**Questionnaire on Gender, sexual orientation and gender identity**

**Feedback of the Government of Malta**

1. **Has the State adopted, in public policy, legislation or jurisprudence, working definitions of gender and related concepts (for example gender theory, gender based approaches, gender perspective, gender mainstreaming) aiming to address violence and discrimination based on sexual orientation and gender identity? If so, please give examples, with commentary as needed to explain context, scope and application.**
2. **If that is the case, has the State carried out evaluations, assessments or evidence-gathering about the impact of the implementation of such actions and, if so, what are the main trends identified?**
3. **If that is not the case, please provide information as to the reasons.**

**Legislation:**

The **Constitution** of Malta expressly prohibits discrimination on the basis of, *inter alia*, sex, sexual orientation, or gender identity (Article 45). It also provides that every person is entitled to the fundamental freedoms “[…] whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity” (Art. 32).

The **Criminal Code** (Cap. 9 of the Laws of Malta) also expressly prohibits hate crime and speech, described as the incitement of violence or hatred against another person or group, on the grounds of, *inter alia*, gender, gender identity, sexual orientation. (Art 82.A) It also prohibits the condoning, denying or grossly trivialising of crimes against peace directed against a person or a group of persons defined by the same characteristics (Art. 82C).

Moreover, the Criminal Code establishes that offences aggravated – or motivated, wholly or in part – by hatred against a person or a group, on the grounds of the abovementioned characteristics will also lead to an increase in punishment by one to two degrees.

The **Gender Identity, Gender Expression and Sex Characteristics Act** (Cap. 540 of the Laws of Malta) defines, *inter alia,* the following terms:

“gender expression” refers to each person’s manifestation of their gender identity, and, or the one that is perceived by others;

“gender identity” refers to each person’s internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and, or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms; and

“lived gender” refers to each person’s gender identity and its public expression over a sustained period of time.

Article 13 of the same Act goes on to state that “the public service has **the** **duty** to ensure that unlawful sexual orientation, gender identity, gender expression and sex characteristics discrimination and harassment are eliminated, whilst its services must promote equality of opportunity to all, irrespective of sexual orientation, gender identity, gender expression and sex characteristics”.

The **Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act** (Cap. 567 of the Laws of Malta) similarly defines the terms “gender expression” and “gender identity”, and criminalises the performance, offering, or advertising of harmful, so-called conversion practices.

The **Gender-Based Violence and Domestic Violence Act** (Cap. 581 of the Laws of Malta) transposes the Council of Europe’s Istanbul Convention in Maltese law. It also similarly defines the term “gender”, and the term “gender-based violence” as follows:

“gender-based violence” means all acts or omissions that are directed against a person because of their gender, that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

As is the case with Chapter 540, this Act imposes positive duties on the State. In particular, the administration must create “an Action Plan which includes effective, measurable, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of gender-based violence and domestic violence.”

1. **Has the State ratified, signed, or adhered regional or international human rights treaties, declarations, programs or policies or any other international instruments aiming to address violence and discrimination based on sexual orientation and gender identity that involve the implementation of a gender framework (for example gender theory, gender-based approaches, gender perspective, gender mainstreaming)?**
2. **If that is the case, has the State carried out evaluations, assessments or evidence-gathering about the impact of the implementation of such actions and, if so, what are the main trends identified?**
3. **If that is not the case, please provide information as to the reasons.**

Malta has signed and ratified the Council of Europe’s European Convention on Human Rights, and its Protocols, as well as the Convention on preventing and combating violence against women and domestic violence.

Malta has also ratified the UN’s UDHR, ICESCR, ICCPR, CEDAW, CAT, CRC and CRPD, and has ratified or acceded to Optional Protocols of some of the treaties mentioned.

Recently, Malta also joined the UN LGBT Core Group.

