**Questionnaire on human rights and transitional justice**

**Feedback of the Government of Malta**

1. **The contribution that transitional justice measures, policies and strategies adopted and/or supported at the local, national and/or regional level - to address a legacy of gross human rights violations and serious violations of international humanitarian law - have made to sustaining peace and the prevention of human rights violations, violence and conflict. Please highlight information on measures that address root causes of conflict, violence and human rights violations (e.g. discrimination, inequality, corruption and impunity). Please also identify or include related public reports in this regard.**

In many countries the cost of labour is regulated by domestic laws on minimum wages. As a way of example, the Employment and Industrial Relations Act (EIRA) is the principal Act which regulates Employment law in Malta. It represents a primary source of employment law, including conditions of employment, protection against discrimination and industrial relations to prevent conditions thatlead to forced labour and/or trafficking.

The UN Trafficking in Persons Protocol refers to a general form of ‘demand that fosters all forms of exploitation of persons’ which, in turn, leads to trafficking in persons. State Parties are compelled to adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons especially women and children. Similarly, Article 6 of the Council of Europe Convention on Actions against Trafficking in human beings also contain similar obligations. However, the EU Convention goes a step further and includes various measures on how to do this. In fact, parties must adopt or strengthen legislative, administrative, educational, social, cultural, or other measures by:

1. “Research on best practices, methods and strategies
2. Raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings
3. Target information campaigns involving, as appropriate, inter alia, public authorities and policy makers
4. Preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.”

In this regard, the Office of the Special Representative and Co-Ordinator for Combating Trafficking in Human Beings (OSR/CTHB) has assumed work to encourage and support participating States to adhere to their obligations and commitments related to addressing the demand that fosters the crime. Addressing the demand that fosters different forms of exploitation that lead to human trafficking serves as a means of fighting the phenomenon’s root causes and not simply its effects. Therefore, when reducing and preventing the economic gain that fuels Trafficking in Human Beings (THB), States can eliminate the profit motivation for traffickers to exploit vulnerable people.

It is therefore clear that reducing and ultimately eradicating the phenomenon of THB will require an in-depth analysis of the ‘demand’ issue since there would not be a huge incentive for trafficking victims if there was not such a huge demand for their exploitation. The cycle of trafficking persists because customers buy sexual services from trafficked victims or because employers find it more profitable to use the service of trafficked victims, including obviously the service of child victims. Different groups involved in organize criminal activities have been encouraged by the demands which exist for the exploitation of victims. The reasons as to why organized crime groups have incorporated trafficking and smuggling in their agendas is in part because the crime of trafficking requires minimum investment undertaking and generate maximum profits.

1. **The contribution of such transitional justice measures, policies and strategies to the realization of the 2030 Sustainable Development Agenda, in particular Sustainable Development Goal 16, on promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. Please highlight coordination with relevant policy areas (e.g., prevention of violence, economic development, poverty reduction, promotion of rule of law, access to justice, good governance, fight against corruption, and security and justice sector reform), specific results in the contribution to development, and key elements that contributed to their success. Please share relevant documents, data and links.**

Legislation, policy, and programmes to combat THB

On the 15th December 2000, the Maltese Government signed the Palermo Convention together with its two protocols. Consequently, the relative sections relating to Human Trafficking were introduced in the Criminal Code by Act III of 2002 and subsequently amended by Act VII of 2010, Act XVIII of 2013, and Act XIII of 2018. The new sub-title aimed at facilitating the ratification process of these instruments. Under the Maltese legal system, an offence of Human Trafficking entails an infringement of any of the provisions found in the Criminal Code falling under the heading ‘Of traffic of persons’, specifically Article 248A of Chapter 9 of the laws of Malta.

