



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women Forty-seventh session

Summary record of the 952nd meeting*

Held at the Palais des Nations, Geneva, on Tuesday, 12 October 2010, at 10 a.m.

Chairperson: Ms. Pimentel (Vice-Chairperson)

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* No summary record was prepared for the 951st meeting.

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In the absence of Ms. Gabr, Ms. Pimentel, Vice-Chairperson, took the Chair.

The meeting was called to order at 10.10 a.m.

Consideration of reports submitted by States parties under article 18 of the Convention *(continued)*

Fourth periodic report of Malta (CEDAW/C/MLT/4; CEDAW/C/MLT/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Malta took places at the Committee table.*
2. **Mr. Zahra** (Malta) said that Malta was committed to promoting female empowerment and gender equality through legislation and Government policies.
3. Malta had implemented a number of articles of the Convention. It needed more time to consider certain issues, including the implications of ratification of the Optional Protocol to the Convention. In the meantime, Malta would maintain its reservation to article 16, paragraph 1 (e), of the Convention.
4. The Equality for Men and Women (Amendment) Act, 2009 had enhanced women's protection from discrimination and strengthened the independence of the National Commission for the Promotion of Equality (NCPE). The activities of NCPE included providing independent assistance to victims of discrimination in pursuing complaints, conducting independent surveys on discrimination and making recommendations on any issue relating to discrimination against women. The NCPE annual report included anonymous summaries of its investigations into complaints.
5. NCPE fostered a good working relationship with NGOs and civil society, trade unions, employers' associations and Government departments. It was working in partnership with five separate organizations on the Unlocking the Female Potential project. Another project, Strengthening Equality beyond Legislation, would review the national minimum curriculum with the aim of mainstreaming gender and racial equality.
6. Circular 30, of 10 December 2008, from the Office of the Prime Minister, had invited the public sector to work with NCPE to identify discriminatory legal, procedural and administrative policies and practices and standardize public service provision and access by mainstreaming gender equality and equal treatment. Other measures taken within the Government included regular NCPE training for officers serving on the equality committees in each ministry.
7. The NCPE Gender Mainstreaming in Practice project aimed to strengthen relevant stakeholders' understanding of the importance of gender mainstreaming by providing tools and training and highlighting good practice through examples of gender-mainstreamed national policies. In addition, a stakeholders' support network would be set up.
8. Gender balance was important in decision-making institutions and women were not prevented from participating in political life in Malta. The number of female candidates standing for election to the European Parliament had increased, accounting for 23.5 per cent of candidates in 2009 as compared to 7 per cent in 2004. More women were to be found in senior positions: in the first quarter of 2010, women had accounted for 22 per cent of legislators, senior officials and managers.
9. There had been improvements in the education sector. Women outnumbered men in tertiary education: 59.4 per cent of the total number of graduates in 2009 had been women. In order to promote gender equality in education, NCPE provided courses for teachers and students in which the issues of gender equality and why gender should not influence career choices were revised.

10. The National Report on Strategies for Social Protection and Social Inclusion 2008–2010 outlined measures to help those most disadvantaged or at risk of poverty, including women. Key objectives were to increase women’s involvement in the labour market, make adequate and affordable housing more available, and combat the intergenerational transmission of poverty and social exclusion.

11. The rate of female employment was rising. It had stood at 38.5 per cent in the first quarter of 2010, and 72.5 per cent of women in employment in 2010 were working full time. Families benefited from fiscal measures such as a one-year income tax exemption for every child under the age of 16, for mothers returning to the labour market after an absence of five years, or a one-year income tax exemption for all children born from 2007 onwards, for mothers in employment returning to work after having a child, and who had not been absent for five years. In addition, the entitlement to paid maternity leave had been increased from 13 to 14 weeks in 2008.

12. Working from home could enable employees to better reconcile work and family commitments. A legal framework was set out in Legal Notice 312 of 2008, the Telework National Standard Order. In the same vein, the Family-Friendly Measures Handbook had been published in 2009, and Circular 36, entitled “Procedure for facilitating requests for family-friendly measures”, had been issued in 2010 by the Office of the Prime Minister. There were also over 40 registered childcare facilities in Malta, making it easier for women to enter employment.

