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Summary record of the first part (public)* of the 3107th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 14 October 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Second periodic report of Malta (continued) (CCPR/C/MLT/2, CCPR/C/MLT/Q/2 and CCPR/C/MLT/Q/2/Add.1)

1. *At the invitation of the Chairperson, the delegation of Malta took places at the Committee table.*
2. **The Chairperson** invited the delegation of Malta to reply to the questions asked by the Committee members during the previous meeting.
3. **Mr. Galea Farrugia** (Malta) said that Malta had a dualist system, according to which, rather than automatically becoming part of national legislation, international instruments needed to be incorporated into existing laws. The provisions of the Covenant had been transposed into various pieces of legislation, including the Constitution and the Criminal Code, and could thus be invoked before the courts. There was, however, no law which reflected the Covenant in its entirety.
4. **Mr. Grech** (Malta) said that the delegation had contacted the Maltese authorities regarding the six reservations relating to the Covenant. He was confident that, within the next few months, at least some of those reservations would be reconsidered.
5. **Mr. Agius** (Malta) said that neither the Constitution nor the legislation on discrimination addressed the issue of language-based discrimination, which, however, would be incorporated into the law establishing the National Commission for the Promotion of Equality when it was reviewed for the purpose of bringing the Commission into line with the Paris Principles. The National Commission for the Promotion of Equality had the power to receive and consider complaints of discrimination based on race, ethnicity or gender relating to access to transport, housing and public places. In 2012, the Commission had carried out an ex officio investigation into a complaint regarding a housing advertisement in which access to the accommodation on offer had been limited to the members of a specific racial group. Following the intervention of the Commission, the website on which the advertisement had been posted had immediately taken it down and issued a public apology.
6. **Ms. Pisani** (Malta) said that the authorities had opened nurseries for children aged between 3 months and 3 years whose parents were either working or studying. After the opening of those nurseries, in April 2014, the number of children benefiting from childcare services had increased from 1,000 in March 2014 to 2,700 by September 2014, while over 2,000 mothers had taken up employment. The full maternity leave entitlement was 18 weeks, with the first 14 weeks being paid entirely by the employer and the final 4 weeks being paid in part by the social security system.
7. **Ms. Buttigieg** (Malta) said that Malta had recently adopted a law on the protection of minors, under which the names of all persons convicted of child abuse, particularly sexual abuse, must be recorded in a register that employers must consult when recruiting staff to work with children. A number of different approaches to tackling violence against children were employed. When cases of violence against children were reported, the child protection services carried out an investigation regarding the family or institution concerned and, if need be, took steps to ensure the safety of the child in question. Child victims of violence also had access to a free, 24-hour emergency hotline, which set off an immediate response if necessary. Moreover, a campaign to prevent sexual violence had been launched in schools in order to raise awareness among children from an early age.
8. The absence of cases of rape or sexual harassment in the statistics was due to the fact that, when victims contacted the authorities to file a complaint, they did not dare talk

about the sexual violence they had suffered straight away, particularly if the perpetrators had been family members. They might instead file complaints on other grounds, particularly psychological harassment, so that the cases were recorded under headings other than rape.

9. **Mr. Agius** (Malta) recognized that the number of women members of parliament, was very low, with only 8 women out of a total of 69 representatives. However, women made up 19.8 per cent of local councillors. There was no quota system but service on local councils could serve as a starting point for women to obtain a seat in Parliament later.

10. **Mr. St. John** (Malta) said that detainees who assaulted prison officials were treated no differently from any non-detainee committing a similar offence, and they were charged and brought before a court for trial. As to the migrant rescue operation referred to at the previous meeting, migrants had been found by the authorities in the Maltese search and rescue zone but had been transferred directly from their boat to the Libyan vessel. It was therefore incorrect to say that they had been sent back by Malta, considering that they had at no time been aboard a vessel under the Maltese flag. The domestic legislation on refugees enshrined the principle of non-refoulement, which meant that asylum seekers could not be sent back to their countries while their applications were being considered. Statistics published by the United Nations High Commissioner for Refugees (UNHCR) showed that the refugee status recognition rate for Malta was usually around at least 50 per cent and sometimes as high as 80 per cent.

11. The maximum period for which asylum seekers could be detained was currently 12 months, while irregular migrants detained for the purposes of return could be held for up to 18 months, in line with the European directive on returning irregular migrants. The recast European directive laying down standards for the reception of applicants for international protection would be incorporated into Maltese legislation in the near future, entering into force in July 2015. In particular, that text made provision for non-custodial measures and judicial review of the lawfulness of detention. In line with the relevant European legislation, asylum seekers were eligible for free legal assistance only at second instance.

12. **Mr. Galea Farrugia** (Malta) said that any remaining ambiguity in the Criminal Code regarding the prohibition of corporal punishment had been cleared up in February 2014, with the adoption of an amendment to article 339 of that text. Thus, corporal punishment was henceforth considered to be a criminal offence and was completely prohibited.