The Government of Malta remains committed in the fight against trafficking in human beings through various initiatives including policies and programmes. As of 2019, it has embarked on the commitment to enhance the fight against human trafficking by working on a reform that will aim to improve the coordination of the current processes and take an active approach in combatting trafficking in all its forms. The reform on human trafficking was initiated under the Parliamentary Secretary for Reforms, Citizenship and Simplification of administrative Processes in 2019, when a public consultation has been launched to gather feedback on measures relating to Malta’s fight against trafficking in human beings. The consultation process gathered feedback from various governmental and non-governmental experts working in the field of human trafficking. The feedback enabled the Government to start working on a strategy that placed victims of human trafficking at the centre of its measures and actions.

With regards to international co-operation in criminal matters for the purposes of investigations or proceedings the provisions of the relevant international and/or regional instruments, *(such as the European Convention on Extradition, the European convention on mutual assistance in criminal matters and its protocols, the council Framework Decision of 13th June 2002 on the European Arrest warrant and the surrender procedures between Member states, and the convention on Laundering, search , seizure and confiscation of the proceeds from Crime)* on mutual legal assistance and extradition, reciprocal arrangements between parties to such instruments and relevant provisions of domestic law concerning international co-operation apply. The Maltese Authorities have also participated in operations organised in the framework of the implementation of the EMPACT (European Multidisciplinary Platform against Criminal Threats) which is a Trafficking in Human Beings Project.

1. **Examples and results of gender-responsive transitional justice processes - including specific measures to ensure full, effective and equal participation of women and girls, increase their role in decision-making, and contribute to their empowerment - and their contribution to sustaining peace and development.**

Gender Equality

Malta has taken on board many of the GREVIO recommendations to sustain its continuous fight against Gender-Based Violence and Domestic Violence. Some of the measures introduced include the adoption of Malta’s first National Strategy ‘Society’s Concern: Gender-Based Violence and Domestic Violence Action Plan’ in 2018, the extension of the national helpline 179 to specifically address calls from victims of GBV and DV and the strengthening of the specialised legal service for victims of Gender-Based Violence and Domestic Violence through Legal Aid Malta. The Government is also committed to analyse the current situation of migrant women and victims of sexual violence in order to proactively address their needs. Malta has also launched its second National Strategy on Gender-Based Violence and Domestic Violence 2021-2022.

Moreover, awareness campaigns have been strengthened with the aim of addressing inequalities between women and men. Such preventive tools are set to also target the various educational institutions around Malta and Gozo. Prosecutors have been given training in areas of Gender-Based Violence and Domestic Violence, where prosecutors meet and brainstorm with NGOs. Consequently, prosecutors will be enabled to assist the victims and be assisted by other specialised personnel. This together with the establishment of protocols and guidelines in the education, health and justice sectors so as to strengthen cooperation and coordination amongst the various stakeholders. To ensure equal representation of women in politics, Malta has also passed a law to achieve gender parity whereby if a gender gets less than 40% of the available seats in Parliament, a maximum of 12 seats - six on either side of the House, can be added. In addition, Malta’s commitment towards having more women in decision-making roles can be seen through the increase in female judicial appointments.

The upcoming Maltese Gender Equality & Mainstreaming Strategy & Action also aims to address the following pillars:

* Right to equal treatment
* Equal access and opportunity to the workplace
* Financial independence
* Equal access and opportunity to knowledge and education
* Co-responsibility and balance of work, private and family life
* Equal access and opportunity to positions of authority for women and men
* Equal access and opportunity to health and general wellbeing
* Equal access to justice

Therefore, these measures are also intended at ensuring the full, effective and equal participation of women and girls.

Gender-sensitive approach in contacts with victims of THB

During contacts with THB victims, the Vice Squad police officers and the *Appoġġ* social workers ensure a gender-sensitive approach. The Vice Squad tries to have as far as possible a female officer present at interviews of female victims. In conducting the individual assessment of victims’ needs, the social workers take into account the specificities arising from age, gender and gender identity, in compliance with Article 12(a) of the Victims of Crime Act *(hereinafter referred to as VCA).* Moreover, in accordance with the guidance note of the International Protection Agency (IPA), which is the national authority responsible for the examination of asylum applications, asylum seekers who have been subjected to serious forms of violence, such as victims of trafficking, can ask for a same-sex case officer and/or interpreter to assist them.