1. **What kinds of information and data are collected by States to identify forms of violence and discrimination faced by people based on sexual orientation and gender identity? Is the data designed to capture causes and patterns of violence and discrimination against lesbians, gay men, bisexual women, bisexual men, trans women, trans men, and gender diverse persons?**
2. **Does this data collection take an intersectional approach (for example, connecting an individual’s multiple social categories to enable more precise analysis (e.g. collecting data about LGBT persons by identities such as race, age, national status and ethnicity)?**
3. **Does the data include information on the relationship between victims and perpetrators?**

No quantitative national surveys have been carried out which capture violence and discrimination against LGBTIQ persons. However, data is available for the FRA LGBT Survey (2013) I and the FRA LBGTI survey II (2020).

A Social Determinants of Health Survey is being conducted by the Ministry for Health which also captures data on sexual orientation and gender identity and includes questions of experiences of violence, but this study is still ongoing and yet to be published.

Data is also collected by the Malta Police Force regarding Hate Speech and Hate Crimes related to SOGIGESC.

The FRA LGBTI II survey is intersectional in approach although given the size of the country and the corresponding number of respondents indicating Malta as their country of residence (800) it is difficult to extrapolate reliable data in this regard.

The FRA data includes questions on perpetrators.

1. **Is comprehensive sexuality education taught in schools? Yes**
2. **If yes, please provide information as to the respective programs. Please provide examples (e.g. copies of curricula, citations to policies).**
3. **If not, are there efforts deployed by the State to establish and promote comprehensive sexual education, which incorporates diverse sexual orientation and gender identity perspectives? What have been the obstacles to adopt such policies and programs? Also, is the State adopting any alternative measures?**

In Malta the ‘National Minimum Curriculum’ (NMC) (1990) was the first legal framework which embraced different aspects of the human development and the diversity of each student. The NMC put emphasis on teaching experiences that allow children and young persons to develop skills and attitudes which help them debate sexual topics in a mature way, so that they cultivate an unbiased and non-judgmental attitude towards sex and sexuality and ‘act responsibly and positively in this regard’ (NMC, 1990, p.36). The ‘A National Curriculum Framework for All’ (2012) built on this notion of inclusivity encouraging critical thinking and reflection about gender identities, gender-role stereotyping and different sexual choices and orientations.

Sexuality and Relationships Education in Malta is compulsory under the Basic Education Act and is delivered in various subjects mainly in Science, Biology, Religion and Personal, Social and Career Development (PSCD). The different subjects tackle the topic from different perspectives however PSCD is the only subject that deals with this area of study in a developmental way, starting from Year 4 (Ages 8-9) going up till Year 11 (Ages 15-16).

In recent years various policies have been issued and promoted in schools namely the ‘Guidelines on Sexuality and Relationships Education in Maltese Schools’ (2013) and the ‘Trans, Gender Variant and Intersex Students in Schools Policy’ (this can be accessed on the following link <https://education.gov.mt/en/resources/Pages/Policy-Documentation.aspx>).

The aim of the policies are that of fostering a school environment that is inclusive, safe and free from harassment and discrimination for all members of the school community, students and adults, regardless of sex, sexual orientation, gender identity, gender expression and/or sex characteristics. They have also the aim of promoting the learning of human diversity that is inclusive of trans, gender variant and intersex students, thus promoting social awareness, acceptance, and respect in line with the philosophy promoted by the NMC and the NCF.

The PSCD syllabus is also constantly updated to make sure it reflects the needs of children and young persons who encounter challenges as they grow up, especially those related to gender norms, body image, sexual orientation and sexual violence amongst others. The syllabus can be accessed on the following link: https://curriculum.gov.mt/en/Curriculum/Year-9-to-11/Pages/default.aspx

The obstacles encountered by schools in the adoption of such policies and curricula come from some parents or/and caregivers who resist the adoption of an inclusive SRE curricula for their children. There might also be resistance from a few other subject teachers to such policies.

To counterbalance these obstacles the Directorate for Learning and Assessment Programmes (DLAP) together with the Human Rights Directorate (HRD) organizes training for teachers and Senior Management Teams to adopt a Whole School Approach in the promotion of an inclusive society. The DLAP and the HRD have recently embarked on a pilot project to create lessons with the help of subject Education Officers in six different subjects so that students are exposed to these themes in a cross curricular manner.