13. **Mr. St. John** (Malta) said that the preferred method of assessing the age of minor asylum seekers was a psychosocial examination carried out by experts from the asylum services. Assessment of bone age was carried out only if that examination was inconclusive. Minor asylum seekers were no longer held in custody. Living conditions in detention centres had improved because those facilities were not currently occupied at full capacity. Moreover, renovation work funded by the European Union (EU) had been carried out and all the tents had been replaced with caravans. Steps were currently being taken to improve living conditions at Mount Carmel Hospital.

14. **Ms. Seibert-Fohr** asked whether disciplinary measures had been taken against those members of the police and armed forces who had made excessive use of force during the events that had taken place on 16 August 2011 at the Safi barracks detention centre and whether the results of the investigation launched in that regard had been published. The Committee viewed the right to life as a priority, which was why it requested all those States parties in which abortion was criminalized to take into consideration the risks inherent in clandestine abortions. The delegation was requested to explain how the authorities ensured that doctors who did everything possible to save the life of the mother were not prosecuted under article 243 of the Criminal Code.

15. **Ms. Majodina** said that, with regard to the second case of collective expulsion of migrants which had occurred in 2010, as the delegation had pointed out, the migrants had been intercepted at sea by the Maltese armed forces, in the State party's search and rescue zone, and that they had consequently been under the supervision of the Maltese authorities prior to being sent back to Libya. The delegation was invited to give details regarding the circumstances surrounding those events.

16. **Mr. Bouzid** said that corporal punishment was still permissible under article 154 of the Civil Code, which left it to the courts to determine the bounds of "reasonable chastisement". He asked whether the Government intended to amend that article in order to completely prohibit corporal punishment in Malta.

17. **Ms. Waterval** requested further information on the implementation and impact of national action plans to combat trafficking in persons. Had the Standard Operating Procedures regarding victim identification referred to in paragraph 118 of the written replies already been applied and, if so, could the delegation report on their implementation in practice? Were data available that indicated a rise in the number of investigations carried out and prosecutions brought in cases of trafficking in persons? How many victims had been recorded between 2010 and 2012? Could the delegation say whether there was a programme or policy in place that offered assistance to victims of trafficking in persons who were unable to return to their countries of origin?

18. **Ms. Seibert-Fohr** requested information on the outcome of the process of reform of the justice system, the proposals made by the Justice Reform Commission, the problems identified and the measures currently being implemented. Noting that the age of criminal responsibility had been raised to 14, she asked whether it was true that minors between the ages of 16 and 18 still fell under the jurisdiction of adult courts and that minors under the age of 16 accused of an offence alongside minors over the age of 16 or adults also fell under the jurisdiction of adult courts. Was it true that detainees could consult with their defence counsels only before, but not during, questioning? What were the provisions of article 534 AB (1) of the Criminal Code, referred to in paragraph 131 of the replies to the list of issues (CCPR/C/MLT/Q/2/Add.1)? She noted that the State party had indicated in its report that the delay regarding access to a defence counsel could be as long as 36 hours. She recalled that it was stated in paragraph 34 of general comment No. 32 of the Committee that the accused must have "prompt access to counsel" and that quick access to a lawyer was an essential safeguard against ill-treatment. She asked whether other safeguards were provided to ensure the proper administration of justice. Was it true that detainees lost the right to remain silent once they had requested the assistance of a legal counsel?

19. **Mr. St. John** (Malta) regarding the second case of collective expulsion referred to by Ms. Majodina, said that disciplinary measures had been taken against the police officers responsible, three of whom had currently been charged. Prison officials received training on the rules governing detention and any breaches thereof were punished according to their seriousness. Any criminal offences also resulted in prosecution. The State party's responsibilities under the international conventions on search and rescue operations were clear. In particular, rescued persons must be taken to the nearest safe port. The Government stood by the report on the events of 2010 officially given by the Maltese armed forces. As to efforts to combat trafficking in persons, statistics on the number of victims identified and perpetrators detained for questioning would be provided within the next 48 hours. The Standard Operating Procedures had entered into force and a high-level committee had been established to monitor their implementation.

20. **Ms. Buttigieg** (Malta) said that a coordinator had been appointed to deal with issues relating to the assistance of trafficking victims. Such assistance could be psychosocial, financial or legal. Victims also had access to a shelter and interpreting services and those

who so wished could benefit from return assistance, offered in cooperation with the International Organization for Migration (IOM).

21. **Mr. St. John** (Malta) said that the Committee would be provided with information in writing concerning the activities of the Vice Squad. To date, there had been no cases of victims of trafficking in persons being unable to return to their countries, but, under the current system, in such cases, a residence permit would be issued to those affected. Victims of trafficking who were unable to return home for fear of reprisals or similar reasons would probably be eligible for the asylum procedure.

