

■ MALTA

Human rights, dignity and solidarity



Hate-speech and the condition of migrants and asylum-seekers are among the most severe challenges to human rights in this constitutional, parliamentary democracy. The country has become the entry door to the European Union for many refugees. Maltese leaders must not forget that decent work for all is essential to the exercise of fundamental human rights and freedom. The island must improve its treatment of refugees and asylum seekers, especially in closed detention centres. Its European partners have to support this effort with a pragmatic solidarity plan.

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A constitutional, republican, parliamentary democracy, Malta holds fair elections every five years on average. Six women were elected to the most recent parliament (2003-2008); one of them became a minister in the 14-member cabinet; another was appointed parliamentary secretary (junior minister without Cabinet rank).

The Constitution provides for an independent judiciary and the Government generally respects this mandate. The Constitution also guarantees the right to a fair public trial; the independent judiciary safeguards this right. Defendants have a right to the counsel of their choice. They may confront witnesses and present evidence, and enjoy a presumption of innocence and the right to appeal.

Malta abolished the death penalty in 1971. Prison conditions generally meet international standards; visits by independent human rights observers are permitted.

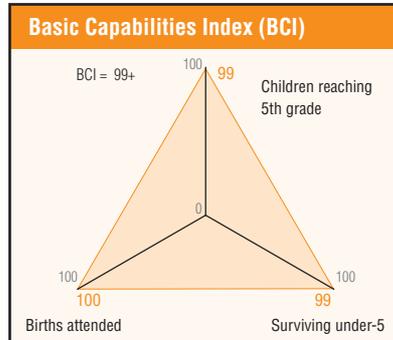
The Constitution provides for an independent, impartial court to determine civil rights and obligations, with remedies for human rights violations. Malta has also incorporated the European Convention of Human Rights and Fundamental Freedoms into domestic legislation. Early in 2008 the European Court of Justice held that Article 6 of the Convention had been violated when the Chief Justice headed the Court of Appeals when it heard a case in which his nephew and his brother were appearing as lawyers for the defence.¹

Maltese citizens have freedom of movement within the country, as well as in foreign travel and emigration. There are no restrictions on the return of citizens who emigrate. As Malta is a member of the European Union and incorporated in the Schengen Area, Maltese nationals can travel freely within the Union.

Freedom of speech and information

The Constitution guarantees freedom of speech and press freedom is safeguarded by the Courts and the Broadcasting Authority, an independent constitutional regulator that supervises radio and television broadcasting. However during the period 2005-2007, journalists and human rights and anti-racism activists were subjected to harassment by right wing fanatics for speaking out against racism. As will be

¹ *Malta Independent*, "European Court finds Malta guilty of breaching European convention", Malta, 23 January 2008.



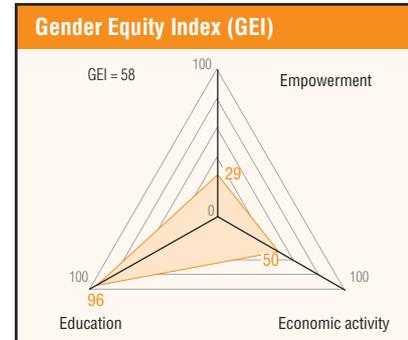
explained below, Malta's anti-discrimination measures have merited criticism.

Internet freedom is respected; no restrictions are placed on Internet access. But even though individuals and groups are free to express their views peacefully via the Internet, Privacy International, a European watchdog on surveillance and privacy invasion by governments reported in 2007 that the country systematically failed to uphold safeguards against invasive surveillance. Malta scored 2.4 in 2007, down from 2.6 the previous year. This places it in the "red zone", which the report defines as "systematic failure to uphold safeguards" and "widespread practice of surveillance". The major factors in the downgrade are a diminution of democratic safeguards, including protection of free expression, open government laws, and protection for journalists and lawyers. Privacy International expressed concern that privacy protection law is enforced by a ministry and "not by an independent agency."

