



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the second periodic report of Malta*

1. The Committee considered the second periodic report submitted by Malta (CCPR/C/MLT/2) at its 3106th and 3107th meetings (CCPR/C/SR.3106 and 3107), held on 13 and 14 October 2014. At its 3127th meeting (CCPR/C/SR.3127), held on 28 October 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Malta albeit very late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's inter-ministerial delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/MLT/Q/2/Add.1) to the list of issues, which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) The adoption of the Civil Union Act, in April 2014;
- (b) The amendment to article 45 (3) of the Constitution, which introduces sexual orientation and gender identity as prohibited grounds of discrimination;
- (c) The amendments to articles 35 (1) and 37 (1) of the Criminal Code, which increase the age of criminal responsibility of children from 9 to 14 years old;
- (d) The amendment to article 339 of the Criminal Code aimed at prohibiting corporal punishment in all settings;

* Adopted by the Committee at its 112th session (7–31 October 2014).



(e) The adoption of the Second National Action Plan on Combating Trafficking in Persons 2013–2014.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, in 1994;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2010;

(c) The Convention on the Rights of Persons with Disabilities, in 2012;

(d) The Convention on the Prevention and Punishment of the Crime of Genocide, on 6 June 2014.

C. Principal matters of concern and recommendations

Domestic applicability of the Covenant

5. While noting information that rights enshrined in the Covenant have been incorporated into the Constitution as well as into different legal instruments, the Committee is concerned at the lack of awareness of the Covenant and the first Optional Protocol thereto, as well as the lack of cases where provisions of the Covenant have been invoked or applied by domestic courts (art. 2).

The State party should take all necessary measures to enhance and clarify the status and applicability of the Covenant and its Optional Protocol in the legal system of the State party. In this regard, it should take appropriate measures to raise awareness of the Covenant and its Optional Protocol among judges, lawyers, prosecutors and the public at large to ensure that its provisions are taken into account before national courts.

Reservations

6. While welcoming the commitment made by the State party that it will be reflecting in the forthcoming months on the reservations made to the Covenant, the Committee reiterates its view that some of the reservations entered by the State party to articles 13, 14, paragraphs 2 and 6, 19, 20 and 22 of the Covenant are obsolete, while in general the reservations have an adverse effect on the effective implementation of the Covenant (art. 2).

In light of its previous recommendation (CCPR/C/79/Add.29, para. 13), the State party should consider withdrawing its reservations to articles 13, 14, 19, 20 and 22 of the Covenant.

National Human Rights Institution

7. While welcoming the steps taken by the State party to extend the mandate of the National Commission for the Promotion of Equality, the Committee is concerned that the State party has not yet established a consolidated national institution with broad competence in the field of human rights in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

The State party should establish a national human rights institution with a broad human rights mandate, in full compliance with the Paris Principles.

Anti-discrimination legal framework

8. While welcoming the recent amendments to the anti-discrimination legal framework to introduce religion, sexual orientation and gender identity as prohibited grounds for discrimination, the Committee is concerned that discrimination on the basis of language has not yet been prohibited by law, thus failing to protect against discrimination on all the grounds enumerated in the Covenant. The Committee further notes with concern the existence of legal and administrative provisions, as well as some practices, that are incompatible with the principle of non-discrimination enshrined in the Covenant (arts. 2 and 26).

The State party should review its anti-discrimination and equality legal framework with a view to ensuring that it includes a comprehensive prohibition of discrimination on all the grounds as set out in the Covenant. The State party should undertake a thorough review of its legislation with a view to amending or revoking all provisions that are not in compliance with articles 2 and 26 of the Covenant.

Racial discrimination

9. Despite the efforts taken by the State party to combat racial discrimination, the Committee is concerned about reports of racism and xenophobia against migrants, including racially motivated violence and racial discrimination in access to employment, housing, and services. The Committee regrets the lack of concrete information on investigations, prosecutions and sanctions imposed on those responsible (arts. 2 and 26).

The State party should strengthen its efforts to eradicate stereotypes and discrimination against migrants, inter alia, by conducting public awareness campaigns to promote tolerance and respect for diversity. The State party should ensure that cases of racially motivated violence are systematically investigated, that the perpetrators are prosecuted and punished, and that appropriate compensation is awarded to the victims.

