

QUICK GUIDE TO ADDRESSING SEXUAL RIGHTS ISSUES DURING THE UNIVERSAL PERIODIC REVIEW ON MALTA

These Guides include:

- A list of issues mentioned in the National Report, the Compilation of official UN Documents and the Summary of Other Stakeholders Submissions, with references to the particular paragraphs in which they can be found.
- The full text of those paragraphs
- In those cases in which the Sexual Rights Initiative has submitted reports, we have included an Annex with our recommendations.

References in the two working languages of the Council (English and French) have been kept in their original language.

Issues are highlighted, while **recommendations** are in bold and underlined. References in the National Report are *in Italics*.

All sexual rights issues that do not relate specifically to women are referred to in this Guide. Sexual rights' issues referring specifically to women -as well as other women's issues- are referred to in the Guide on Women's Issues

OP-CRC-SC (Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography) not ratified.

ISSUE	N Report	Compilation	Summary
Discrimination and Equality/ Empowerment			
Gender identity/ Transsexual persons			Restrictions to change sex assignment in identity documents. Need for measures to respect and legally

			recognize self-defined gender identity (14). Hormone therapy and gender reassignment not covered by National Health Service. Need for policies providing social support and healthy gender transitioning or reassignment. (16)
Sexual minorities/sexual orientation/gays	Sexual orientation as protected category against discrimination in social welfare and employment (104, 38, 39).		Discrimination persists in employment, healthcare, education, provision of goods and services. Need for legislation to prohibit it in all areas of life (4). Same-sex marriage not available and not recognized. Adoption not possible (13)
Trafficking/sexual exploitation/violence against children		Insufficient data. Need for a national strategy to prevent and combat it. Call for reinforce protecting measures and assistance (23)	

Gender identity/Transsexual persons

Malta Gay Rights Movement and International Lesbian and Gay Association-Europe

(MGRM-ILGA Europe) reported that according to Maltese law, only unmarried transgender persons who have undergone irreversible gender reassignment surgery may change the indication of sex in official documents. The procedure is lengthy and costly and involves a court procedure whereby the post-operative transgender person must undergo a medical examination by court appointed experts. This is the cause of embarrassment and humiliation to the individual concerned. Moreover, MGRM and ILGA-Europe indicated that the change in legal sex is claimed by the state to be purely for reasons of privacy and to prevent embarrassment to the transgender individual concerned and is not recognized for purposes such as marriage. This has been borne out by a recent decision by the Civil Court which revoked a previous ruling that had given a transsexual woman the right to marry. The case is currently before the Maltese Constitutional Court. MGRM and ILGA-Europe urged the Maltese Government to take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity; to ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity of the persons concerned; to ensure that changes to identity documents are recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy, including marriage (Para 14, Summary).

MGRM and ILGA-Europe reported that there is a general lack of professional expertise in the area of transgender health and made reference to research that indicates that transgender persons experience difficulty in accessing treatment for financial reasons since hormone therapy and gender reassignment are not covered by the National Health Service and transgender persons avoid doing routine health checks as they fear adverse reaction from healthcare professionals. MGRM and ILGA-Europe urged the Maltese Government to undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment (Para 16, Summary).

Sexual minorities/sexual orientation /LGBT persons

In order to address on-going social welfare concerns and emerging needs in the area of social welfare, for the next couple of years Malta is proposing the following overarching policy priority objectives: () Promoting equality of opportunities so as to ensure full social participation regardless of ... sexual orientation by: (i) Combating discrimination; Mainstreaming social inclusion and anti-discrimination issues (Para 104, NR). The Employment and Industrial Relations Act is the parent act of the Equal Treatment in Employment Regulations (Legal Notice 461 of 2004) which give effect to the European Directives on discrimination and implement the principle of equal treatment in relation to employment by laying down minimum requirements to combat discriminatory treatment on the grounds of () ... sexual orientation. As the Employment and Industrial Relations Act, these regulations address all stages of the

employment life, including access to employment, promotions, training, remuneration and other conditions of employment, and membership of, and involvement in, any organization of employees and employers or professional organization (Para 38, NR). The Regulations prohibits direct and indirect discrimination, harassment and sexual harassment. Employers are obliged to bring to the attention of the employees the equality policy; and to take effective measures to prevent all forms of gender discrimination at the workplace (Para 39, NR)

MGRM and ILGA-Europe noted that legal protection for lesbian, gay, bisexual and transgender/transsexual (LGBT) persons in the area of employment exists through legislation on equal opportunities and equal treatment of men and women in matters of employment and occupation. However, MGRM/ILGA-Europe noted that recent research conducted by MGRM illustrates that in the past two years discrimination against LGBT persons remains widespread in a number of areas, such as employment, provision of goods and services, healthcare and education. MGRM/ILGA-Europe urged the Maltese Government to adopt legislation to prohibit all forms of discrimination - including discrimination based on sexual orientation and gender identity - in all areas of life (Para 4, Summary).

MGRM and ILGA-Europe noted that there is no possibility for same-sex couples in Malta to register or legalize their relationship. Same-sex marriage or partnerships registered in

countries that allow such unions are not recognized by the Maltese State. Second parent adoption is also not possible. This lack of legal recognition leads to discrimination in access to housing, inheritance rights, the possibility of joint tax returns, visitation rights, emergency and family leave among other rights. MGRM and ILGA-Europe urged the Maltese Government to adopt legislation to recognize the relationship between two partners, irrespective of their sex and; to take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners (Para 13, Summary).

Trafficking/ sexual exploitation of children / Violence against children

An ILO Committee of Experts noted in 2007 the CRC's concerns over the insufficient data and awareness of commercial sexual exploitation of children in Malta, recommending a national study on the nature and extent of the problem with a view to designing policies and programmes to prevent and combat it, and for care and rehabilitation. The ILO Committee requested information on measures taken or envisaged to prevent the commercial sexual exploitation of children, and effective measures taken to remove children from such situations, to provide for their rehabilitation and social integration. The Committee noted the Government's

information in this regard, inter alia, about a 24-hour helpline and about school visits to increase awareness of all forms of child abuse (Para 23, Compilation).

Suggested questions and recommendations:

Recommend that the Maltese Government take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity; to ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity of the persons concerned; to ensure that changes to identity documents are recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy, including marriage (MGRM-ILGA Europe)

Recommend that the Maltese government includes the procedures required by transsexual persons for their gender reassignment in the National Health Service and provides a comprehensive health plan to this population, including services for social support.

Recommend that Malta extends the anti-discriminatory protection already offered on the basis of sexual orientation in the area of employment to all other areas, including through promulgating the required legal instruments.

Recommend that Malta intensifies awareness-raising efforts to ensure the implementation of the current (and future) dispositions against discrimination based on sexual orientation, particularly in the areas of employment and access to goods and services.

Recommend that Malta adopts legislation to recognize the relationship between two partners, irrespective of their sex and; to take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners (MGRM-ILGA Europe)

Reaffirm CRC recommendation national study on the nature and extent of commercial sexual exploitation of children with a view to designing policies and programmes to prevent and combat it, and for care and rehabilitation.