

QUICK GUIDE TO ADDRESS WOMEN'S 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
- A reference to "gaps", that is, issues on which the National Report should/could have applied a gender perspective but failed to do so.
- In those cases in which the Sexual Rights Initiative has submitted reports, we have included an Annex with our recommendations.
- In all cases we have included suggested questions and 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 from the National Report are *in Italics*.

All women's rights issues (included sexual rights' issues related specifically to women) are referred to in this Guide. Other sexual rights issues are referred to in the Sexual Rights Guides for each state under review

CEDAW ratified with reservations (arts. 11 (1), 13, 15, 16 (1e)). OP-CEDAW not ratified. Rome Statute ratified. Palermo Protocol ratified.

In 2004, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) **urged Malta to ratify OP-CEDAW and ICRMW.**

Reservations to CEDAW

While commending the legal efforts undertaken since ratification of the Convention, CEDAW **urged the Government to review and expedite withdrawal of the reservations to articles 11** (right to work), **13** (family benefits, financial credit, cultural life, development), **15** (civil matters) **and 16** (marriage and family relations) **[1]** (Para 1, Compilation).

Gaps

The National Report should/could have applied a gender perspective -that is, make

reference to how the issue affects women and men in particular ways- but failed to do so in the following sections: The National Commission Persons with Disability (6), Commissioner for Children (7), National Employment Authority (8), Health care system (23), Data protection (24-28), Consumer rights (29-32), Employment services through the Employment and Training Corporation (40), Social Welfare Standards (41), Housing (42), Protection of children (43), . Patients' involvement, choice and information (45), The elderly (46), Persons with mental health problems (47), Ethics and society (52-55), Right to life of the unborn child (56), Arbitrary arrest or detention (57-60), Protection from forced labour (61), Protection from inhuman treatment (62), Protection from deprivation of property without compensation (63), Protection for privacy of home or other property (64), Provisions to secure the protection of law (65-66), Protection of freedom of conscience and worship (67), Protection of freedom of expression (68-69), Protection of freedom of peaceful assembly and association (70), Prohibition of deportation (71), Freedom of movement (72), Independence of the Judiciary (74), Complaints against the police and relative procedures (75-77), The Ombudsman (78-82).

ISSUE	N Report	Compilation	Summary
Abortion	Protection to right to life of unborn child (56)	Illegal in all cases. Recommendation to except rape, incest, and therapeutic cases (36)	
Asylum-seeker women		Detention policy applied also to pregnant and lactating women in inhuman conditions, with health risks (43)	
Equality and Non discrimination	Current legislation and policies (4). Definition of discrimination (73), in social welfare (104)		

Patriarchal attitudes/sterotypes		Traditional gender roles affecting full enjoyment of rights. Need to assert non-traditional images of women by media and awareness campaigns (11)	
Public and political participation		Low representation at national levels and political decision-making. Need for special measures and awareness raising (29)	
Ratification of CEDAW / OP-CEDAW		Call for OP -CEDAW ratification and withdrawal of reservations to arts. 11 (1), 13, 15, 16 (1e)	
Reproductive health/rights	Free medical assistance to illegal immigrants (94).	Increasing rate of teenage pregnancy. Need for education programs and extension of health care services. (36)	
Rights of girls		Need to develop adolescent health policies, reproductive health education, mental health and cut alcohol addiction programs (37)	

Right to marry	Marriage Act (21)		
Right to social security		Need to take into account unpaid domestic work done by women for social security benefits. How Social Security determines the head of household (11)	
Right to work	Employment and Industrial Relations Act (39,40)	Questions on equality in the labour market (12). Occupational segregation, wage gap, difficulties in balancing family life and work (30)	
State mechanisms for women's rights	National Commission for the Promotion of Equality (5, 44)	Question about NCPE's impact, recommendation for support to be provided to it (8)	
Trafficking of women/ Forced prostitution		Request of comprehensive information on prevalence and on strategies for prevention, combat and assistance to victims (24)	
Violence against Women /Gender Violence	Commission and Domestic Violence Act (34)	Need to define rape and violent assault as crimes against women integrity an as a form of discrimination (17)	

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Abortion

Sub-title VII of Title VIII of the Maltese Criminal Code also protects the right to life of the unborn child. Article 241 provides that whoever, by any food, drink, medicine, or by violence, or by any other means whatsoever, causes the miscarriage of any woman with child, whether the woman be consenting or not, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years. The same punishment is awarded against any woman who is found guilty of procuring her own miscarriage, or who shall have consented to the use of the means by which the miscarriage is procured (Para 56, NR).

The Committee on Economic, Social and Cultural Rights (CESCR) observed with concern that abortion is illegal in all cases under Maltese law and urged it to review its legislation and consider exceptions to the general prohibition for cases of therapeutic abortion and when the pregnancy is the result of rape or incest (Para 36, Compilation)

Asylum-seeker women

A 2007 United Nations High Committee for Refugees (UNHRC) report noted that Malta's policy on detention of asylum-seekers is at times applied to vulnerable persons, namely children, pregnant and lactating women, elderly persons, persons with disabilities and victims of torture/trauma. (). The UNHCR report stated that medical services are not sufficient to meet all the needs, often urgent, of detained asylum-seekers, and that health risks are present. It stated that the Detention Service makes extensive use of inappropriate cells as a means of punishment, and the use of violence and offensive language, including threats is common. The report noted that UNHCR is not aware of any analysis by the Government to explore alternatives to detention of asylum-seekers (Para 43, Compilation).

