



**G R E T A**  
GROUP OF EXPERTS  
ON ACTION AGAINST  
TRAFFICKING IN HUMAN BEINGS

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Report concerning the implementation  
of the Council of Europe Convention  
on Action against Trafficking in Human Beings  
by Malta

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## Table of contents

|  |    |
|--|----|
| Preamble.....  | 4  |
| I. Introduction .....  | 5  |
| II. Main developments in the implementation of the Convention by Malta .....   | 7  |
| 1. Emerging trends in trafficking in human beings and types of exploitation.....   | 7  |
| 3. Developments in the institutional framework.....  | 8  |
| 4. National Action Plans.....  | 8  |
| 5. Training of relevant professionals.....   | 9  |
| 6. Data collection and research .....  | 11 |
| III. Article-by-article findings .....   | 12 |
| 1. Prevention of trafficking in human beings .....   | 12 |
| a. Measures to raise awareness (Article 5) .....   | 12 |
| b. Measures to prevent THB for labour exploitation (Article 5) .....   | 12 |
| c. Measures to prevent trafficking in children (Article 5) .....   | 14 |
| d. Measures to prevent trafficking in human beings for the purpose of organ removal (Article 5) .....  | 15 |
| e. Measures to discourage demand (Article 6) .....   | 15 |
| f. Border measures (Article 7).....  | 16 |
| 2. Measures to protect and promote the rights of victims, guaranteeing gender equality .....   | 16 |
| a. Identification (Article 10) .....   | 16 |
| b. Assistance measures (Article 12) .....  | 18 |
| c. Identification and assistance of child victims of THB (Articles 10 and 12) .....  | 20 |
| d. Protection of private life (Article 11).....  | 21 |
| e. Recovery and reflection period (Article 13) .....   | 22 |
| f. Residence permits (Article 14) .....  | 23 |
| g. Compensation and legal redress (Article 15) .....   | 24 |
| h. Repatriation and return of victims (Article 16).....  | 26 |
| 3. Substantive criminal law .....  | 27 |
| a. Criminalisation of THB (Article 18) .....   | 27 |
| b. Criminalisation of the use of services of a victim (Article 19) .....   | 29 |
| c. Corporate liability (Article 22) .....  | 29 |
| d. Non-punishment of victims of trafficking in human beings (Article 26) .....   | 29 |
| 4. Investigation, prosecution and procedural law.....  | 30 |
| a. Measures related to effective investigations (Articles 1, 27 and 29) .....  | 30 |
| b. Protection of witnesses and victims (Articles 28 and 30) .....  | 31 |
| c. Jurisdiction (Article 31) .....   | 32 |
| d. International co-operation (Article 32).....  | 32 |
| e. Co-operation with civil society (Article 35) .....  | 33 |
| IV. Conclusions .....  | 34 |
| Appendix List of public bodies, intergovernmental organisations, non-governmental organisations and other civil society actors with which GRETA held consultations ..... | 38 |
| Government's Comments .....  | 39 |

## Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) has been set up pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), which entered into force on 1 February 2008. GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, who have been selected on the basis of their professional experience in the areas covered by the Convention. The term of office of GRETA members is four years, renewable once.

GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is to be based and defines the most appropriate means to carry out the evaluation. GRETA adopts a questionnaire for each evaluation round which serves as the basis for the evaluation and is addressed to all parties.

The first evaluation round was launched in February 2010 and the questionnaire for this round was sent to the parties according to a timetable adopted by GRETA, which reflected the time of entry into force of the Convention for each party. GRETA organised country visits to all parties in order to collect additional information and have direct meetings with relevant actors, both governmental and non-governmental.

Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA launched the second evaluation round of the Convention on 15 May 2014. During this new evaluation round, GRETA has decided to examine the impact of legislative, policy and practical measures on the prevention of trafficking, the protection of the rights of victims of trafficking, and the prosecution of traffickers. The adoption of a human rights-based approach to action against trafficking in human beings remains at the centre of the second evaluation round. In addition, particular attention is paid to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking. The questionnaire adopted by GRETA for the second evaluation round is sent to all parties which have undergone the first evaluation round, following a timetable approved by GRETA.

GRETA's reports are based on information gathered from a variety of sources and contain recommendations intended to strengthen the implementation of the Convention by the party concerned. In its recommendations, GRETA has adopted the use of three different verbs - "urge", "consider" and "invite" - which correspond to different levels of urgency of the recommended action for bringing the party's legislation and/or practice into compliance with the Convention. GRETA uses the verb "urge" when it assesses that the country's legislation or policy are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of an obligation of the Convention is lacking. In other situations, GRETA "considers" that it is necessary to make improvements in order to fully comply with an obligation of the Convention. By "inviting" a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are on the right track.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each party in a plenary session. The process of confidential dialogue with the national authorities allows the latter to submit, within two months, comments on GRETA's draft report with a view to providing additional information or correcting any possible factual errors. These comments are taken into account by GRETA when establishing its final report. The final report is adopted by GRETA in a plenary session and transmitted to the party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month GRETA's report, together with eventual comments by the party concerned, is made public and sent to the Committee of the Parties to the Convention.

