence", July 2007, p. 5, available at <http://www.unhcr.org/refworld/docid/4950f39f2.html> (accessed on 23 December 2008).

<sup>85</sup> Ibid., p.5.

<sup>86</sup> Ibid., pp. 5-6.

<sup>87</sup> E/CN.4/2006/73/Add.1, paras. 185-187.

<sup>88</sup> OHCHR press release 26 January 2009.

<sup>89</sup> E/CN.4/2006/73/Add.1, paras. 188-189.

<sup>90</sup> See UNHCR website, Malta, "UNHCR deplores excessive force at peaceful demonstration, welcomes prompt government enquiry", available at <http://www.unhcr.org/news/NEWS/41ecf4cb25.html> (accessed on 27 October 2008).

<sup>91</sup> E/CN.4/2006/73/Add.1, paras. 190-198.

<sup>92</sup> United Nations High Commissioner for Refugees, "The detention of refugees and asylum-seekers by reason of their unauthorized entry or presence", July 2007, p. 5, available at <http://www.unhcr.org/refworld/docid/4950f39f2.html> (accessed on 23 December 2008).

<sup>93</sup> OHCHR press release, annex, 26 January 2009.

<sup>94</sup> CRC/C/OPAC/MLT/CO/1, paras. 12-13.

<sup>95</sup> CRC/C/15/Add.129, para. 44.

<sup>96</sup> CERD/C/304/Add.94, para. 13.

<sup>97</sup> CRC/C/OPAC/MLT/CO/1, paras. 8-9.

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