13. Malta supported initiatives to reduce maternal mortality and morbidity, while respecting the dignity and rights of both the mother and the unborn child. Maternal mortality was comparatively low in Malta: only four deaths in childbirth had been registered between 1998 and 2007. The Health Division offered comprehensive obstetric services during and after pregnancy and in 2007 had set up a breast screening programme for women aged 50 to 60.

14. Despite the legislative and policy developments to guarantee equal treatment of men and women, there was still a gap between law and practice and the pace of cultural change could be slow. Malta would nonetheless continue its efforts to mainstream gender equality.

Articles 1 to 6

15. **Ms. Ameline**, noting that international law was not directly applicable in Malta, said that she was concerned that the State party’s written responses to the list of issues (CEDAW/C/MLT/Q/Add.1) had not described the role of Parliament in implementing the Convention.

16. Malta’s willingness to lift its reservations to the Convention was a central issue. She wondered whether Malta was open to debate on its reservation to article 16 and how such a debate could be launched. Had NCPE given any thought to the circumstances under which the reservation might be lifted or partially lifted?

17. **Mr. Flinterman** said that he welcomed the updates provided in the delegation’s opening statement and in the written responses to the list of issues. Given that Malta had acceded to the European Union in 2004, he asked if a timeframe had been set for Malta to lift its reservations to articles 11, 13 and 15 of the Convention. The reservation to article 16 may have been based on a misreading of the Convention: there was no legal obligation under the Convention for a State to permit abortion. It was the Committee’s practice, however, to urge States that had criminalized abortion to permit it in two exceptional circumstances, namely when the mother’s life was in danger or when the pregnancy was a result of rape. The Committee also urged States not to criminalize women who had undergone abortion. In that light, perhaps the State party could reconsider its reservation to article 16.

18. The State party had not ratified the Optional Protocol even though it had accepted communications procedures under other international instruments. He wondered why the Maltese Government was reluctant to give women the opportunity to make a complaint at the international level.

19. He wondered if the delegation could explain why there were so few cases of gender discrimination before the courts and whether the judiciary and the general public were adequately informed about the Convention. He asked whether the State party could provide more detail on the number of gender discrimination cases submitted to the Ombudsman and NCPE. What was the connection between the two bodies?

20. The Convention might not be well known in Malta since it was incorporated in various pieces of domestic legislation, in contrast to the European Convention on Human Rights which was incorporated in a special law. He wondered if the Convention could also be the subject of a separate law. He asked how the State party ensured that members of the judiciary were aware of the Convention and fulfilled their obligation to interpret domestic law in light of the Convention.

21. The scope of the Convention included multiple discrimination against women based on factors other than their sex. Sources had reported that lesbian, bisexual and transgender women lacked visibility in Malta and suffered discrimination based on their sexual orientation or gender identity. He asked what measures the Government was taking to prevent such discrimination and what role NCPE played with respect to lesbian, bisexual and transgender women.

22. **Ms. Hayashi** drew attention to the fact that Malta ranked eighty-third out of the 134 States covered by the World Economic Forum's Global Gender Gap Index because of Maltese women's low participation rate in the labour market and underrepresentation in political life. She therefore wished to know what steps NCPE had taken since 2004 to implement the recommendations contained in the Committee's concluding comments on the State party's combined initial and second and third periodic reports (A/59/38, paras. 80–123). She asked what thematic issues had been covered by NCPE research projects and what percentage of recommendations stemming from such research had been implemented. Were NCPE staff selected on account of their expertise and interest in the subject matter or were they Government appointees? Could NCPE initiate court action on behalf of victims of discrimination and give them legal assistance? How many cases had NCPE handled and with what outcome?