The Education Officers of PSCD have also developed workbooks that facilitate SRE learning in the classroom but also offer parents or/and caregivers a good resource for them to talk about the subject whilst creating a broad base to build on. Parents or/and caregivers are also called in for meetings during the different years to be informed by the PSCD teachers of the different topics their children will be discussing and when. This provides parents or/and caregivers the right stimuli to keep discussing sexual matters openly at home and thus supporting what is being taught in schools. Parents or/and caregivers are also provided with different websites and storybooks that can help them feel more comfortable and knowledgeable on how to talk to their children about various issues related to sexuality and relationships. Parents or/and caregivers are important sources of positive sexual health education and when they are aware of the content of the PSCD syllabus they tend to object less and their concerns and the anxieties are also mitigated.

The National Literacy Agency has also distributed a number of books to primary schools that address the issue of diversity and that can assist teachers in addressing LGBTIQ issues in an age appropriate way.

1. **Are there examples where the concept of gender has been used in religious narratives or narratives of tradition, traditional values or protection of the family to hinder the adoption of legislative or policy measures aimed at addressing or eradicating violence and discrimination based on sex, gender, sexual orientation and gender identity?**

Attempts were made to stop the enactment of the Civil Unions Act in 2014, the Gender Identity, Gender Expression and Sex Characteristics Act in 2015, and later on, the Marriage Equality Act in 2017, on the basis that these laws would confer rights to individuals going against what is traditional or acceptable. These attempts were unsuccessful. Similar attempts were also made to oppose the amendments to the Embryo Protection Act in 2018.

There is also an ongoing campaign to stop the progress of the Equality Bill, a government-proposed law which would strengthen Malta’s equality and non-discrimination framework, considerably going beyond the minimum standards required by European Union Directives. The Bill is currently being debated in Parliament.

1. **Are there examples where a concept of gender has been used in religious, traditional or indigenous narratives or values in a manner which promotes the acceptance of persons with diverse sexual orientations or gender identity, or protects LGBT individuals from violence and discrimination as well as covering a wider range of persons?**

Malta is host to two civil society organisations called Drachma – a support groups for LGBTIQ Christians and Drachma Parents – a support group for parents of LGBTIQ children. Both work closely together and have a Christian ethos. They were founding members of the Global Network of Rainbow Catholics and the European Network of Parents of LGBTQI people the latter of which was launched in Malta in 2017. They have established strong links with the Catholic Bishops of Malta and Gozo. Copies of a publication of Drachma Parents were purchased by the Bishops and distributed to all parishes.

Appearing March 8, 2019 on the popular TV Talk show, called *Xarabank*, Father Kevin Schembri, who teaches canon law at the University of Malta, and who was the official representative of the Archbishop on the programme, told the show’s host, Peppi Azzopardi, that God created people with “difference sexual orientations,” and that being homosexual “cannot be something bad, because he created it.” [[1]](#footnote-1)

In 2016 the Archbishop of Malta, Fr Charles Scicluna was reported to reject Conversion Practices as infringing on human dignity.[[2]](#footnote-2)

1. **Are there examples in which narratives or “gender ideology,” “genderism” or other gender-related concepts have been used to introduce regressive measures, in particular but not limited to LGBT persons or communities?**

N/A

1. **Are there initiatives taken by States in connection with the right to freedom of religion, belief or conscience (including the figure of conscientious objection) that have had the practical impact of limiting the enjoyment of human rights (including sexual and reproductive rights) of LGBT persons?**

To date, Maltese law fully criminalises abortion, and access to emergency contraception remains sketchy. However, it should be emphasised that these positions pre-date any public expressions or statements of conservative or religious nature. Access to emergency contraception became available following the filing of a judicial protest by women’s rights activists in 2016. However, pharmacists have the right to conscientiously object to supply it. They are obliged to provide information on alternative suppliers.

