

TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Malta, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Malta, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

MALTA REVIEW

Justice System

➤ *Quality of justice*

In its 2018 concluding observations, the UN Committee on the Rights of Persons with Disabilities expressed concern about the lack of documents in accessible formats for blind and deafblind persons and persons with intellectual or psychosocial disabilities in various proceedings and the absence of policies to empower persons with disabilities to participate in the justice system as direct or indirect participants, such as lawyers, court officers or law enforcement officials. It recommended in particular to provide free or affordable legal aid for persons with disabilities in all areas of law and ensure the necessary budgetary allocations to the institution or institutions mandated with this task ([CRPD/C/MLT/CO/1](#), para 21-22).

In a press statement of October 2020, following the mission of a team to Malta, the Office of the High Commissioner for Human Rights noted that migrants interviewed reported limited contact with the outside world, including lawyers and civil society organisations. OHCHR further reported that even when migrants were released from detention into open shelters, they faced an array of problems, including a lack of information about what will happen to them and delays in asylum processing (www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26337&LangID=E).

In its 2018 concluding observations, the UN Committee on the Rights of Persons with Disabilities expressed concern about the lack of systematic and continuous training for members of the judiciary, members of the legal profession, prosecutors and prison officers with regard to the equal rights of persons with disabilities and human rights in general. It recommended that Malta provide mandatory and ongoing capacity-building programmes, including training on the provisions of the Convention for members of the judiciary and the legal profession; for example, by broadening the audience of the disability equality training that is currently being provided to the recruits at the Police Academy ([CRPD/C/MLT/CO/1](#) para 21-22).

In its 2019 concluding observations, the UN Committee on the Rights of the Child recommended that Malta periodically conduct specific trainings on the Convention on the Rights of the Child and its Optional Protocols for all professionals working for and with children. Malta should ensure that all relevant persons in authority are trained on how to effectively assess the child's best interests, and that all professionals working with and for children systematically receive appropriate training on hearing and taking into account children's views in all decisions affecting them and in accordance with the child's age and maturity. The Committee also urged Malta to provide systematic training for judges, prosecutors, law enforcement officers and other professionals, on the identification, and referral to adequate services, of potential victims of child marriage and female genital mutilation. The Committee moreover urged Malta to ensure that child protection authorities are promptly informed and assigned to participate in procedures for the determination of the best interests of the child, including by training border officials on the rights of the child and in child-sensitive procedures ([CRC/C/MLT/CO/3-6](#), para 14, 20-21, 29, 42).

➤ **Other**

In its 2019 concluding observations, the UN Committee on the Rights of the Child recommended Malta to review and adapt its legislative framework to ensure that businesses operating in or managed from Malta do not negatively affect children's rights, and to explicitly prevent and aim to eliminate child sexual exploitation, especially in travel and tourism. It also expressed concern about cases of sexual abuse of children committed within their family and/or by persons in their circle of trust, including by religious personnel of the Catholic Church. Inter alia, it urged Malta to establish accessible, effective, confidential, child-friendly mechanisms, procedures and guidelines to ensure mandatory reporting and referral of cases of child sexual abuse and exploitation; transparent and effective investigation of all cases (including in travel and tourism), the criminal prosecution of alleged perpetrators, and adequate criminal punishment of those found guilty. It also recommended to establish an independent and impartial commission of inquiry to examine cases of sexual abuse reportedly committed by religious personnel ([CRC/C/MLT/CO/3-6](#), para 17, 27). In 2019, Malta supported a recommendation from its latest Universal Periodic Review on addressing child abuse and sexual exploitation ([A/HRC/40/17](#) and [A/HRC/40/17/Add.1](#)).

In its 2019 concluding observations, the UN Committee on the Rights of the Child expressed several concerns about the treatment of children in the criminal justice system. The Committee urged Malta inter alia to review its legislation to ensure all children under 18 be treated as children and referred to the juvenile justice system when in conflict with the law, including when co-accused with adults; further limit the use and length of pretrial detention of children; ensure detention be used as a last resort and for the shortest possible time and be regularly reviewed with a view to its withdrawal; and when detention was unavoidable, ensure that children are held separately from adults. The Committee referred in particular to the case of children who had allegedly hijacked the vessel that had rescued them off the coast of Libya in March 2019, expressing concern they were being charged with terrorism before the Court of Magistrates and not before the Juvenile Court, and had been initially placed in the high-security division of an adult prison ([CRC/C/MLT/CO/3-6](#), para 44-45). In a Press briefing note of May 2019 on the case, the spokesperson of the UN High Commissioner for Human Rights called on Malta to reconsider the charges, noting also that the minors concerned had reportedly been interrogated without being appointed legal guardians or placed in the care of independent child protection officials, responsible for ensuring their best interests (<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24569&LangID=E>).

Anti-corruption framework

➤ *Prevention*

In its 2019 concluding observations, the UN Committee on the Rights of the Child called on Malta to strengthen audits to increase transparency and accountability with regard to public expenditure across all sectors, and to strengthen institutional capacities to effectively detect, investigate and prosecute corruption, taking note of target 16.5 of the Sustainable Development Goals ([CRC/C/MLT/CO/3-6](#), para 11(e)).