23. **Ms. Ameline** requested information on the membership of NCPE and on its political, legal and judicial standing, as well as on procedures for liaison with the Government, Parliament and other commissions. She wished to know what NCPE was doing to heighten awareness of the Convention in Malta and thus speed up the removal of discriminatory provisions from existing legislation. She asked whether NCPE was mandated to study Maltese legislation's conformity with the Convention and whether the Government expected the public debate on the withdrawal of Malta's reservations to the Convention to gather momentum.

24. **Mr. Flinterman** asked whether the Constitutional Court had interpreted the scope of section 45 (11) of the Maltese Constitution, especially the phrase "only in so far as such measures, taking into account the social fabric of Malta, are shown to be reasonably justifiable in a democratic society". It was important to remember that national legislation, including the Constitution, always had to be interpreted in the light of the State party's obligations under the Convention. In the case of temporary special measures the relevant article was article 4, paragraph 1, which had formed the subject of the Committee's general recommendation No. 25. Since the measures on reconciling work and family responsibilities listed on pages 26 and 27 of the report seemed to be more akin to general

social policy measures than to temporary special measures within the meaning of the Convention, he asked the delegation to provide further examples of temporary special measures to accelerate the attainment of de facto equality, and the results achieved.

25. **Mr. Zahra** (Malta) said that the Maltese Government was not entirely sure what impact withdrawing its reservation to article 16, paragraph 1 (e), would have on its ability to adhere to certain of its guiding principles.

26. He agreed that accession to the European Union had lent impetus to campaigns to make stakeholders more aware of the importance of women's rights and of possible courses of action to achieve gender equality. Membership of the European Union had given Malta a wider perspective on many issues and made it possible to adopt suitable legislation.

27. He took the point that, while studies were useful, what was really needed was action. Malta had adopted a two-pronged approach. It had set in motion a process for ensuring that the requisite legislation and structures were in place, but it had likewise made sure that gender equality and gender mainstreaming were incorporated into the operational programmes making use of European Union funds. As a result, those funds had been specifically allocated to research-based projects to identify grey areas that might require further exploration, or sectors of society not covered by previous action.

28. A programme was also in place to acquaint the legal profession, the police and particularly the judiciary with their responsibilities and obligations in the sphere of gender equality. Turning to the question of access to justice, he said that he was unable to give the exact number of cases of gender discrimination that had been decided by the courts. Potential victims of domestic violence did, however, have a growing awareness of their rights and of the courses of action they could take.

29. The Government saw NCPE as an independent structure that could offer candid feedback to guide policy decisions and act as a forum for key stakeholders to hold wider consultations going beyond the Government sector.

30. **Ms. Bartolo** (Malta) said that decisions of NCPE were binding if both parties accepted them. Since 2004, 246 complaints had been lodged with NCPE. In three cases access to employment had been denied on the grounds of gender identity. Twenty cases of alleged sexual harassment had been referred to it since 2007. Since complaints could also be filed with the Industrial Tribunal, the Department of Industrial and Employment Relations had likewise investigated a number of allegations of sexual harassment: an amicable settlement had been reached in one case investigated in 2007; in 2009 a case had been dropped because the complainant had withdrawn the complaint; of the two cases investigated in 2010, one had been discontinued on the grounds of insufficient evidence, the other had been referred to the Tribunal. Complaints could also be submitted to the civil courts. However, in a small island like Malta, with a closely knit community, people often preferred to lodge complaints with NCPE because its investigations were confidential, whereas in the Industrial Tribunal or the civil courts, redress could be obtained but proceedings were not anonymous.

31. Awareness-raising campaigns run by the NCPE received European Union funds. In fact projects funded by the European Union accounted for a substantial proportion of the NCPE budget. Its projects tended to reflect national priorities but took account of obligations under the Convention. Most projects focused on increasing the female employment rate, but others concerned gender mainstreaming. A number of projects comprised not only research but also the holding of regular training courses for all the sectors involved in the implementation of equality legislation. The staff of NCPE were highly dedicated and recruited on the basis of their qualifications.