22. **Mr. Galea Farrugia** (Malta) said that minors aged under 14 were not criminally liable; from 14 to 16 fell under the jurisdiction of the juvenile courts, and from 16 to 18 fell under the jurisdiction of the ordinary courts. In line with the European Directive 2013/48/EU on the right of access to a lawyer, which had been transposed into Maltese legislation, accused persons had access to their lawyers during questioning. The presence of a lawyer did not mean that the detained person in question no longer had the right to remain silent. The fact of remaining silent did not constitute a confession but the judge or jurors might draw inferences of guilt.

23. **Mr. Flinterman**, referring to paragraph 133 of the State party's report, said that he remained unconvinced that the 2002 amendments to the Criminal Code were in line with article 14, paragraph 2, of the Covenant. He requested clarification regarding the notion of negative inferences from the silence of the accused, as well as concrete examples of cases in which the court had inferred guilt from the silence of the accused during questioning. He asked for further information on the independence and impartiality of the Refugee Appeals Board, as well as on its membership and the renewal of its members' terms.

24. **The Chairperson** asked whether measures had been drawn up to protect victims of trafficking in persons and ensure their return or settlement in the country of their choice in exchange for their cooperation with the authorities regarding the pursuit of traffickers.

25. **Mr. Grech** (Malta) said that additional information would be provided in writing on reasoning by inference in criminal proceedings.

26. **Mr. St. John** (Malta) recalled that the Refugee Appeals Board ruled on appeals against the recommendations of the Office of the Refugee Commissioner. The Board could override negative recommendations made by the Office and grant additional protection or refugee status to previously unsuccessful applicants. The rules governing the appointment and removal from office of Board members, which were very similar to those applicable to judicial bodies, safeguarded the body's independence. In particular, Board members could be removed from office only for gross misconduct.

27. **Mr. Flinterman** welcomed the adoption of the law on civil unions in April 2014, which had been a major step forward, and invited the delegation to report on its implementation. He asked whether the Government also had plans to allow homosexual couples to marry and invited the delegation to comment on the statements made by certain non-governmental organizations (NGOs) to the effect that civil couples would always be considered to be "inferior" to married couples and that the law perpetuated the notion of "different but equal" treatment of homosexual couples. In order to explain, as it had been invited to do in paragraph 21 of the list of issues, why migrants who had not obtained refugee status were refused the right to marry, the State party had referred to article 12 of the European Convention on Human Rights, under which the right to marry and to found a family was subordinate to the relevant national laws governing its exercise. Article 23, paragraph 2, of the Covenant did not refer to national laws, merely stating that the right to marry should be recognized. He invited the delegation to comment. Were the conditions under which divorce was granted the same for both spouses? The delegation was invited to indicate whether the law provided for any further conditions in addition to those referred to

in paragraph 336 of the State party's report and to explain the meaning of the phrase "lived apart for at least four years". The State party had indicated that it would look at the issue of blind persons and persons with visual impairments having to vote verbally in front of a group of representatives of political parties and the electoral commissions. Did that mean that the State party recognized that that provision contravened articles 17 and 25 of the Covenant and had a timetable been set regarding the search for a solution in that regard?

28. **Ms. Majodina** asked why the State party refused to raise the age of marriage from 16 to 18 when the age of majority was set at 18 and that the average age of marriage had clearly risen.

29. **Mr. Bouzid** wished to know more about the grounds for the State party's persistent refusal to decriminalize defamation when such a stance was incompatible with its obligations under article 19 of the Covenant. He also wished to know how the State party could justify retaining on the statute books laws punishing "offence" or "public vilification" of Catholicism or any other religion, bearing in mind article 19 of the Covenant. Given that no measures had been taken to disseminate the Covenant and its First Optional Protocol and that civil society had taken no part whatsoever in the preparation of the second periodic report, the delegation was requested to indicate whether the State party intended to take measures to better disseminate the Covenant and the Optional Protocol henceforth and to ensure broad civil society participation regarding the preparation of the next periodic report.

30. **Mr. Seetulsingh**, referring to paragraph 309 of the State party's report, asked how the courts determined what constituted defamation on the basis of public opinion concerning the meaning of the term. It would be useful to be provided with an example of a court ruling in which such a determination had been made.

31. **The Chairperson** wished to know how the State party intended to reconcile the protection of one religion in particular — Catholicism — and the related measures (laws on "offence" or "public vilification" of Catholicism) with its obligations arising not only from article 19 but also from article 18, protecting the freedom of religion, conscience and belief, including the absence of religious belief, and from article 26, prohibiting any discrimination on any of those grounds.