The National Statistics Office (NSO) came under fire when the Chamber of Small Business and Enterprise (GRTU) challenged the accuracy of its statistics. A report prepared for the GRTU showed that the NSO had inflated GDP growth to 4.14% when it was actually 1.94%. The GRTU also criticized the appointment of the chairman of the statistics watchdog, the Malta Statistics Authority (MSA), to the helm of the NSO in January 2007. The MSA is in charge of making sure that the NSO functions correctly, putting this official in the compromising position of running the same organization that he was responsible for monitoring.

Religion

The Constitution guarantees freedom of religion. Although Roman Catholicism is the state religion, nu-



merous non-Catholic groups practice their faiths and are not required to register with the Government. All public schools provide Catholic religious instruction, but a student may legally opt out of it. The Muslim community runs its own school. Divorce and abortion are not permitted due to the strong opposition of the Maltese Roman Catholic Church. However, the State recognizes any divorce obtained abroad.

Labour

The labour market continues to adjust to globalization and the continuing privatization of public enterprises. Factory relocation has dramatically cut employment in the textile industry, formerly the mainstay of the manufacturing sector. Layoffs in the past two years have caused a broad shift in Maltese employment patterns. This transformation has included an expansion of employment in services, the pharmaceutical industry and information technology that is offsetting losses in traditional manufacturing enterprises.

The Employment and Industrial Relations Act 2002, which governs the labour market, includes family-friendly provisions. Despite wide-ranging agreement among the social partners on the need for family-friendly measures in principle, employers are wary of the strain that this could place on corporate economic viability. Unfortunately, measures aimed at helping workers achieve a better work-life balance currently apply to workers in the public services exclusively. The debate on this issue highlights the gap in industrial relations between rhetoric and reality.

In January 2005, the regulations governing vacation leave were amended to abolish the award of a compensatory day off for a public holiday falling on a weekend. The General Workers' Union strongly opposed the decision, appealing to the International Labour Organization (ILO). In June 2006, the ILO

recommended that the amended legislation should respect clauses contained in collective agreements and thus refrain from interfering in social partners' negotiations. However, up to this date (February 2008) the Government has maintained its original position.

The European Commission has required Malta to implement in full the EU rules prohibiting any discrimination in employment and occupation on grounds of religion, belief, age, disability or sexual orientation. The Employment Equality Directive (2000/78/EC) was ratified in 2000 with a deadline for implementation into national law of December 2003. The main problem areas are the following:

- National legislation is limited in terms of the people and areas it covers, as compared to the Directive (for example: lack of protection for civil servants or in self-employment);
- Definitions of discrimination that diverge from the Directive (in particular, in terms of indirect discrimination, harassment and instructions to discriminate);
- Incorrect implementation of the employer obligation to provide reasonable accommodation for disabled workers;
- Inconsistencies in the provisions designed to help victims of discrimination.

The influx of a relatively large number of undocumented migrants from Africa fills a gap in the labour market, since these migrants take on jobs unwanted by the Maltese. This situation may eventually create an underclass. To prevent that, their situation should be regularized through temporary work permits or by registering them as guest workers.

In an effort to promote female participation in employment, in 2007 the national budget implemented a measure offering tax deductions for expenses that individuals incurred on licensed childcare services. Employer payments for childcare services became deductible expenses.

Although gender mainstreaming was officially introduced in Malta through the European Employment Strategy, a study conducted by the Centre for Labour Studies revealed that obstacles to equality of opportunity remain. Although gender equality is protected by law, discrimination in various forms is still apparent. For example, recruitment strategies and modes of selection discriminate against women.

As globalization's emphasis on economic growth and profitability catalyzes market volatility and makes the labour world less secure, it is important for Maltese leaders to look upon work as a significant means of gaining self-respect and human dignity. Productive and decent work for all is essential to the exercise of fundamental human rights and freedom.

Domestic violence

Women's rights were enhanced by the enactment of the Domestic Violence Act, which came into force in February 2006, eight years after it was first presented. A Commission on Domestic Violence was established in March to provide enhanced protection for victims and specific offences have been

enumerated in the legislation covering domestic violence. The Commission's responsibilities include awareness raising and developing strategies to identify problems in order to give better protection to victims.