32. As far as LGBT issues were concerned, awareness-raising was regarded as crucial, especially in order to prevent bullying at school. In primary schools the topic was approached by stressing that each person was unique and that differences should be accepted. In secondary schools the topic was addressed more formally, usually through a discussion of sexual orientation, although the syllabus was flexible and could be adjusted as needed.

33. **Ms. Scerri** (Malta) said that some projects to address women's inequality were implemented by NCPE, while others were funded by the European Union. They included publicity campaigns to promote an awareness of the need for gender equality, as well as training and measures to give practical effect to the findings of research. The training aid framework supported workforce training by refunding a portion of the fees for courses to facilitate entry or re-entry into the labour market. The employability programme consisted of a number of training initiatives to assist job seekers and employees interested in upgrading their knowledge and skills. Another project, consisting of a 13-week television series, publicized the advantages of women's financial independence and men's greater involvement in unpaid family duties. It also targeted employers by highlighting the benefits of a better work-life balance for them and their employees. Another project sought to curb domestic violence by training and sensitizing professionals in various fields who came into contact with people experiencing or escaping from domestic violence and by enhancing general public awareness of a sensitive subject. A significant number of the people covered by those measures had been women. The Government was reviewing the Social Security Act in order to remove gender-based discrimination in the pension system.

34. **Ms. Ara Begum** asked whether NCPE had examined the link between the Government budget and the achievement of substantive equality. Did Malta have gender-responsive budgeting?

35. **Ms. Murillo de la Vega** asked how many people were on the staff of NCPE. What was its budget and what percentage did that represent of the national budget?

36. **Mr. Zahra** (Malta) said that the national budget appropriation for NCPE for 2007–2009 had amounted to €250,000 per annum, but other national and European Union funding was also available to finance specific NCPE projects.

37. **Ms. Bartolo** (Malta) explained that the amount of additional funding depended on the number of NCPE projects being run at any time. The NCPE tried to run two projects every year, and normally the funding was between €500,000 and €600,000 per project. There was a core staff of 10, who were supplemented by project staff.

38. **Ms. Patten** said that, given that the Commission on Domestic Violence had been established in March 2006, she wondered why it had taken so long to develop a national action plan on domestic violence. She asked how the work of the Commission and its subcommittees would be evaluated. She requested clarification of the link between the Commission and the Appogg agency and asked which of the two bodies gave legal assistance to women victims of violence.

39. Detailed information, such as the number of shelters and how many were run by Appogg, would be useful, especially in light of information from other sources that children over a certain age were not allowed in shelters. She asked if there were any provisions to remove perpetrators of violence from the marital home, or other measures to protect women. She would like up-to-date information on the prosecution and punishment of perpetrators. She was also interested to know how the justice system supported and protected women victims of violence and whether training on violence against women was compulsory for all members of the judiciary.

40. She emphasized the need for courts to exercise their discretion in the application of the law and cited a recent case which had been dropped owing to the woman's refusal to testify, despite strong evidence and a confession from the perpetrator.

41. **Ms. Murillo de la Vega** asked whether there had been any studies on the use of time in Malta or the way women and men shared domestic tasks. She also asked if the State party had evaluated the obstacles that prevented women from working and if there was information available on the number of women dropping out of the labour market owing to the traditional view of women as wives. She recalled that the Committee had requested, but had not yet received, information on the percentage of women deemed by the Director of Social Security to be heads of household: perhaps the State party could provide that information without delay.

42. She expressed concern that the grounds for separation of a married couple included violence only if it was excessive and cruel. Furthermore, current legislation did not fully protect women from being subjected to violence.

43. Rape was dealt with in Maltese law under the subheading "Of Crimes against the Peace and Honour of Families and against Morals". Courts took account of the degree of resistance put up by the victim, which might imply a judgement on the victim's morals, and she wondered why the law made resistance on the part of the victim a factor in determining the gravity of a violent offence.

44. **Ms. Awori** wondered if there were any studies of why domestic violence reporting levels were so low. She asked how the Subcommittee for a National Publicity Campaign was reaching out to marginalized women and informing them about domestic violence and the law.