In 2018, several Special Procedures mandate-holders initiated a dialogue with Malta citing concerns over alleged Government interference into the investigation of the killing of investigative journalist, Daphne Caruana Galizia, and the large number of pending civil lawsuits against her family, including lawsuits initiated by public officials ([OL MLT 1/2018](#)), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>)

Fresh public calls for accountability were issued again by Special Procedures mandate-holders in October and December 2019, including together with the Council of Europe Commissioner for Human Rights and the OSCE Representative on Freedom of the Media, noting failure by the authorities to fully investigate the killing. They called for the public inquiry or other investigations to also consider the factors behind her assassination, including the major cases of corruption she was investigating and had denounced repeatedly. (see <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25150&LangID=E> and www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25381&LangID=E)

In 2019, Malta supported several recommendations from its latest Universal Periodic Review, on strengthening anti-corruption institutions and investigating cases of violence, harassment or threats against journalists ([A/HRC/40/17](#) and [A/HRC/40/17/Add.1](#)).

➤ ***Repressive measures***

In December 2019, the UN Special Rapporteur on the right to privacy addressed to Malta detailed recommendations on strengthening the legal framework on Malta Secret Service, in order to tighten safeguards and avoid potential for conflicts of interest in matters of surveillance and interception of telecommunications, especially where the role of Ministers and the Prime Minister was involved. The Special Rapporteur noted that flaws and the lacunae in some of Malta's relevant laws had long been noted and that they needed to be reformed in such a way so as to introduce greater accountability and better safeguards that would protect democracy, privacy and the rule of law. The Special Rapporteur respectfully submitted that new legal safeguards as he recommended would not only intrinsically improve the protection of citizens available under Maltese law, but that they would also serve to bolster international confidence in the commitment of the Executive in Malta to bringing integrity to the country's institutions. ([OL MLT 2/2019](#), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>; see also press release at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25441&LangID=E>).

Other institutional issues related to checks and balances

➤ ***The process for preparing and enacting laws***

In 2020, several Special Procedures mandate-holders initiated a dialogue with Malta citing concern about information received on the closure of the country's ports as a measure to fight against the spread of COVID-19. Acknowledging States' sovereign responsibility to manage their borders, they emphasised that denial of access to territory without safeguards to protect against refoulement could not be justified on the ground of any health risks ([MLT 1/2020](#), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>).

In a press statement of October 2020, the Office of the UN High Commissioner for Human Rights noted that the situation for migrants had become all the more acute in light of the COVID-19 pandemic, with humanitarian search and rescue vessels being prevented from continuing their life-saving work, as well as a lack of access by civil society groups that help migrants.

(www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26337&LangID=E).

➤ ***Independent authorities***

In its 2018 concluding observations, the UN Committee on the Rights of Persons with Disabilities recommended that Malta repeal and/or amend articles 21 (1) and 24 (1) of the Equal Opportunities (Persons with Disability) Act to ensure sufficient representation and engagement of representative organizations of persons with disabilities, accountability and transparency. It further called on Malta to review the draft Equality bill on Human Rights and

the Equality Commission to ensure that the planned Maltese national human rights institute adheres to the Paris Principles ([CRPD/C/MLT/CO/1](#), para 50).

In its 2019 concluding observations, the UN Committee on the Rights of the Child referred to its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child. It reiterated its previous recommendation (CRC/C/MLT/CO/2, para 19) that Malta take appropriate measures to strengthen the independence of the Office of the Commissioner for Children, by ensuring the provision of adequate specific and separate human, technical, and financial resources as well as the immunities required for it to effectively carry out its function, including dealing with complaints from or for children in a child-sensitive and expeditious manner ([CRC/C/MLT/CO/3-6](#), para 13).

➤ ***The enabling framework for civil society***

In its 2019 concluding observations, the UN Committee on the Rights of the Child expressed deep concern at instances of criminalizing search and rescue operations for refugees and migrants, including children, carried out in the Mediterranean Sea by some civil society organizations. The Committee urged Malta to guarantee the rights and freedom of action of civil society and to ensure that the rescue of migrants is not considered a crime ([CRC/C/MLT/CO/3-6](#), para 15).

In 2019, several UN Special Procedures mandate-holders initiated a dialogue with Malta citing concerns about allegations of acts of intimidations against human rights defender Sarah Clarke, then International Policy and Advocacy Manager at the non-governmental organization PEN International, by Maltese high level officials during a UN High Level event on 10 December 2018 ([OL MLT 1/2019](#)), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>). Her case was included in the 2019 Report of the UN Secretary-General on reprisals ([A/HRC/42/30](#) para 70, 71).

In her February 2021 global update to the UN Human Rights Council, the UN High Commissioner for Human Rights expressed concern about measures in several EU countries restricting the work of organizations that protect migrants' rights and deliver life-saving assistance. She noted that criminal or administrative proceedings had been initiated in Malta against humanitarian actors involved in search and rescue in the Mediterranean. (www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26806&LangID=E).