Furthermore, pursuant to Article 14A(1) of the VCA, a court must take into consideration the gender of a child in the appointment of a support person to assist the child during the judicial proceedings. This article was introduced in April 2018 and allows a judge to appoint a specially trained expert as a support person to guide and assist a child victim of crime throughout the court proceedings, as well as for a suitable period of time following their conclusion. Pursuant to the same article (i.e. 14) and Article 17(1) of the same act, a children’s advocate with family law experience shall be appointed to assist and represent the interests of a child victim of trafficking in civil proceedings.

1. **Transitional justice policies that have strengthened and opened up space for civil society, and their impact on sustaining peace and development.**

A commonly used definition of transitional justice incorporates four essential elements of transition justice, namely criminal justice, truth, reparations and guarantees of non-recurrence / institutional reform.

With regard to the criminal justice system, Malta signed the Rome Statute on the 17th July 1998 and ratified on the 29th November 2002. In this regard, the ICC is the only permanent international criminal court with global aspirations. The obligation of state to investigate and prosecute ‘serious crimes under international law’ is today firmly established under treaty law. The ICC statute affirms that it is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes.

With regards to THB, the act is a crime under national legislation, more precisely under Article 248A-248D of the Criminal Code. Malta continues to be primarily a country of destination for trafficked victims. By Act XIII, adopted in April 2018, the minimum penalty for THB cases was increased from four to six years imprisonment while the maximum penalty is that of twelve years. Furthermore, compensation for moral damages of victims of trafficking was also introduced to the Criminal and Civil Codes. Two new services were added under Article 12 of the VCA i.e. medical treatment and protection measures against the risks of intimidation and retaliation. These amendments also clarified that these services are should be provided to victims even when the offence was committed in another EU Member State. In February of 2019, Malta also ratified the 2014 Protocol to the 1930 Forced Labour Convention.

The Anti-Human Trafficking Monitoring Committee, which is responsible for drawing up and monitoring the implementation of anti-trafficking policies, adopted the fifth National Action Plan on Combatting THB which plan includes measures under the pillars of co-ordination, prevention, awareness, evaluation and monitoring.

In 2019, the Government of Malta launched a public consultation with a view to carrying out a reform on human trafficking and prostitution. As part of this process, the Government intends to develop a comprehensive National Strategy against Human Trafficking for 2020-2024. In this regard a unit was set up within the Human Rights Directorate of the Ministry for Equality, Innovation and Research to monitor the implementation of the National Strategy and co-ordinate the work of the various stakeholders.

Victims of THB, by virtue of their status as victims of crime and victims of human rights violations, have the right to access to justice and effective remedies for any harm committed against them. Pursuant to Article 4 of the VCA, a victim shall be offered without undue delay and from his/her first contact with a competent authority, information on how and under which conditions he/she can have access to the existing support services, in particular medical care, accommodation, legal aid, interpretation and translation services, protection measures and compensation. In Criminal Proceedings, victims have the right to an interpreter and translation of information essential to the exercise of their rights. Such services are provided by qualified interpreters registered by the court.

Pursuant to Articles 3(5) and 5(3) of Subsidiary legislation 217z.07 entitled ‘Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese Authorities, Regulations’ a victim of THB who does not have sufficient financial resources is also provided with free legal aid during the reflection period and for the duration of the residence permit. As for child victims, under Article 14 of the VCA, in cases when a child is unaccompanied or separated from his/her family or when the Court considers that this is in the best interest of child, the Court must also appoint a children’s advocate or a legal aid lawyer, to represent the child’s interests. This provision applies also in cases where it is not clear if the victim is a minor. Free legal aid is provided in accordance with Subsidiary Legislation 595.11 on the Legal Aid Agency (Establishment) Order through Legal Aid Malta and is funded from the national budget. Asylum seekers are entitled to free legal aid to challenge any detention order issued against them and to appeal the first instance decision on their applications for asylum. NGOs also provide pro-bono legal assistance to victims of THB.