45. She recalled that the Committee had recommended in its previous concluding comments that the State party should amend its legislation on rape (A/59/38, para. 116). Had it taken steps to do so, and had amendments to deal with marital rape been considered? There was still no comprehensive law on sexual offences in Malta to protect women and prosecute perpetrators and she wondered whether the State party was planning to introduce one.

46. **Ms. Coker-Appiah** said that the inclusion of rape under the subheading "Of Crimes against the Peace and Honour of Families and against Morals" subsumed women's individual rights into group rights, which had negative consequences both in terms of society's response to rape and in terms of reporting levels. She expressed concern at the fact that the law linked violence and rape: there was no need for violence in order for an act to constitute rape. Consent should be the primary consideration when defining rape.

47. **Ms. Hayashi** said that the figures given in the responses to the list of issues for the prosecution of prostitution were very low. Were there any figures on the percentage of non-Maltese women engaged in prostitution? Given the link between the trafficking of persons and prostitution, she wondered what training was given to police, immigration officers and others who had contact with undocumented immigrants, to help them identify victims of trafficking.

48. The written responses stated that European Council directive 2004/81/EC, granting temporary residence permits to victims of trafficking if they cooperated with the authorities, had been transposed into law in 2007. She asked how the directive was being implemented and evaluated and how many residence permits had been granted. Information on whether the initiative had been of help in prosecuting offences of trafficking would also be useful. She also requested details of any international agreements between Malta and other States aimed at combating trafficking.

49. **Ms. Chutikul** said that tackling the problems of trafficking and prostitution did not seem to be a priority for the State party and there was a general lack of data, especially on foreign women being trafficked to Malta. In the context of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Office of the United Nations High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking, she wondered what protective measures the State party had put in place for victims of domestic and cross-border trafficking. It would be interesting to learn how the State party cooperated with the countries of origin to prevent trafficking and prosecute traffickers. She wondered whether Malta had the necessary multisectoral approach in place to tackle trafficking and, if so, how it worked. She asked whether the State party was planning to carry out a study on trafficking and develop an action plan to address the problem. She was interested to know what measures had been taken both before and after Malta's ratification of the Council of Europe Convention on Action against Trafficking in Human Beings in 2008.

50. On the subject of residence permits for trafficked women, she wondered whether the women were offered witness protection and whether they were allowed to work while awaiting the outcome of legal proceedings.

51. **Mr. Zahra** (Malta) said that, as the Domestic Violence Act was new, its impact and that of the work of the subcommittees set up under the Act would not be clear for several years. He was unable to give the exact number of shelters for victims of domestic violence. The Government was working in partnership with civil society organizations to provide adequate facilities for cases requiring immediate action and protection. Minors at risk could be put under State protection through the issuance of protection orders. The approach taken in the event of domestic violence tended to favour protective measures rather than the arrest and detention of the perpetrator. The case referred to by Ms. Patten clearly showed the need to progress from drafting and enacting legislation to its effective implementation.

52. Although there were too few women holding ministerial posts in Malta, the presence of two female ministers did mean that women had a say in making key decisions at the executive level.

53. An improvement in maternity leave was being discussed in Malta. In that connection the role of the private sector in providing family-friendly facilities alongside those run by the Government was of critical importance, since there was no point in investing in people if they dropped out of the labour market for family reasons. It made good economic sense to encourage women to return to work, for example through the wider introduction of flexitime. The Government was therefore firmly committed to promoting flexible working arrangements and other family-friendly measures.

54. The Government believed that childcare had to be made more accessible by offering tax incentives for private investment in day centres. Public subsidies for such centres should enable them to charge lower fees. Financial incentives were likewise given to the private sector to upgrade facilities.

55. The Government believed that it was necessary to address the underlying causes of trafficking and migration flows. It was therefore engaged in a process of consultation with illegal migrants' countries of origin. It also sought assistance from neighbouring countries in the European Union to stem the flow of migrants arriving by sea and to engage in rescue operations. It endeavoured to secure NGOs' full cooperation with the Immigration Commission in order to provide health and social services for migrants.

