



# Convention on the Rights of the Child

Distr.: General  
23 January 2013

Original: English

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## Committee on the Rights of the Child Sixty-second session

### Summary record of the 1763rd meeting

Held at the Palais Wilson, Geneva, on Thursday, 17 January 2013, at 3 p.m.

*Chairperson:* Mr. Zermatten

## Contents

Consideration of reports of States parties (*continued*)

*Second periodic report of Malta* (continued)

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports of States parties** (continued)

*Second periodic report of Malta* (continued) (CRC/C/MLT/2; CRC/C/MLT/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Malta resumed places at the Committee table.*
2. **Mr. Borg** (Malta) said that although no central authority was responsible for monitoring compliance with the Convention, the Foundation for Social Welfare Services was the body in charge of overseeing the work of the country's three main social welfare services. It was the duty of the State to ensure that the Foundation was adequately funded and properly staffed.
3. The Commissioner for Children received complaints on its website, by email or in person from parents and children alike and followed them up, including by conducting investigations, as necessary. Under the Commissioner for Children Act, the Commissioner could carry out investigations for any purpose connected with his or her duties or on receipt of a written complaint. However, the Commissioner did not investigate complaints that fell under the jurisdiction of the courts. In such cases, the Commissioner was required to provide the reasons for declining to carry out an investigation and could advise the complainant of available administrative and judicial remedies.
4. Much had been done in the country to prevent domestic violence. Under the law, domestic violence meant any act of violence, whether physical or verbal, committed by a household member against another, including any omission that caused physical or moral harm. Under previous legislation, when a complaint of domestic violence had been filed and subsequently retracted, the police could not take any further action. Currently, however, police were required by law to follow up on any allegation of violence, even if it was subsequently withdrawn.
5. **Mr. Cardona Llorens** requested clarification of the phrase "exceeding the bounds of reasonable chastisement" referred to in the part of the Civil Code concerning deprivation of parental authority. What was considered reasonable bounds? Was there a clear prohibition under the law against all forms of corporal punishment?
6. **Mr. Borg** (Malta) said that any form of bodily harm was punishable under both the Criminal Code and civil law. The reference to reasonable chastisement in the Civil Code did not mean that the law permitted acts such as corporal punishment in the home, as they were prohibited under the Criminal Code. "The bounds of reasonable chastisement" referred to disciplinary measures not contrary to the law and did not include corporal punishment.
7. **The Chairperson** wondered why corporal punishment had been expressly and completely prohibited in the schools but not in the home. The phrase "bounds of reasonable chastisement" was a vague, arbitrary and dangerous notion.
8. **Mr. Borg** (Malta) said that, as corporal punishment was prohibited under the Criminal Code, it was not acceptable in a family setting. If further clarification of the law was required, he would inform the capital of the need to amend the law to make it clear that corporal punishment was prohibited everywhere.
9. **The Chairperson** said that the Committee would welcome such steps.
10. **Ms. Herczog**, noting that many countries were grappling with corporal punishment, said that working with parents had proved to be an effective way of addressing the issue.

She asked whether the law provided a clear definition of abuse in care institutions and whether Church institutions were subject to investigations by the Commissioner.

11. **Ms. Bugeja** (Malta) said that a unit of the national social work services, known as the Looked After Children Service, closely monitored all care institutions without exception and regularly visited every child in residential or foster care in the country. The Government had also introduced the notion of co-management of Church-run organizations, by which no organization caring for children was allowed to operate on its own.

12. **Mr. Borg** (Malta) said that another area in which children exercised their right to express their views was adoption. He referred to the relevant provisions of the Civil Code stipulating that a child who had reached the age of 11 must give his or her consent to any adoption process.

13. **Ms. Demicoli** (Malta) said that there were no provisions under the law governing the medical treatment or counselling of children without parental consent. The Government therefore applied the principle that patients could give their own consent to be treated if their doctors considered that they were sufficiently mature and understood the information that was provided to them. The principle did not apply to emergency situations, in which doctors acted in what they considered to be the best interests of the patient. The Government was drawing up guidelines to help health workers to assess whether a young person could be provided with confidential health care without parental consent.

14. **The Chairperson** said that he failed to understand why the delegation was focusing on the issue of adoption when the right of children to be heard extended to all decisions that affected them, not merely adoption and medical decisions.

15. **Ms. Tabone** (Malta) said that children were heard in the Family Court in separation or divorce cases. Judges and magistrates held special meetings with the children concerned to solicit their views. Children were also supported by a child advocate to ensure that their interests and comments were taken into account.

16. **Mr. Borg** (Malta) said that children were heard in school settings both in the classroom and through the children's councils. He knew of no administrative procedure in Malta where children could not be heard.

