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**STATUS OF HUMAN RIGHTS IN THE REPUBLIC OF MALTA
FOR THE 45TH SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to discuss the status of human rights in the Republic of Malta (Malta) for the 45th session of the Universal Periodic Review (UPR).

Background

2. Malta is located in the Mediterranean Sea in Southern Europe and has a population of approximately 467,000 people.¹ The population of Malta is predominately Christian with approximately 82.6% of the population identifying as Catholic, 4.8% as other, 3.9% as Muslim, 3.6% as Orthodox Christian, and 5.1% as non-religious.²

3. Malta's previous review was held on November 14, 2018.³ As a result of the review, Malta received 157 recommendations, 122 of which Malta supported.⁴ It was recommended by France, and noted by Malta, that the government "[r]eform laws on abortion with a view to legalizing it and improving the provision of sexual and reproductive health services, in particular family planning"⁵ It was also recommended by Belarus, and supported by Malta, that the government "[i]ncrease efforts in the fight against corruption and trafficking in persons, including by improving the relevant legislation and law enforcement practices."⁶ There were no recommendations made regarding religious freedom.

Legal Framework

Abortion

4. Under Article 33 of the Constitution of Malta, "[n]o person shall intentionally be deprived of his life"⁷

5. In Malta, abortion is currently prohibited in all circumstances.⁸ Under Article 241(1) of Malta's Criminal Code:

Whosoever, by any food, drink, medicine, or by violence, or by any other means whatsoever, shall cause the miscarriage of any woman with child, whether the woman be consenting or not, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.⁹

6. However, while not codified, it is the current practice for physicians to be free to act in situations where continued pregnancy will threaten the mother's life.¹⁰

7. Malta is a party to the International Covenant on Civil and Political Rights (ICCPR).¹¹ Under Article 6 of the ICCPR, “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹² Malta also has a responsibility to protect the lives of preborn babies under other international agreements such as the UN Charter, the Universal Declaration of Human Rights (UDHR), and the 1994 Cairo Conference on Population and Development.

Human Trafficking

8. Article 35 of the Constitution of Malta states that “[n]o person shall be required to perform forced labour.”¹³ Further, under Article 36, “[n]o person shall be subjected to inhuman or degrading punishment or treatment.”¹⁴

9. Moreover, under Article 248A of the Criminal Code of Malta:

(1) Whosoever, by any means mentioned in subarticle (2), traffics a person of age for the purpose of exploiting that person in:

- (a) the production of goods or provision of services; or
- (b) slavery or practices similar to slavery; or
- (c) servitude or forced labour; or
- (d) activities associated with begging; or
- (e) any other unlawful activities not specifically provided for elsewhere under this sub-title,

shall, on conviction, be liable to the punishment of imprisonment from six to twelve years.¹⁵

10. Further, under Article 248B:

Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material or other forms of sexual exploitation shall, on conviction, be liable to the punishment laid down in article 248A(1).¹⁶

11. Additionally, Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Malta is a party,¹⁷ states that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁸

12. Furthermore, under Article 8 of the ICCPR, “[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude.”¹⁹

13. Malta is also a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.²⁰ Under Article 9, section 1 of this Protocol:

1. States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization.²¹

Abortion

14. In May 2021, legislation was introduced to remove Art. 241(1) from the criminal code and effectively legalize abortion in Malta.²² Thankfully, the President of Malta stated that “promoting abortion as a reproductive right simply does not follow any human rights logic.”²³ This proposed legislation expired in April 2022, and no action has been taken to re-introduce it.²⁴ Then, in November 2022, legislation was introduced to codify the existing practice of allowing doctors to perform abortion to protect a pregnant woman “from a medical complication which may put her life at risk or her health in grave jeopardy.”²⁵ Clearly, Malta understands human rights and the duty to protect every human being.