Discrimination against lesbian, gay, bisexual and transgender (LGBT) persons

10. While welcoming the efforts undertaken by the State party to address discrimination against lesbian, gay, bisexual and transgender (LGBT) persons in general, the Committee is concerned about the reportedly insufficient measures to prevent and combat bullying and harassment against LGBT students in educational settings (arts. 2 and 26).

The State party should take specific measures to provide an educational environment free of discrimination and violence against LGBT students, particularly through awareness-raising campaigns, school curricula and trainings addressed to educational personnel. The State party should take all necessary measures to put an end to any form of social stigmatization of homosexuality, bisexuality or transsexuality.

Representation of women in political and public life

11. While welcoming the measures taken by the State party to enhance the participation of women in the labour market and public life, the Committee is concerned about the low representation of women in political and public sectors, particularly in decision-making positions (arts. 2, 3 and 26).

The State party should strengthen its efforts to increase the participation of women in the public and private sectors, and if necessary, through appropriate temporary special measures to give effect to the provisions of the Covenant.

Violence against women and children

12. While welcoming the measures taken by the State party to prevent violence against women, including domestic violence, the Committee is concerned about the low number of prosecutions of perpetrators of violence against women and children. The Committee is also concerned about the lack of information on sanctions imposed on perpetrators, as well as on remedies provided to victims (arts. 7 and 23).

The State party should intensify its efforts to eliminate violence against women and children, ensure that further cases are duly investigated, prosecuted and penalized in an appropriate and systematic way, and establish a rehabilitation system for the victims. In particular, the State party should provide access to justice for all women and increase the number of shelters with adequate human and material resources. The State party should improve training with regard to the prevention and repression of violence against women and children for the staff of legal institutions and the police force. It should also establish a reporting system and a database for such acts in order to analyse and take appropriate measures in this area.

Abortion

13. The Committee is concerned about the general criminalization of abortion, which forces pregnant women to seek clandestine abortion services which put their lives and health at risk. The Committee is concerned that no exception is admitted when a woman's life is in danger or for cases of pregnancy resulting from rape or incest (arts. 6, 7 and 17).

The State party should revise its legislation on abortion by making exceptions to the general ban on abortion for therapeutic purposes and when the pregnancy is the result of rape or incest. The State party should ensure that reproductive health services are accessible to all women and girls throughout the country. It should also increase the number, and ensure the implementation of education and awareness programmes at the formal level (in schools) and at the informal level (through the media and other means of communication) on the importance of using contraceptives and on sexual and reproductive health rights.

Ill-treatment and excessive use of force by police officers

14. The Committee is concerned about allegations of ill-treatment and excessive use of force by soldiers and police officers at detention centres for migrants, which in some cases included the use of tear gas and rubber bullets. The Committee regrets the incomplete information on sanctions taken against officers found responsible by the State party for such cases and particularly with regard to the deaths of two migrants of Nigerian and Malian origin in 2011 and 2012 (arts. 6 and 7).

The State party should adopt effective measures to prevent excessive use of force and ill-treatment by law enforcement officials and members of the security forces. The State party should ensure that allegations of torture and/or ill-treatment are effectively investigated, perpetrators prosecuted and, if convicted, punished with sanctions commensurate with the seriousness of the crime, and victims should be adequately compensated. The State party should promptly investigate cases of death in custody, prosecute those responsible and provide appropriate compensation to families of victims.

Trafficking in human beings

15. While noting the adoption and implementation of the second National Action Plan on Combating Trafficking in Persons 2013–2014, the Committee is concerned about the low number of investigations and convictions related to trafficking in human beings. The

Committee also regrets the lack of information on measures adopted to improve the identification of victims and to ensure that victims have access to compensation and rehabilitation (art. 8).

The State party should intensify its efforts to combat trafficking in persons; systematically and vigorously investigate and prosecute perpetrators, and ensure that, when convicted, they are adequately sanctioned. The State party should also guarantee adequate protection, reparation and compensation to victims, including rehabilitation. It should ensure that legal alternatives are available to victims who may face hardship and retribution upon removal.

Administrative detention of migrants and asylum seekers

16. While taking note of the explanations provided by the State party, the Committee is concerned that irregular migrants, including asylum seekers are systematically detained upon arrival in the State party and that the length of detention could rise to 18 months for irregular migrants and to 12 months for asylum seekers. Similarly, the Committee is concerned about reports that migrants in a vulnerable situation, including unaccompanied children are automatically detained and that they are not systematically provided with free legal representation. Finally, the Committee notes that the time limit for administrative detention for immigration purposes is not defined by law and is concerned about the absence of an effective judicial remedy to review the lawfulness of detention, possibly due to reported lack of independence and judicial capacity of the Immigration Appeals Board (arts. 9, 13 and 24).