17. Turning to the questions raised about students with disabilities, he said that all children with special educational needs had a say in the national curriculum. Under the Ministry of Education inclusion policy, students drew up a statement of needs and had individual educational plans, which ensured that their needs were met. All students with sensory impairments were in mainstream schools and enjoyed appropriate support.

18. **Ms. Demicoli** (Malta) said that the national sexual health strategy adopted in 2011 had been covered in the report and the replies to the list of issues. It was based on a sexual health policy published in 2010 and the outcomes of a series of workshops. The strategy dealt with family planning, more effective contraceptive methods and other related issues and envisaged more research and outreach campaigns.

19. **The Chairperson** wished to know whether adolescent girls had access to confidential counselling and contraceptive means and whether the reproductive health services under the 2011 strategy were available throughout the country or only in the capital.

20. **Ms. Demicoli** (Malta) said that the Ministry of Health was coordinating efforts among various departments to carry out the strategy. Contraception was freely available in Malta and public health care was free of charge.

21. **Ms. Wijemanne** (Country Rapporteur) would like to know what occurred in cases of early pregnancy. What types of support were given to young mothers? Were there cases in which their babies were taken away from them? Was there a need for parental consent to receive counselling?

22. **Ms. Demicoli** (Malta) said that girls could obtain confidential counselling without the consent of their parents as long as they were deemed to understand the advice of a doctor. Nevertheless, doctors would always advise minors to inform their parents that they were seeking counselling. The Government offered a number of services to help young mothers to care for themselves and their children, including educational support and vocational training.

23. **Mr. Borg** (Malta) said that the teenage pregnancy rate had remained stable over the past 10 years. The State had adopted a holistic approach to single mothers, encompassing the education, health and social policy sectors. In cases in which the birth was not registered by both parents, the mother received additional benefits and her child was certainly not taken from her. Maltese society was caring and open to change.

24. **Ms. Demicoli** (Malta) said that the enactment of a new Mental Health Act in December 2012, which took a patient-centred approach and included for the first time provisions dealing specifically with children, had been an important development in the area of mental health. With regard to services for children with mental health problems, including depression, she said that there was a residential young people's unit, with two consultants working specifically with children. The Child Guidance Clinic assessed and treated children and adolescents with emotional and behavioural problems on an outpatient basis. The services offered by the clinic included a child guidance clinic, a learning disability clinic and an attention deficit hyperactivity disorder clinic. The National Agency for Child Welfare Services (Appoġġ) worked closely with school psychology services. There was also a residential service in the community run by a non-governmental organization and supported by the Government. Wherever possible, the policy was to avoid institutionalization.

25. **Mr. Borg** (Malta) said that all of the health services mentioned by his delegation were free.

26. **Ms. Tabone** (Malta) said that a special agency had been established in 1994 to deal with substance abuse. There had been extensive efforts in schools to educate young people about illegal and legal substance abuse and other addictive behaviours such as gambling. Prevention programmes catered to different age groups. The programme for children aged between 6 and 8, for example, covered self-esteem, drug abuse and sexual abuse, taught in the form of a puppet show. Young people who were experimenting with drugs were treated on an individual basis. There had been a move away from organized programmes for young experimenters, because research had shown that placement in such programmes resulted in the young people being labelled, which, in such a small country as Malta, thwarted their progress. There were no children in treatment programmes, as early interventions had been successful in preventing addiction.

27. Efforts had also been focused on Internet abuse, which was dealt with by two agencies within the Foundation for Social Welfare Services. A three-year programme had been carried out to educate children, parents and teachers on such abuse, in close cooperation with the police cybercrime unit.

28. **Mr. Borg** (Malta) said that the Foundation was an umbrella organization comprising three agencies: Appoġġ, which dealt with social and family affairs; sedqa, which dealt with substance abuse; and Sapport, which dealt with persons with disabilities.

29. **Ms. Wijemanne** said that the Committee had received reports that children spent lengthy periods in detention centres because the age determination process took an inordinately long time. Some children were also allegedly detained together with adults. She asked whether it would be possible to expedite the age determination process in order to provide greater protection for children. She also wished to know what access children in irregular migration situations, including victims of armed conflicts, had to psychosocial care and mental health services.

30. **Mr. Borg** (Malta) said that the Government made every effort to ensure that unaccompanied minors were detained no longer than was absolutely necessary to determine their identity and health status. When migration flows were low, unaccompanied young persons who were manifestly children were immediately brought to an open centre, where age verification took from a few hours to a maximum of 24 hours. Since December 2011, the Agency for the Welfare of Asylum Seekers requested interim care orders to be issued in cases clearly involving minors and continued its age assessment in open centres. In cases in which the age of the person claiming to be an unaccompanied minor was not apparent, the person was sent to a closed centre until medical screening was completed and the person's age verified. The age verification procedure began with a psychosocial interview by a multidisciplinary team. If the interview was inconclusive, the child's age was determined by an X-ray of his or her hand and wrist. The Agency sought to limit the use of that option. The test was performed as a last resort on persons determined by age assessment teams to be adults but who continued to claim they were minors to ensure that the full evidence was considered. The time frame for completion of the age assessment interview was 10 working days.