15. The people of Malta are also united in their support of protecting unborn children. In fact, a recent survey showed that 90% of the population in Malta opposed unrestricted abortion even during the first three months of pregnancy.²⁶

16. Malta’s commitment to protecting innocent human life should be applauded and supported. Further, Malta’s position regarding abortion is in line with numerous international documents. In fact, since the 1994 Cairo Conference on Population and Development, U.N. Members States have had an affirmative commitment to “reduce the recourse to abortion”²⁷ and to “take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning.*”²⁸ “Family planning” simply means planning when you will have children, as well as how many. However, once a human child is conceived, ending his or her life does not remain in the ambit of “family planning,” it becomes murder. As such, abortion should not be used for nor is it in fact a part of “family planning,” as the Cairo Conference correctly affirmed. Interestingly, France has apparently forgotten its commitment that abortion should not be promoted as family planning, as that was exactly its recommendation as noted in Paragraph 3 above. Additionally, the UDHR states that “recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family is the foundation of freedom, justice and peace in the world,” and provides that “[e]veryone has the right to life”²⁹ Again, Article 6 of the ICCPR likewise states that “[e]very human being has the inherent right to life. This right shall be protected by law.”³⁰ Similarly, the preamble to the United Nations Charter states that “the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person”³¹ Clearly, Malta’s law on abortion fulfills its obligations under these international documents as the law recognizes the dignity of the human life of both the mother and the preborn baby.

17. Further, Malta’s law remains in line with a majority of U.N. Member States protecting life. Currently, out of the 193 U.N. Member States, a majority (109) of them have strict limits on abortion.³² Even in the sixty-seven countries that have varying gestational limits for on-demand abortions, the majority of these (fifty-two) have a gestational limit of twelve weeks or less, while some allow only up to fourteen weeks, or somewhere in between.³³

18. In Malta, current practice allows physicians to intervene in cases where continued pregnancy is thought to be a threat to the mother's life.³⁴ Permitting abortion in these limited circumstances ensures the protection of life for both the preborn child and the life of the mother, as abortion can result in physical and psychological harm to the mother. It has been well-documented that abortion can result in the perforation of the uterus or the laceration of the cervix.³⁵ Abortion also deprives women of the health benefits that come from continuing pregnancy, such as the elimination of the protective effect a full-term pregnancy has against breast cancer.³⁶ Abortion can also mask other dangerous symptoms like an undiagnosed ectopic pregnancy.³⁷ Interestingly, even the World Health Organization acknowledges the complications of abortion in its pro-abortion guidelines.³⁸

19. Furthermore, women who have undergone abortions have also been reported to experience negative psychological side effects, from shame to drug abuse to suicidal thoughts.³⁹ All of these reasons contribute to the negative and even devastating effects abortion has on both the mother and the preborn baby. As such, despite several countries urging Malta to expand the so-called "reproductive services," Malta has every right to protect women and preborn children from the devastation of abortion.

Human Trafficking

20. In Malta, human traffickers lure victims to the country with false promises of jobs.⁴⁰ It is common for traffickers to lure in victims with false promises of jobs, only to force them into a different job and strip them of their passports.⁴¹ These victims are often women who have been lied to and are then forced into prostitution.⁴² Despite this problem, the government decreased human trafficking investigations in 2022.⁴³

21. For example, one Chinese woman moved to Malta after she was told she would have a job as a babysitter.⁴⁴ However, after arriving in Malta, she was told that she would be giving massages using a "special technique."⁴⁵

Her Maltese employer insisted that she needed to provide special services to clients, otherwise he would stop her working permit and she would have to return to China. So she ended up once again offering sexual services against her will. She says that she charged clients €30, which was split with her employer. Her employer also used to charge her €300 a month in commission.⁴⁶

22. In 2021, the government identified eighteen potential cases of human trafficking, which was an increase from 2020 when only six potential cases were identified.⁴⁷ Despite these cases, the government had zero reported human trafficking prosecutions or convictions in 2021.⁴⁸

23. In September 2020, a Chinese national was sentenced to five years in prison for human trafficking and operating a prostitution racket.⁴⁹ This came after police discovered that the perpetrator lured several Chinese women using false job promises, stripped them of their passports, and forced them into prostitution.⁵⁰

24. One thing that has hindered Malta's ability to effectively convict and prosecute human traffickers is a lack of resources and coordination.⁵¹ For example, one report found that the anti-trafficking stakeholders task force rarely conducted meetings to co-ordinate anti-trafficking efforts.⁵² Further, the government also cut funding from the Anti-trafficking

Monitoring Committee's budget from 20,000 euros in 2017/2018 to 16,000 euros in 2019/2020.⁵³ The government also failed to provide training and education regarding the crime of human trafficking to judges, police officers, or employees in the Attorney General's office.⁵⁴

Recommendations

25. Malta and its people are committed to protecting the life of both the mother and the preborn child. Malta will unquestionably face external as well as internal pressure to expand access to abortion, but we want to encourage Malta that its position to protect human life is not only consistent with human morality and decency, it is required by international human rights documents. Further, Malta's position is consistent with most countries in the world. For these reasons, Malta should resist all efforts to undo the protections it affords to all human beings, including the preborn. Malta must continue to stand steadfast and uphold protections for life at all stages.