Where a victim contacts directly *Aġenzija Appoġġ* (which is the national agency for children, families and the community) a social worker informs him or her of the possibility to report the case to the police. If the victim does not want to report the case to the police, an arrangement is made with a lawyer from the NGO Jesuits Refugee Services to provide information about victims’ rights, with assistance of an interpreter provided by *Agenzija Appogg* whenever necessary.

Presently, a booklet is also being prepared which will be available in a range of languages to inform newly arriving migrants of their rights. Moreover, the Agency for Welfare of Asylum Seekers (AWAS) has set up a Migrants Advice Unit operating within the immigration centres whereby four interpreters and a cultural mediator were recruited to increase its efficiency. The Human Rights Direcotrate is also responsible for implementing the I Belong programme, which seeks to promote migrant integration through two-stage courses in the Maltese and English languages as well as cultural and societal orientation. This measure supports access to the labour market and mainstream services, such as education, health care and social services. This programme is open to all migrants, including victims of trafficking as well as asylum seekers whose asylum requests are in process.

1. **Challenges and successful experiences in enhancing linkages between transitional justice, peace and development, and increasing effective cooperation among relevant stakeholders in related policy areas. Kindly provide specific examples.**

In Malta, there is no time limit for the prosecution of a case since the duration of criminal proceedings in THB cases depends on the complexity of the case, in particular on the number of accused and victims. The situation exacerbated in 2020 due to postponements of court proceedings related to the Covid-19 pandemic. Nevertheless, the issue of the length of criminal proceedings is not specific to cases of THB since court hearings are postposed for reasons such as workload of courts, lack of interpreters, and unavailability of police officers who are in charge of conducting the prosecution. Consequently, the length of criminal proceedings impacts negatively on victims of trafficking, who might be exposed to repeated confrontation with perpetrators and re-victimisation, as well as on the outcome of prosecution. Unfortunately, this can only contribute to the lack of trust of victims in the criminal justice system.

Bilateral and international cooperation to bring to justice those involved in the smuggling of migrants, and human trafficking and money laundering. By way of example, the Maltese Authorities recently participated in operations organised in the framework of the implementation of the EMPACT (European Multidisciplinary Platform against Criminal Threats) THB Project.

1. **Information pertaining to other aspects of the mandate set out in resolution 42/17, including regarding the situation and perspectives of women, youth, children, older persons, persons with disabilities, as well as other relevant gender and intersectional dimensions.**

On the perspective of women:

In accordance with the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) recommendations Malta has implemented its recommendations by providing for specialized legal service for victims of Gender Based Violence and Domestic Violence through Legal Aid Malta, a specialized dedicated unit within the Malta Police Force for the same victims. On-going training is also being organized by the Commission to professionals working in the field of Gender Based Violence and Domestic Violence. Such initiatives serve to strengthen efforts to facilitate access by women to justice by making legal aid in civil proceedings more accessible for women victims of violence.

On the perspective of child-sensitive procedures for obtaining access to justice and remedies:

The interviewing of child victims of abuse is conducted by the police in a specially adapted room. Pursuant to Articles 391(3) and 646(2) of the Criminal Code, a child witness who is under the age of 16 shall be questioned only once, via video conference, and his/her testimony shall be recorded. The court may authorise a re-examination only for special and exceptional reasons which arise after the child has given his or her testimony. The authorities take all necessary measures so that child victims do not come across perpetrators in the court building, for example by making sure that the child enters the court through a different entrance from the defendant. The examination is conducted by a magistrate specialised in cases involving child abuse in a specially equipped room within the court building and the questions are put to the child by the magistrate or a psychologist in a child friendly way. The child does not see the defendant or his/her lawyer. The child is usually accompanied by his or her parents or guardian, a social worker, a lawyer and if necessary, even a psychologist.

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