31. Individuals who were determined to be unaccompanied minors were accommodated in dedicated reception centres for unaccompanied minors under a care order. A request for the appointment of a legal guardian took place in the first week following admission to a centre for unaccompanied minor asylum seekers. Unaccompanied minors and other migrant minors had free access to public education.

32. While no specific steps were taken to identify former child soldiers, there was nothing stopping former child soldiers from revealing the fact to the authorities or NGOs, which would then refer them to treatment and support services.

33. **Mr. Gurán** requested further details of the appointment of legal guardians for unaccompanied minors.

34. **Mr. Tortell** (Malta) said that a legal guardian was appointed once a child's age was determined. The legal guardians were often social workers who worked in reception centres exclusively housing unaccompanied minors and assisted the minors throughout the asylum procedure, including placing them in schools and providing them with the necessary health care.

35. **Mr. Cardona Llorens** asked what provisions were made for families in the centres.

36. **Mr. Tortell** (Malta) said that the Government's policy was to respect family unity to the greatest extent possible in both closed and open centres. In the first few days after arrival, it was necessary to carry out an assessment to ensure that persons claiming to be a family unit were indeed a family. In closed centres, once it was determined that the persons in question were a family with minor children, that family unit was not subject to detention and, once it had received medical clearance, was immediately transferred to an open centre. There were various centres that housed families, run by both the Government and civil society. In some cases, the volume of arrivals meant that people had to wait some time before being transferred to the relevant centre.

*The meeting was suspended at 4.25 p.m. and resumed at 4.40 p.m.*

37. **Mr. Borg** (Malta) said that the Government had no evidence of child sex tourism in Malta, but child sexual abuse legislation was applicable to nationals and non-nationals alike. Under the Criminal Code, anyone convicted of trafficking in persons for the purpose of exploiting them in the production of goods or provision of services or slavery or practices similar to slavery or servitude was liable to imprisonment of between 2 and 9 years. Under a memorandum of understanding between the Foundation for Social Welfare Services and the police force, any cases of suspected trafficking were immediately investigated by the police and social workers together, with special responsibility for social workers to support the alleged victim.

38. Detailed information on the school dropout rate had been provided in the written replies to the list of issues.

39. With regard to the age of criminal responsibility, he said that a new bill presented to Parliament aimed to bring Maltese legislation into line with the principles of the Convention by raising the minimum age of criminal responsibility from 9 to 14 and providing that malicious intent must be demonstrated to criminally prosecute minors between the ages of 14 and 16.

40. **Mr. Gastaud** requested clarification of what was meant by malicious intent and asked whether young offenders received legal aid.

41. **Mr. Cardona Llorens** asked whether minors between the ages of 16 and 18 would be tried as adults, which would be contrary to the Convention.

42. **Ms. Tabone** (Malta) said that the amendments contained in the bill were considered to be an improvement on the current provisions of the Criminal Code. Children aged between 16 and 18 would be prosecuted as adults before the regular courts, but the punishment handed down would be lighter.

43. **The Chairperson** said that, for the new law to be fully consistent with the Convention, there should be a single category for children between 14 and 18 and persons under 18 years of age should be treated as children under the justice system. The issue of malicious intent should also be addressed.

44. **Mr. Borg** (Malta) said that the Committee's concerns would be raised with the Minister of Justice.

45. **The Chairperson** said that there was still time to amend the law, as the bill had not yet been adopted.

46. **Mr. Borg** (Malta) said that the bill would be discussed in Parliament before enactment, so amendments could be made. Meanwhile, he would take up the possibility of cases involving children aged between 16 and 18 being heard before the juvenile courts on the delegation's return to the capital.

47. **The Chairperson** asked what follow-up had been given to the Committee's previous concluding observations and recommendations concerning the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, including the recommendation to disseminate and raise public awareness about the Optional Protocol.

48. **Mr. Borg** (Malta) said that there were 53 childcare centres throughout the country and plans to open more. Childcare services were available at reduced rates or free of charge to those in need, based on a means test. However, many families preferred to leave their children with relatives such as grandparents rather than at childcare centres.

49. Prison staff included psychologists and social workers who assisted the children of inmates. Human rights education was included in courses on personal and social

development, which were a required part of the curriculum in both primary and secondary schools.

50. **Ms. Demicoli** (Malta) said that, thanks to promotional campaigns, the breastfeeding rate had increased from 35 per cent in 1990 to 56 per cent in 2011. Government efforts to promote breastfeeding included establishing a walk-in breastfeeding clinic, annual seminars, guidelines on breastfeeding rooms in public places and in the workplace and a breastfeeding policy in hospitals.