26. While we are encouraged by Malta's stance on protecting preborn babies and their mothers, Malta is clearly lacking in its ability to combat human trafficking and protect victims. Malta must do more to protect victims of human trafficking and prosecute perpetrators. To do this, Malta must dedicate resources and training for law enforcement personnel so that they are able to identify victims and effectively prosecute traffickers.

¹ Malta, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/malta/> (May 2, 2023).

² Neville Borg, *90% Caucasian, 83% Roman Catholic: Malta Census Statistics Released*, TIMES OF MALTA (Feb. 16, 2023), <https://timesofmalta.com/articles/view/90-caucasian-83-roman-catholic-malta-census-statistics-released.1014045>.

³ *Universal Periodic Review – Malta*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/mt-index> (last visited May 10, 2023).

⁴ *Malta Infographic 31st*, OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/MT/MALTA_Infographic_31st.pdf (last visited May 10, 2023).

⁵ OHCHR, UPR of Malta (3rd Cycle – 31st Session): Thematic List of Recommendations, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session31/MT/UPR31_Malta_Thematic_list_of_Recommendations_E.docx (last visited May 10, 2023).

⁶ *Id.*

⁷ CONSTITUTION OF THE REPUBLIC OF MALTA 1964 (amended 2016), art. 33, https://www.constituteproject.org/constitution/Malta_2016.pdf?lang=en.

⁸ Sarah-Taissir Bencharif, *Malta to Amend Strict Anti-Abortion Laws*, POLITICO (Nov. 16, 2022, 6:03 PM), <https://www.politico.eu/article/malta-to-amend-strict-anti-abortion-laws/>.

⁹ CRIMINAL CODE art. 241 (1) (Malta), <https://www.refworld.org/docid/5d36fc847.html>.

¹⁰ *20,000 Take to Streets of Malta to Demand Government not Introduce Abortion*, RIGHT TO LIFE (Dec. 6, 2022), <https://righttolife.org.uk/news/20000-take-to-streets-of-malta-to-demand-government-not-introduce-abortion>.

¹¹ *Ratification Status for Malta*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx (last visited May 11, 2023).

¹² International Covenant on Civil and Political Rights art. 6, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [hereinafter ICCPR].

¹³ CONSTITUTION OF THE REPUBLIC OF MALTA 1964 (amended 2016), art. 35.

¹⁴ *Id.* art. 36.

¹⁵ CRIMINAL CODE art. 248 A (Malta).

¹⁶ *Id.* art. 248 B.

¹⁷ *Ratification Status for Malta*, *supra* note 11.

¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women art. 6, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

¹⁹ ICCPR art. 8, *supra* note 12.

²⁰ *Chapter XVIII Penal Matters: 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18 (May 09, 2023, 9:15 AM).

²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime art. 9, § 1, *adopted* on Nov. 15, 2000, 2237 U.N.T.S. 319, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

²² Ivan Martin, *MP Marlene Farrugia Presents Bill to Decriminalise Abortion*, TIMES OF MALTA (May 12, 2021), <https://timesofmalta.com/articles/view/mp-proposes-bill-decriminalising-abortion.871381>.

²³ Matthew Vella, *Marlene Farrugia Presents Abortion Decriminalisation Bill in Historic First*, MALTA TODAY (May 12, 2021, 4:34 PM), https://www.maltatoday.com.mt/news/national/109590/breaking_marlene_farrugia_presents_abortion_decriminalisation_bill_in_historic_first#.ZEf4-i-B1hG.

²⁴ Laura Calleja, *Abortion: What Happens to Marlene Farrugia's Decriminalisation Bill?*, MALTA TODAY (Apr. 14, 2022), https://www.maltatoday.com.mt/news/national/116213/abortion_what_happens_to_marlene_farrugias_decriminalisation_bill#.ZFzvfHbMK5c.