56. **Ms. Bartolo** (Malta) said that an extension of maternity leave was being discussed not only because of its impact on women's employment rate, but also because Malta had to fulfil its obligations under European Union law.

57. There were no recent studies of the distribution of domestic duties between men and women in Malta. In terms of childcare, since quality and affordability were as important as quantity, those aspects were being addressed by projects financed by the European Union. NCPE was holding consultations with experts with a view to removing any discriminatory provisions from the Income Tax Act. No statistics were kept of the percentage of women deemed to be heads of household.

58. She agreed that rape might be better regarded as a crime against the person rather than as a crime against the peace and honour of families and against morality. To the best of her knowledge however, the fact that it was dealt with under that chapter of the Criminal Code had not prevented victims from obtaining a remedy, because the courts interpreted the Code broadly.

59. The Industrial Tribunal had recently heard a very interesting case in which verbal harassment had been deemed to constitute sexual harassment. The intense debate triggered by that verdict was enhancing the general public's awareness of the issues. NCPE was still trying to ascertain the level of underreporting of discrimination, including cases involving sexual harassment. She had noted the Committee's concerns regarding the need to strengthen legislation and to apply it in practice. The NCPE project entitled "Unlocking the Female Potential" sought to ascertain why women dropped out of the labour market. Research was also being carried out to determine teenage mothers' prospects in life and on the labour market. It was hoped that the findings would suggest tools for addressing those problems.

60. **Ms. Scerri** (Malta) said that Appoġġ was the State agency designated to provide support for victims of domestic violence and she drew attention to the relevant information in the written responses to the list of issues.

61. **Ms. Chutikul** wondered whether the Government involved NGOs in its attempts to curb trafficking and prostitution. She said that she had been heartened by the Maltese delegation's references to the need for high-quality day-care centres. In that respect she urged it to bear in mind Australia's experiences with centres run by the private sector, and Harvard University's research into the brain development of very young children. What was needed was not just a babysitter.

62. **Ms. Belmihoub-Zerdani** said that she was horrified by the fact that, whenever the subject of domestic violence arose, a reference was always made to women's right of shelter. Why should men be allowed to remain in the family home when it was in children's best interests to remain at home with their mothers? In those circumstances men should be banned from the family home and sent to shelters themselves to experience the realities of living in such accommodation, as that might bring them to their senses.

63. **Mr. Flinterman** said that it was still unclear whether any temporary special measures to expedite effective gender equality had been adopted under section 45 of the Constitution. He asked the delegation to provide more precise information about the role of the Convention in the work of NCPE. Did NCPE display in its offices a poster showing the first 16 articles of the Convention? How often was reference made to the Convention when counselling individual complainants or in training courses? He also requested more precise information on NCPE action to eliminate discrimination against lesbian, bisexual and transgender women.

64. **Mr. Zahra** (Malta) said that Government policy on private sector involvement in the establishment of childcare centres did not mean that the State was abdicating its responsibilities in that respect. The private sector was strictly regulated and its facilities were inspected to ensure that they were up to standard. The State functioned as a regulator, while the private sector acted as a provider.

65. **Ms. Bartolo** (Malta) said that the tough regulations governing childcare centres might dissuade employers from offering such facilities at the workplace, so the benefits of children's attendance at such centres were continually being advertised.

66. The best interests of the child always took priority when the courts dealt with cases of domestic violence, although other issues also required consideration, such as the need to protect women victims. Campaigns were being run to emphasize the fact that women's financial independence would render them less vulnerable to domestic violence.

67. The idea of a poster was a good one, but more needed to be done to explain women's rights under the Convention.

68. NCPE had held meetings with the Maltese gay rights movement to discuss LGBT issues and planned further measures to complement those already taken in the educational sphere.

69. **Ms. Scerri** (Malta) said that the State schools ran free kindergartens for the over-threes. Childcare centres therefore catered rather for the under-threes. Grants from European Union funds could be awarded for the establishment, upgrading or relocation of a centre that met the requisite standards.

The meeting rose at 1 p.m.