51. **Ms. Wijemanne** asked whether the marketing of baby formula in Malta was regulated and monitored. She said that the problem of child obesity might stem in part from the very low breastfeeding rate in the State party. She wished to know whether hospital staff members were trained in ways of encouraging new mothers to breastfeed.

52. **Ms. Demicoli** (Malta) said that the breastfeeding services previously mentioned were available both in hospitals and in community health centres. Regulations were in place on the marketing of baby formula, and a new directive on the subject was currently being discussed.

53. **The Chairperson** asked what the impact of increasing maternity leave to 18 weeks had been on the breastfeeding rate. While he understood that a number of preschool facilities had been established for children 3 years of age or older, he wished to know what facilities were available for children under 3.

54. **Mr. Borg** (Malta) said that it was impossible to know what impact the new maternity leave regulations had had on breastfeeding, because they had just been introduced, on 1 January 2013. Various family-friendly work arrangements were available to working mothers. For example, they could work flexible hours or reduced hours, or could telecommute for up to 90 per cent of their working hours. Employers were encouraged to provide breastfeeding rooms at the workplace, and the Government was committed to further promoting breastfeeding in the country.

55. **Ms. Herczog** asked if the new regulations on parental leave also applied to fathers. It was debatable whether flexible working arrangements were the best option, because it meant that mothers still had to care for their children while performing their job. She asked whether there were further plans to create affordable childcare facilities for children under 3 years old.

56. **Mr. Borg** (Malta) said that parental leave could be taken by either parent or shared between the two.

57. **Ms. Bugeja** (Malta) said that some of the root causes of child abuse as reported by social workers included mental illness, lack of parenting skills, lack of education, substance abuse and poverty. In an effort to prevent child abuse, parenting training was provided to all social workers and all parents involved with social services. A booklet entitled “Kiko and the Hand” prepared by the Council of Europe to teach children to say “no” to sexual abuse had been translated into Maltese and disseminated in all schools. An online counselling service was available to children, and a national helpline accepted anonymous calls and received on average 12,000 calls every year. Comprehensive social services had been established in six locations across the country and included outreach service that reached persons who were unlikely to seek assistance on their own.

58. Children who had to be removed from their parents were placed in family-based care whenever possible. Specialized foster care was available for children with disabilities or behavioural problems. Efforts were made to ensure that siblings were placed together in the same foster family. No children under 5 years of age had been placed in an institution in recent years. Foster parents were provided with training and financial support. Each child in foster care was assigned a social worker, and their individual support plans were reviewed

regularly. Planning for transition from care began early in the child's life, with a focus on further training or employment. If necessary persons in care could continue to receive support well beyond 18 years of age.

59. The recent, widely reported incidents of sexual abuse had served to raise awareness of the issue and had resulted in the adoption of the Protection of Minors (Registration) Act. Under the Act a register of convicted sexual abusers had been established, and employers were required to screen new employees to ensure their name did not appear in the register.

60. **The Chairperson** asked when Malta had ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and what measures it had taken to implement that Convention, particularly with regard to victims in legal proceedings and the use of new technologies for the sexual exploitation of children.

61. **Ms. Bugeja** (Malta) said that cases of child grooming had been reported and investigated by the cybercrime police. A programme was in place to train teachers to inform children about the dangers of grooming. Counselling was available to perpetrators of domestic violence, who could join the programme either voluntarily or on the basis of a court order.

62. **Mr. Borg** (Malta) said that the education system had undergone significant reforms in 2006, with a focus on expanding student services and improving the quality of education.

63. **The Chairperson** asked whether the programme for perpetrators of domestic violence was imposed by the courts and whether admission to the programme resulted in reduced sentences.

64. **Ms. Bugeja** (Malta) said that perpetrators could enter the programme either voluntarily or by order of the court. While there were no specific provisions under the law for voluntary treatment, volunteering for the programme was viewed positively by the courts.

65. **Mr. Gurán** (Country Rapporteur) thanked the delegation for the new information provided, which had been much needed, given that there had been a 12-year gap between the submission of the first and the second periodic reports. His primary concerns regarding the implementation of the Convention related to immigration policies, corporal punishment, sexual and reproductive health and certain aspects of the Criminal Code. He hoped that the Committee's concluding observations would help the Government of Malta to better understand and implement the Convention.

66. **Ms. Wijemanne**, noting the significant progress made, said that Malta still faced many challenges, including issues of adolescent health and irregular migration.

67. **Mr. Borg** (Malta) reiterated his Government's firm commitment to the rights of the child.

68. **The Chairperson** said that the Government of Malta should: submit its initial report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as soon as possible; ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; and ensure the timely submission of its next periodic report on the implementation of the Convention.

*The meeting rose at 5.45 p.m.*