## I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) by Malta took place from 2011 to 2013.<sup>1</sup> Following the receipt of Malta’s reply to GRETA’s first questionnaire on 1 September 2011, a country evaluation visit was organised from 28 February to 2 March 2012. The draft report on Malta was examined at GRETA’s 14th meeting (25-29 June 2012) and the final report was adopted at GRETA’s 15th meeting (26-30 November 2012). Following the receipt of the Maltese authorities’ comments, GRETA’s final report was published on 24 January 2013.

2. In its first report on Malta, GRETA noted the steps taken by the Maltese authorities to develop the legal and institutional framework for combatting trafficking in human beings (THB), including by setting up the Anti-Human Trafficking Monitoring Committee and the Stakeholder Task Force on THB, both of which include NGO representatives. However, GRETA stressed the need for certain amendments to the legislation in order to bring it into full compliance with the Convention. Moreover, GRETA urged the Maltese authorities to improve the identification of victims of THB and to ensure that they have access to all the assistance measures provided for in the Convention. GRETA also called on the authorities to improve the application of the recovery and reflection period and to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit. Given the absence of compensation of victims of human trafficking, GRETA asked the authorities to provide information to victims on trafficking about the right to compensation and ways to access it, and amend the relevant legislation in order to enable all victims of trafficking to have access to State compensation. Further, GRETA urged the Maltese authorities to take measures to ensure that human trafficking offences are investigated and prosecuted promptly and effectively.

3. On the basis of GRETA’s report, on 15 February 2013 the Committee of the Parties to the Convention adopted a recommendation to the Maltese authorities, requesting them to report back on the measures taken to comply with this recommendation by 15 February 2015.<sup>2</sup> The report submitted by the Maltese authorities on 16 February 2015 was considered at the 16th meeting of the Committee of the Parties (15 June 2015). The Committee of the Parties decided to transmit the authorities’ report to GRETA for consideration and to make it public.<sup>3</sup>

4. On 1 June 2015, GRETA launched the second round of evaluation of the Convention in respect of Malta by sending the questionnaire for this round to the Maltese authorities. The deadline for submitting the reply to the questionnaire was 2 November 2015. The Maltese authorities submitted their reply on 21 October 2015.<sup>4</sup>

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<sup>1</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta, first evaluation round: <http://rm.coe.int/16806863cc>

<sup>2</sup> Recommendation CP(2013)3 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta, adopted at the 10th meeting of the Committee of Parties on 15 February 2013: <http://rm.coe.int/1680631ee4>

<sup>3</sup> Report submitted by the Maltese authorities on measures taken to comply with Committee of the Parties Recommendation CP(2015)8 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: <http://rm.coe.int/1680631f00>

<sup>4</sup> <http://rm.coe.int/1680631f04>

5. In preparation of the present report, GRETA used the reply to the questionnaire by the Maltese authorities, the above-mentioned report submitted by them to the Committee of the Parties and information received from civil society. An evaluation visit to Malta took place from 15 to 19 February 2016 in order to hold meetings with relevant actors, collect additional information and assess the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Mr Ryszard Piotrowicz, member of GRETA;
- Ms Gulnara Shahinian, member of GRETA
- Mr Mats Lindberg, Administrator in the Secretariat of the Convention.

6. During the visit, the GRETA delegation met the Minister for Home Affairs and National Security, Mr Carmelo Abela, whose Ministry co-ordinates Malta's efforts against trafficking in human beings. In addition to other officials from the Ministry of Home Affairs and National Security, it met the Anti-Human Trafficking Monitoring Committee, representatives of the Ministry for the Family and Social Solidarity, the Ministry for Health and Energy, the Foundation for Social Welfare Services (represented by **Appoġġ**, the National Agency for children, families and the community), the Department for Industrial and Employment Relations, the Employment and Training Corporation and the Refugee Commissioner. Discussions were also held with prosecutors, judges and representatives of relevant police services. Furthermore, the GRETA delegation held meetings with the Parliamentary Ombudsman, the Ombudsman for Children and members of the Maltese Parliament's Social Affairs Committee.

7. In the course of the visit, the GRETA delegation visited the State shelter for victims of domestic violence and trafficking in human beings and the Safi Barracks detention centre for irregular migrants and failed asylum seekers awaiting deportation.