1. **Have there been public expressions of statements by political and/or religious leaders that have led to indefinite extension, modification or suppression of actions, activities, projects, public policies or application of gender frameworks?**

As stated in answer to Question 5, the Equality Bill has led to vociferous backlash from right-leaning and religious groups, on the basis that this proposed law would severely prejudice their freedom to live in accordance with their morals and values.

Of particular note is their insistence that the right to conscientious objection should be recognised within this law. This seems to be stalling the legislative process somewhat.

1. **Who are main actors who argue that the defenders of human rights of LGBT individuals are furthering so-called “gender ideology”? What are their main arguments? Have they been effective in regressing the human rights of LGBT individuals? Have their strategies directly or indirectly also impacted on the human rights of women and girls?**

The main actors are conservative religious groups both Roman Catholic and evangelical as well as far-right politicians.[[3]](#footnote-3) Their main arguments are:

1. Parents should have the right to determine what kind of sexuality and relationships education their children receive;
2. Marriage is between a man and a woman;
3. Equality legislation will threaten the right to freedom of religion;[[4]](#footnote-4)[[5]](#footnote-5)
4. One’s gender is dependent on one’s biological sex. Anything else is gender indoctrination;
5. Children have a right to a mother and a father;
6. Catholic Schools have the right to select staff based on their religious ethos;
7. **Can you provide examples of coalitions working together on resisting attacks on gender ideology? Please share examples of feminist and LGBT and other groups working together and with what kinds of frameworks, arguments and results?**

A number of coalitions have come together to resist attacks on gender ideology such as those between the LGBTIQ Rights Organisations, Human Rights advocacy groups and Women’s Rights (Pro-choice) Groups in support of the introduction of emergency contraception and the proposed Equality Act. Arguments are generally based on the right to self-determination and equal treatment.

1. **What policies, programs and/or practices has the State adopted to meet Sustainable Development Goals 5 (gender equality) and 10 (reducing inequalities)? Do these rely on gender frameworks inclusive to diverse sexual orientations and gender identities and/or aiming to address violence and discrimination based on sexual orientation and gender identity? Please identify relevant examples.**
2. Amendment to the Constitution of Malta to encompass discrimination on the grounds of sexual orientation, gender identity, gender expression or sex characteristics;
3. Enactment of the Gender Identity, Gender Expression and Sex Characteristics Act, which provides the right to gender identity and the right to change the recorded gender by means of a declaratory act before a Notary;
4. Enactment of the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, which prohibits conversion practices;
5. Enactment of the Civil Unions Act, providing the right to same-sex couples (as well as couples of different sexes) to register their partnership as a civil union. This Act provided that a civil union, once registered, shall mutatis mutandis have the corresponding effects and consequences in law of civil marriage;
6. Enactment of Subsidiary Legislation Conversion of civil unions into marriage, providing the right to couples in a civil union (including same sex couples) to convert their civil union into marriage;
7. Full marriage equality;
8. Enactment of the Protection of the Embryo (Amendment) Act to extend the right to assisted reproduction to any person regardless of gender or sexual orientation, who has attained the age of majority;
9. Gender neutral toilets policy;
10. Full transposition of the Council of Europe Istanbul Convention

1. https://lovinmalta.com/news/news-human-interest/it-cannot-be-bad-to-be-gay-says-priest-on-xarabank-where-there-is-love-and-sincerity-there-is-god/ [↑](#footnote-ref-1)
2. https://timesofmalta.com/articles/view/archbishop-wants-to-build-bridges-with-gay-community.603941 [↑](#footnote-ref-2)
3. https://www.maltatoday.com.mt/news/national/105657/antigay\_antifeminist\_religious\_zealots\_the\_adversaries\_of\_the\_equality\_act#.YCpNFWhKjIU [↑](#footnote-ref-3)
4. https://timesofmalta.com/articles/view/persecuted-by-equality-miriam-sciberras.822289 [↑](#footnote-ref-4)
5. https://timesofmalta.com/articles/view/proposed-equality-law-may-restrict-religious-freedom-church-says.776042 [↑](#footnote-ref-5)