Equality and non-discrimination

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 age, disability, gender, race, belief and sexual orientation by: (i) Combating discrimination; Mainstreaming social inclusion and anti-discrimination issues (Para 104, NR)

The specific fundamental rights and freedoms enshrined in Chapter IV of the Constitution are the following: () protection from discrimination on the grounds of ()

sex. Apart from the provisions of the Constitution and the European Convention Act, the Maltese Government has, over the years, taken various legislative initiatives aimed at further safeguarding the implementation of particular human rights. Inter alia, this refers to **legislation on protection against discrimination** () (Para 4, NR). In this regard one may refer to **legislation on protection against discrimination** such as the **Equality for Men and Women Act** (Para 18, NR).

The National Minimum Curriculum (NMC) entitled "Creating the Future" contains universal elements and priorities for the nurturing and development of what is truly human. One finds an emphasis on self-understanding and emotional development, and on values such as

respect for differences among people. It appeals to schools to be the testing ground for Human Rights. The NMC is a significant tool for **Human Rights Education**. One of its major principles is the issue of inclusive education. Two of its objectives emphasise on the development of citizens and a democratic environment and the **strengthening of gender equality** (Para 48, NR).

Article 45 of the Constitution provides that no **law** shall make any provision that is discriminatory either of **itself or in its effect**. The same article moreover provides that no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. Within the context of this provision, the expression **"discriminatory" means** affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description (Para 73, NR).

Patriarchal attitudes/stereotypes

CEDAW and CESCR expressed concern about the persistence of **traditional stereotypes** in the roles and responsibilities of women and men in family and society which, despite women's generally high level of education, **negatively affect full enjoyment of rights** by both women and men. They strongly **recommended organizing awareness-raising campaigns**. **CEDAW recommended that the media be encouraged to project positive images of women and men in non-traditional activities** (Para 11, Compilation).

Public and political participation

Noting that the proportion of women represented in local councils as of June 2004 was **17.6 per cent**, CEDAW was concerned, as was CESCR, that they are **significantly**

underrepresented at the national level in elected and appointed posts, in the judiciary, and in political decision-making, including the administration and the foreign service. A 2008 United Nations Statistics Division source indicated that the proportion of seats held by women in the national parliament was 9.2 per cent in 2008. CEDAW recommended the utilization of temporary special measures in all areas of public life. It also suggested that the State continue to offer leadership training programmes to women and carry out awareness-raising campaigns on women's participation in decision-making (Para 29, Compilation).

Reproductive health/rights

On 29 July 2008, Médecins Sans Frontiers (MSF) signed a Memorandum of Understanding (MoU) with Malta for the purpose of providing free medical aid to illegal immigrants reaching Malta (). MSF will also assist the authorities in the areas of () sexual and reproductive health. This one-year agreement provides for assistance to be given by MSF staff to immigrants upon their arrival, as well as to immigrants in detention and open Centres (Para 94, NR).

CESCR recommended that the State strengthen education programmes of sexual and reproductive health and support sexual and reproductive health services, expressing concern at the lack thereof. The Committee of the Rights of the Child (CRC) expressed concern at the increasing rate of teenage pregnancy; at insufficient access by teenagers to reproductive health education and counselling services, including outside school; and at the lack of a structured policy on health education (Para 36, Compilation).

Right to marry

Within the context of human rights within marriage and family values, on the other hand,

one may refer to the Marriage Act which refers to "wanting to ensure, in line with fundamental human rights and the values of family based on marriage, a free choice in matters of marriage" (Para 21, NR).

Right to social security

CEDAW encouraged Malta to assess unpaid work done by women in the family, to recognize such work in national account statistics and in pension entitlements and social benefits. CEDAW called on Malta to revisit the regulation requiring the Director of Social Security to determine the head of household, concerned that it may result in unintentional discrimination against women and may contradict civil law that gives parental authority to both parents (Para 11, Compilation).

Right to work

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 () **sex**. 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)

In 2008, an ILO Committee of Experts **asked the Government to provide detailed information, including statistics disaggregated by sex, on the results achieved by projects to promote equality in the labour market**. It **asked how these projects have helped to improve women's participation in private sector employment, including in jobs with career prospects and in posts of responsibility**. Another ILO Committee of Experts recalled in 2008 that pursuant to the Employment and Industrial Relations Act (No. 22), the Minister may **adopt regulations** to give better effect to the principle of equal remuneration for men and women for work of equal value. The Committee **asked whether any special regulations are envisaged or have been adopted to this end** (Para 12, Compilation).