Racism

A report by the EU Agency for Fundamental Rights (FRA) on racism and xenophobia had mixed words of praise and criticism regarding how Malta deals with and prevents ethnic discrimination. The study criticized the absence both of Maltese case law on ethnic discrimination (meaning that key concepts of anti-discrimination legislation on ethnic or racial discrimination have not been applied, tested or interpreted by the courts) and of unemployment figures for immigrants from outside the EU. The FRA also noted that not a single sanction had been applied nor any compensation awarded in cases of ethnic discrimination during 2006, though the laws and procedures were in place.

On the other hand, the FRA commended two programmes underway in 2006 – one dealing with cultural awareness and anti-racism training of the Malta Police Force, and another that provides in-service courses with a specific emphasis on human rights for social studies teachers.

In April 2007 the Government published Legal Notice 85 – the Equal Treatment of Persons Order – which mirrors the EU directive. The Legal Notice, under the European Union Act, also extended the mandate of the National Commission for the Promotion of Equality (NCPE) from matters limited to gender equality to include complaints of racial or ethnic discrimination. The legal notice empowers the NCPE to look into complaints regarding social protection, social advantages, education, housing and other goods and services available to the public.

Overt racism has continued to increase in recent years. A non-governmental coalition, the European Network Against Racism noted that discussions in the news media and on the Internet were increasingly hostile towards immigrants and that racist attacks and hate speech were on the rise. In 2005, individuals and organizations that actively worked to protect the human rights of migrants and refugees or denounced racist and discriminatory attitudes and actions in Maltese society were targets of arson attacks. Although the situation currently appears calm, a new political party with racist tendencies – the Azzjoni Nazzjonali – is contesting the parliamentary election.

Migrants and asylum-seekers

Malta maintained its automatic detention policy for irregular migrants. On arrival they are held in closed detention centres for up to 18 months and later transferred to open centres. The policy clearly violates international human rights laws and standards. Migrants are detained without first having proper medical screening, potentially putting the health of other detainees and the detention centre staff at risk. NGOs and journalists are still not allowed access to detention centres. Four administrative detention centres for asylum seekers and migrants are in de-

plorable condition and failed to meet legally binding international standards.²

A delegation of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs that visited four detention centres in 2005 found that the Hal-Safi detention centre "was like a cage", without sheets on the beds, broken and dirty mattresses, and no heating. Hygiene conditions were intolerable, with broken showers, no hot water, and toilets without doors and in a state of disrepair. At the Hal-Far centre, delegates found high levels of mosquitoes and rat infestation, and appalling conditions in bathrooms. Some residents who had fled from the Darfur region in Sudan said their asylum applications had been rejected on the grounds that "they could have moved to safer areas of the country". The Lyster Barracks centre, had only two functioning toilets for more than 100 people, no provision of sanitary towels for women, and no area outside for fresh air and exercise, the Committee reported.

A report drawn up by the French NGO Médecins du Monde (MdM) criticized the living conditions in Malta's overcrowded closed detention centres as "detrimental" and "incompatible with a minimal respect for human rights". MdM doctors were initially denied access to the closed centres, but were eventually allowed in for two single-day visits. An Eritrean migrant, Mr. Berhe, has filed a constitutional case against the Principal Immigration Officer and the Justice and Home Affairs Minister, claiming a violation of his human rights due to the lengthy procedures for asylum and inhumane conditions of detention that included a crowded centre and lack of appropriate hygienic and medical and legal services.

Dr. K. Camilleri, a Maltese refugee lawyer working with the Jesuit Refugee Service, has been honoured by the UN refugee agency with the Nansen Award for her work with refugees.

Malta has implemented several initiatives recommended by previous EU delegations to ease boredom within the Closed Centres and to facilitate decent living conditions for detainees who are released into Maltese society or possibly resettled in another country. Declaring that its resources are over-extended, the Government has called upon the international community to give Malta the help it needs to tackle its refugee problem through burden sharing and resettlement schemes. The EU, which is the real magnetic pole for those fleeing Africa, needs to develop a consistent response. Malta's request for assistance is not to be construed as an abdication of its international obligations but as the expression of a genuine need for short-term help. Such assistance is not viewed as a permanent solution, which Malta recognizes can only be found within the framework of a long term approach addressing the root causes of emigration from Africa. We have had sufficient declarations on migration. It is time to translate them into practice. ■

² "JRS (Malta) concern on medical care in detention centres", August 2007, <www.jrsmalta.org>.