²⁵ AN ACT to Further Amend the Criminal Code, Cap. 9, 2022 (Malta), <https://parlament.mt/media/119611/bill-28-criminal-code.pdf>.

²⁶ *20,000 Take to Streets of Malta to Demand Government not Introduce Abortion*, *supra* note 10.

²⁷ International Conference on Population and Development, *Report of the International Conference on Population and Development*, ¶ 8.25, U.N. Doc. A/CONF/F.171/13/Rev.1, https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/icpd_en.pdf.

²⁸ *Id.* ¶ 7.24 (emphasis added).

²⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, pmbl., art. 3 (Dec. 10, 1948) (emphasis added).

³⁰ ICCPR art. 6, *supra* note 12.

³¹ U.N. Charter pmbl.

³² *The World's Abortion Laws*, CTR. FOR REPROD. RTS. (Sep. 27, 2022), https://reproductiverights.org/wp-content/uploads/2022/09/WALM_20220927_V1.pdf.

³³ *Id.*

³⁴ *20,000 Take to Streets of Malta to Demand Government not Introduce Abortion*, *supra* note 10.

³⁵ *Women's Right to Know: Abortion & Pregnancy Risks*, LA. DEP'T OF HEALTH, <https://ldh.la.gov/page/915> (last visited May 11, 2023).

³⁶ See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 CATH. U.L. REV. 1273, 1288-89, 1290 n.119 (2005).

³⁷ See generally *Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More*, THE UNCHOICE, www.theunchoice.com/physical.htm (last visited May 11, 2023) (listing sequelae and referencing sources).

³⁸ *Abortion Care Guideline*, WORLD HEALTH ORGANIZATION & HUMAN REPRODUCTION PROGRAMME 79 (Mar. 8, 2022), <https://www.who.int/publications/i/item/9789240039483>.

³⁹ Priscilla K. Coleman et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, 22 J. OF AM. PHYSICIANS & SURGEONS 113, 116-17 (2017), <https://www.jpands.org/vol22no4/coleman.pdf>.

⁴⁰ Nicole Meilak, *Slow Justice is Black Mark on Maltese Fight Against Human Trafficking*, MALTA TODAY (Aug. 3, 2022), https://www.maltatoday.com.mt/news/national/118086/slow_justice_is_black_mark_on_maltese_fight_against_human_trafficking#.ZEfjJS-B3YU.

⁴¹ *Id.*

⁴² Cedric Farrugia, *Women Lured to Malta and Forced Into Prostitution - Coalition*, NEWSBOOK (Mar. 17, 2021, 6:15 PM), <https://newsbook.com.mt/en/women-lured-to-malta-and-forced-into-prostitution-coalition/>.

⁴³ Meilak, *supra* note 40.

⁴⁴ Michele Gauci, *Chinese Woman Forced to Work as Sex Worker by Maltese Employer After Coming to Island to Babysit*, LOVIN MALTA (Apr. 13, 2023, 1:39 PM), <https://lovinmalta.com/lifestyle/interview/chinese-woman-forced-to-work-as-sex-worker-by-maltese-employer-after-coming-to-island-to-babysit/>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Josanne Cassar, *18 Suspected Cases of Human Trafficking in Malta in 2022*, TVM NEWS (July 21, 2022), <https://tvmnews.mt/en/news/18-suspected-cases-of-human-trafficking-in-malta-in-2022/>.

⁴⁸ Meilak, *supra* note 40.

⁴⁹ Luigi Sapiano, *Chinese Woman Jailed for Five Years After Running Prostitution Racket out of Her Balzan Massage Parlour*, LOVIN MALTA (Sept. 25, 2020, 5:08 PM), <https://lovinmalta.com/news/chinese-woman-jailed-for-five-years-after-running-prostitution-racket-out-of-her-balzan-massage-parlour/>.

⁵⁰ *Id.*

⁵¹ Kevin Cassar, *How Malta Protects Human Traffickers*, MALTA INDEPENDENT (Jan. 2, 2022, 11:00 AM), <https://www.independent.com.mt/articles/2022-01-02/blogs-opinions/How-Malta-protects-human-traffickers-6736239066>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*