The State party should:

- (a) Guarantee that administrative detention for immigration purposes is justified as reasonable, necessary and proportionate in light of the specific circumstances and used as a measure of last resort for the shortest appropriate period;**
- (b) Further develop specific needs assessments of migrants in a vulnerable situation, particularly of unaccompanied children;**
- (c) Guarantee that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings;**
- (d) Ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children;**
- (e) Establish in its legislation a specific time limit and alternatives for detention;**
- (f) Ensure that administrative detention for immigration purposes is subjected to periodic evaluation and judicial review by an independent judicial body, in accordance with the requirements of article 9 of the Covenant.**

Non-refoulement and refugee determination procedures

17. While acknowledging the efforts made by the State party to improve the refugee determination procedure, the Committee is concerned about reports on difficulties faced by asylum seekers in access to counsel from the outset of the procedure. The Committee is also concerned about alleged instances of collective expulsions of migrants who have been intercepted and rescued at sea, in case of a real risk of ill-treatment, infringing the principle of non-refoulement and regrets that the State party contests its jurisdiction over persons rescued at sea (arts. 6, 7 and 13).

The State party should ensure that all persons applying for international protection are given access to a fair and full refugee determination procedure, have access to counsel and an interpreter from the outset of the procedure. The State party should scrupulously respect the principle of non-refoulement and ensure that migrants intercepted or rescued at sea are given access to the refugee determination procedure.

Living conditions in detention centres

18. Despite the efforts made by the State party to improve living conditions in detention centres, including open and closed centres for migrants, the Committee is concerned at reports of degrading living conditions, including inadequate sanitary conditions and health-care services (art. 10).

The State party should strengthen its efforts to improve the living conditions in detention centres on a sustainable basis, including with regard to adequate health care- services and sanitary conditions, with a view to achieving full compliance with the requirements of article 10.

The right to a fair trial

19. The Committee is concerned about the restrictions to the right of persons deprived of liberty to have access to a lawyer, such as delays of up to 36 hours prior to such access and the prohibition of access to a lawyer during police interrogation (arts. 9 and 14).

The State party should adopt all legislative and other measures to ensure that all persons deprived of their liberty have proper access to a lawyer including during police interrogation.

Juvenile justice

20. The Committee is concerned that children between 16 and 18 years of age who are in conflict with the law, including those standing as co-accused with adults, are excluded from the juvenile justice system and tried as adults (art. 24).

The State party should ensure that its juvenile criminal justice system upholds the rights set forth in the Covenant. The Committee considers that it is particularly important to uphold the right of children in conflict with the law to be treated in a way that will promote their integration into society, and that the principle that detention and incarceration should be used only as a last resort.

Right to vote of blind persons

21. The Committee is concerned about information that persons who are blind or visually impaired are in some cases obliged to vote verbally in front of a group of people representing political parties and the electoral commissions, thereby undermining their right to privacy and to vote by secret ballots (arts. 17 and 25).

The State party should ensure that it does not discriminate against persons with disabilities, particularly blind persons and persons with visual impairments by denying or preventing them from exercising their right to vote by secret ballots.

Freedom of expression and freedom of conscience and religious belief

22. The Committee is concerned about the criminalization of defamation and that the Press Act does not define libel or defamation. The Committee also regrets that Title IV of the Criminal Code provides for crimes against religious sentiment and criminalizes the Vilification of the Roman Catholic Apostolic Religion, as well as the Vilification of other

cults tolerated by law, which may undermine the right to freedom of expression and freedom of religion (arts. 18 and 19).

The State party should guarantee freedom of expression and freedom of the press, as enshrined in article 19 of the Covenant and developed at length in the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. The State party should also consider decriminalizing defamation and should in any case restrict the application of criminal law to the most serious cases, bearing in mind that imprisonment is never an appropriate punishment in such cases. The State party should consider repealing Title IV of the Criminal Code.

23. The State party should widely disseminate the Covenant, the first and second Optional Protocols to the Covenant, the text of its second periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into the other official languages of the State party.

24. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 13 and 16 above.

25. The Committee requests the State party to provide in its next periodic report, due for submission on 31 October 2020, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and non-governmental organizations operating in the country.