CEDAW and CESCR were concerned that women are severely underrepresented in the labour market, particularly in **senior and decision-making** positions. They noted with concern the strong **occupational segregation**, both horizontal and vertical, the concentration of women in **part-time jobs**, and the persistent **wage gap**. CEDAW was concerned about lack of information on women working part-time for less than 20 hours, who seem to be less protected, with access to fewer entitlements. It **urged the State to ensure de facto equal opportunities in the labour market and to address the wage gap**. CESCR was concerned about the difficulties of **balancing employment and family** responsibilities and **urged further measures to enable working parents to reconcile the two responsibilities, including by ensuring access to affordable childcare and flexible parental leave schemes for workers in public and private sectors**. CEDAW, noting that a significant number of women drop out of the labour market by age 25, was concerned about the lack of information on women wanting to re-enter the market. It **recommended conducting thorough research and designing a comprehensive policy for counselling, training and retraining these women to reintegrate them into the labour market** (Para 30, Compilation).

State mechanisms for women's rights

The **National Commission for the Promotion of Equality (NCPE)** was appointed in January 2004, in accordance with the "Equality for Men and Women Act"; with responsibility in the areas of: **discrimination on the grounds of gender, (), sexual orientation** in the provision of goods and services, and **gender and family responsibilities** in employment. One of the NCPE's principal functions is to **investigate complaints** made by individuals who feel that they have been discriminated against on the basis of any of the listed areas of responsibility. The Commission may also initiate investigations on any matter involving an act or omission related to discrimination that is allegedly unlawful (Para 5, NR). The **National Commission for the Promotion of Equality** is an autonomous body which inter alia, monitors and reviews local legislation and suggests amendments as necessary and ensures the implementation of an inclusion policy across all grounds in all areas of **decision making**. It also actively promotes equality through various initiatives and through the investigation of complaints brought before it by the general public and through the dissemination of information in view of the various projects that it is leading or a member of their respective partnership (Para 44, NR).

CEDAW, while appreciating the work by the national machinery for gender equality, **sought detailed information: on the results of this work**, including the machinery's role in **mainstreaming gender perspectives** into laws, programmes and policies of individual ministries, departments and public entities; on the results of the Strategic Policy Direction 2004-2006; and on the impact of the **work of the National Commission for the Promotion of Equality for Men and Women** on the **non-discrimination of women**. CESCR recommended providing adequate support to the National Commission (Para 8, Compilation).

Trafficking of women/Forced prostitution

CEDAW encouraged the State to provide **comprehensive information** on the prevalence of trafficking in Malta as a **country of transit and destination** and, if required by the findings, on the **State's strategy** for the prevention of trafficking in **women and girls**, the support and rehabilitation measures for victims, the prosecution and punishment of offenders, and its international, regional and bilateral cooperation with respect to combating trafficking (Para 24, Compilation).

Violence against Women/Gender Violence

*In view of solidarity services and issues of family friendly measures, Malta has: (a) In 2006, enacted the **Domestic Violence Act** to make special provision for domestic violence and to make consequential and other **amendments to the Criminal and Civic***

Codes. This legislation also establishes the Commission on Domestic Violence, which amongst other functions, upholds the main role of advising the Minister responsible for Social Policy on all aspects of Domestic Violence () (Para 34, NR).

CEDAW was concerned that, under the Criminal Code, the crime of rape must be associated with violence and that rape as well as violent assault is considered in the Criminal Code under the title "Of Crimes against the Peace and Honour of Families and against Morals". CEDAW called upon Malta to define the crimes of rape and violent assault as crimes against the physical and mental integrity of women and as a form of discrimination that seriously inhibits women's ability to enjoy human rights and fundamental freedoms in equality with men (Para 17, Compilation).

Suggested questions/recommendations:

Reaffirm CESCR recommendation for Malta to review its legislation and consider exceptions to the general prohibition for cases of therapeutic abortion and when the pregnancy is the result of rape or incest

Recommend that Malta changes its policy of detaining asylum-seekers, particularly in the case of children, pregnant and lactating women, elderly persons, persons with disabilities and victims of torture/trauma.

Ask Malta what steps have been taken to ensure an increase in women's participation in the judiciary and in political decision-making posts and if CEDAW's recommendation to utilize temporary special measures has been implemented.

Ask Malta what measures are being taken to address CRC concerns on teenage pregnancies and insufficient access by teenagers to reproductive health education and services /Recommend that Malta takes all necessary steps to address the increase in teenage pregnancies, including by providing teenagers with sufficient access to scientifically based reproductive health education and services.

Ask Malta how are the dispositions of the Equal Treatment in Employment Relations being implemented, particularly to ensure that the principle for equal pay for equal work among women and men is observed.

Ask Malta which policies it is implementing to prevent and combat trafficking of

women, and what kind of assistance is being offered to victims.

Reaffirm CEDAW's recommendation to define the crimes of rape and violent assault as crimes against the physical and mental integrity of women and as a form of discrimination that seriously inhibits women's ability to enjoy human rights and fundamental freedoms in equality with men

Ask Malta which State policies are being implemented to attend to the specific needs of women with disabilities, in the context of its broader policy on the issue.



([1]). Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life.

(a) To participate in the elaboration and implementation of development planning at all levels;

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;