32. **Mr. Agius** (Malta) expressed surprise at the fact that NGOs might consider that the law on civil unions conferred upon such unions a status inferior to that of marriage, whereas in fact it attributed *mutatis mutandis* the same rights and duties to couples joined by a civil union, be they heterosexual or homosexual as those prescribed in the law on marriage. In the initial text, upon which the law had been based, and which had been entirely drafted at the initiative of NGOs defending the rights of homosexual, bisexual and transgender persons, care had been taken not to create a status for persons in civil unions that was "equal but different" to that of married couples. In fact, compared to other forms of non-marital union found elsewhere in the world, the civil union system in force in Malta was the one that was closest to marriage. The civil or registered partnership and other types of union found in other countries rules on constitution and dissolution were similar to those contained in the law on civil union were recognized in Malta as being equivalent to civil unions. The law on civil union contained a detailed list of such forms of union. Adoption by couples united under that law was governed by the same rules as adoption by married couples. Divorce rules applied in the same way to men and women.

33. **Mr. St. John** (Malta) said that, in order to register their marriages with the Public Registry, foreign nationals must provide a certain number of documents proving their identity. That rule could be waived in cases where the interested parties were unable to produce the required documents for valid reasons – for example, in the case of refugees or migrants enjoying subsidiary protection. However, the Public Registry would not register

the marriages of rejected asylum seekers who were shown to run no danger in their home countries and who had no valid reason for failing to produce the required documents.

34. **Mr. Darmanin** (Malta) said that the procedure involving a verbal vote carried out before a group of representatives of political parties and the electoral commissions was available, not only to blind persons and persons with visual impairments, but also to any other persons wishing to receive such assistance. Braille or MP3 format ballot papers were available on request. The members of the electoral commissions had received special training and were sworn to secrecy. Moreover, Malta had expressed reservations on article 29 (a) (i) and (iii) of the Convention on the Rights of Persons with Disabilities (CPRD), under which the State party, notwithstanding the fact that it was determined to ensure that persons with disabilities could exercise their right to vote in a secret ballot at elections and referendums, reserved the right to continue to apply the provisions of its own legislation relating to electoral procedures, equipment, materials and assistance to persons with disabilities during voting procedures.

35. **Mr. Grech** (Malta), in response to the questions put by Ms. Majodina and Mr. Bouzid, confirmed that the Government did not currently intend either to raise the age of marriage or to decriminalize defamation. As to the request made by Mr. Seetulsingh, the delegation would provide the Committee within 48 hours with an example of a court ruling regarding a case of defamation.

36. **Mr. Flinterman** said that he did not understand why the State party refused to raise the age of marriage from 16 to 18 when, as the State party had indicated in its own report, the average age for first time marriages in Malta in 2010 had stood at 28 for women and 30.6 for men. He hoped that the State party would reconsider its position on that issue in the future. The reservations formulated by the State party regarding article 29 (a) (i) and (iii) of the Convention on the Rights of Persons with Disabilities did not exempt it from its obligations under article 25 of the Covenant, which guaranteed the right of all citizens to vote by secret ballot. He wanted to know why the Government did not put in place a procedure enabling blind persons or persons with visual impairments to exercise that right, for example by permitting them to be accompanied by a trusted person, as had been suggested by a Maltese association for the defence of the rights of persons with visual impairments.

37. **Mr. Bouzid** said that, in its reply, the delegation had seemed to indicate that the refusal of the State party to decriminalize defamation was final. Such a stance nevertheless contravened article 19 of the Covenant and called for an explanation.

38. **The Chairperson** asked whether there had been any prosecutions for defamation since the submission of the State party's previous report.

39. **Mr. Grech** (Malta) assured the Committee that, although the Government currently favoured maintaining the status quo, the decriminalization of defamation continued to be debated and the views of the Committee would be borne in mind.

40. **Mr. Darmanin** (Malta) said that the delegation had noted Mr. Flinterman's remarks on the conflict between the obligations arising from article 25 of the Covenant and the reservations formulated by Malta regarding article 29 (a) (i) and (iii) of the Convention on the Rights of Persons with Disabilities and that they would be duly communicated to the competent ministry. As to the right to vote by secret ballot, very few voters with disabilities in fact made use of the Braille or MP3 format ballot papers placed at their disposal, with only six persons having done so at the previous election. Lastly, the Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing had met with NGOs on an number of occasions to discuss the proposal to authorize blind persons or persons with visual impairments to be accompanied by a trusted person when voting. The Electoral Commission was currently considering that issue.

41. **Mr. Agius** (Malta) said that the dialogue had been very useful and that his Government would give due attention to the issues raised by the Committee members.

42. **The Chairperson** thanked the delegation and invited it to provide the Committee with the additional replies it had been unable to give verbally within 48 hours, in order that they might be taken into account in the concluding observations.

43. *The delegation of Malta withdrew.*

The first part (public) of the meeting rose at 12.35 p.m.