8. Separate meetings were held with representatives of non-governmental organisations (NGOs), the Chamber of Advocates and officials from the local offices of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

9. The list of national authorities, NGOs and other organisations with which the delegation held consultations is set out in the Appendix to this report. GRETA is grateful for the information provided by them.

10. GRETA wishes to place on record the co-operation provided by the Maltese authorities during the second evaluation visit and in particular the assistance given by the contact person appointed by the Maltese authorities to liaise with GRETA, Ms Joyce Damato of the Ministry for Home Affairs and National Security.

11. The draft version of the present report was approved by GRETA at its 26th meeting (4-8 July 2016) and was submitted to the Maltese authorities for comments on 22 August 2016. The authorities' comments were received on 22 October 2016 and have been taken into account by GRETA when considering and adopting the final report at its 27th meeting (28 November - 2 December 2016). The final report covers the situation up to 2 December 2016; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 33-37).

## II. Main developments in the implementation of the Convention by Malta

### 1. Emerging trends in trafficking in human beings and types of exploitation

12. Malta remains a country of destination for victims of trafficking in human beings (THB). In the period 2012-2016,<sup>5</sup> a total of 67 victims and presumed victims<sup>6</sup> of trafficking were identified in Malta (3 in 2012, 10 in 2013, 20 in 2014, 3 in 2015 and 31 in 2016<sup>7</sup>). About 75% of the victims were female; 24 were victims of trafficking for the purpose of sexual exploitation and the remainder for the purpose of labour exploitation or a combination of labour and sexual exploitation. Only one of the presumed victims was a child. Most of the victims of trafficking for the purpose of labour exploitation were identified in two cases (*Police vs Han Bin*, known as the "Leisure Clothing factory case", and a recent case involving Filipino workers exploited in cleaning services, see paragraphs 78 and 79). Further, there were three cases of trafficking for the purpose of domestic servitude. The main countries of origin of the victims were the Philippines, Vietnam, China and Romania. In 2013, the first case of internal trafficking of a Maltese woman was identified. The Maltese authorities are not aware of any cases of Maltese citizens having fallen victim of THB abroad.

### 2. Developments in the legal framework

13. In its first report, GRETA urged the Maltese authorities to amend the definition of trafficking in human beings by including "abuse of a position of vulnerability" among the means for committing the offence and "forced labour or services" amongst the forms of exploitation. GRETA also considered that the irrelevance of the consent of the victim to the intended exploitation, where any of the means have been used, should be spelled out explicitly in legislation. Further, GRETA urged the Maltese authorities to introduce as an aggravating circumstance the offence of THB committed against a child.

14. On 6 December 2013 Article 248A of the Criminal Code (CC), which criminalises THB, was amended in line with GRETA's recommendations. The term "abuse of a position of vulnerability" was included in the means referred to in paragraph 2 of Article 248A. Further, the list of forms of exploitation was expanded to include "forced labour", "activities associated with begging" and "any other unlawful activities". The irrelevance of the victim's consent to the intended or actual exploitation, where any of the means have been used, was also made explicit in paragraph 3 of Article 248A.

15. Moreover, a new Victims of Crime Act entered into force on 2 April 2015. The new Act includes provisions regarding access of victims of trafficking to assistance services and compensation under the Criminal Injuries Compensation Scheme (see paragraph 121).

16. The above-mentioned legal developments are discussed in greater detail in later parts of this report (see paragraphs 133-139).

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<sup>5</sup> To 20 September 2016 included.

<sup>6</sup> In Malta, "presumed victims" are persons who are referred through the National Referral Mechanism but do not go to the Police and are hence not formally identified.

<sup>7</sup> All 31 victims were identified in one case, see paragraph 79.

### 3. Developments in the institutional framework

17. The Anti-Human Trafficking Monitoring Committee,<sup>8</sup> set up in 2011, remains the body responsible for drawing up and monitoring the implementation of anti-trafficking policies. Since 2013 there has been no single person occupying the position of National Anti-trafficking Co-ordinator, this function being bestowed on the entire Anti-trafficking Committee, which also holds the role of National Rapporteur or equivalent mechanism. The Committee convenes two to three times per year and reports to the Prime Minister every six months. It should be noted that at times of general elections, the entire Committee resigns and a new one is appointed based on the election results, though two civil servants' administrative support to the Committee remains uninterrupted. The one NGO representative on the Committee is at present Caritas Malta.

18. At operational level the Stakeholders Task Force continues to co-ordinate anti-trafficking efforts. In 2015 it convened twice, on 23 March and on 10 December. At present the Jesuit Refugee Service and Caritas Malta are the only NGO members of the Task Force.

19. The annual State budget allocation for anti-trafficking work was 20 000 Euros in 2015 and remains at the same level in 2016. This represents a significant decrease from the 100 000 Euros available annually at the time of GRETA's first evaluation visit. Most of the 2015 budget was used to finance the project "Looking Beneath", implemented by the Ministry of Home Affairs and National Security and IOM (see paragraph 29). In addition, the Agency *Appoġġ* has an annual budget of approximately 33 500 Euros for assistance measures to victims of trafficking (see paragraph 88).

20. The staff of the Police Vice Squad, which is responsible for investigating and in most cases prosecuting THB cases, was increased by the appointment of six additional officers in 2015 (see paragraph 147).

21. GRETA considers that the Maltese authorities should keep under review the effectiveness of the Anti-Trafficking Monitoring Committee in fulfilling the role of a National Rapporteur or equivalent mechanism, and examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions.

22. Further, GRETA considers that the Maltese authorities should ensure that the budget allocated to action against THB is adequate to cover all actions needed to combat THB.

### 4. National Action Plans

23. In its first report GRETA invited the Maltese authorities to introduce an independent evaluation of the first National Action Plan against Trafficking in Human Beings, as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.

24. The Second National Action Plan against THB covered 2013 and 2014 and contained some elements from the previous plan which had not been implemented. It focused to a large extent on the provision of assistance and support to victims of trafficking.

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<sup>8</sup> The Committee includes representatives of the Office of the Prime Minister, the Ministry for Home Affairs and National Security, the Ministry for the Family and Social Solidarity, the office of the Commissioner of Police, the office of the Attorney General and Caritas Malta.



25. The Third National Action Plan against THB covers 2015 and 2016 and has a strong focus on action against trafficking for the purpose of labour exploitation, manifested by activities to train officials and raise awareness among various stakeholders and potential victims about the risks of labour exploitation. Actions include capacity building of the authorities involved in victim identification; fostering of awareness among persons vulnerable to human trafficking; victim assistance; strengthening police efforts towards the identification of new crime trends and risks; reviewing police *modus operandi* in order to better address changing situations; and international co-operation.

26. Apart from periodic internal evaluations by the Anti-Human Trafficking Monitoring Committee, there have been no independent evaluations of the implementation of the national action plans.

27. GRETA considers that the Maltese authorities should, especially in the absence of an independent National Rapporteur or equivalent mechanism, commission an external evaluation of the implementation of the current National Action Plan upon its expiry, as a basis for the development of the next National Action Plan.

## 5. Training of relevant professionals

28. In its first report, GRETA urged the Maltese authorities to provide training to all professionals responsible for the provision of assistance and protection to victims of trafficking. It also considered that the Maltese authorities should take further steps to provide specialised, regular training about THB and the rights of victims of trafficking to other relevant authorities and professionals, including judges and prosecutors.

29. The Ministry for Home Affairs hired a former IOM expert to train various professionals about THB from January to April 2013. The target group of some 150 people included staff of the Agency **Appoġġ**, the Agency for the Welfare of Asylum Seekers (AWAS) and the NGOs Caritas Malta and Jesuit Refugee Service. Among the professionals were social workers, psychologists and care workers. Within the project "Looking Beneath", concluded between the IOM and the Maltese Government, a three-day refresher training (7-9 July 2015) was provided to strengthen the capacity of a broad range of stakeholders to identify and refer to assistance victims of human trafficking in general, and in particular victims of trafficking for labour exploitation. The stakeholders trained included 10 law enforcement officials, staff of the Refugee Commission, AWAS, Caritas Malta, the Jesuit Refugee Service, the Attorney General's Office, the Employment and Training Corporation, the Department of Industrial and Employment Relations, the Migrant Health Liaison Office, the Department of Citizenship and Expatriate Affairs, including the Central Visa Unit<sup>9</sup>, social workers from Community Outreach Centres, and Maltese diplomatic and consular staff. Leaflets in five languages were developed and printed under this project.

30. Within the police, the Vice Squad Inspector with particular responsibility for investigating THB has received training about THB and has trained his four constables who investigate THB cases. The police specialised in investigating economic crime (see paragraph 149) have also received training in THB. Further, one official from the Maltese Police attended a three-day training programme organised by CEPOL<sup>10</sup> in collaboration with the Police Department of Vilnius in 2014.

31. Border guards are trained both in-country and abroad in identifying possible victims of trafficking and perpetrators. For example, they participated in training organised by Frontex in the context of the Vega project and the resulting Vega Children handbook<sup>11</sup> (see also paragraph 72).

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<sup>9</sup> On 22 January 2016 the government agency "Identity Malta" was moved under the portfolio of the Ministry for Justice, Culture and Local Government. This move included the Central Visa Unit and the Citizenship and Expatriates Unit, hence the amalgamation of these services under National Identity Management. "Identity Malta" executes the functions and duties of the public administration in matters relating to passports, identity documents, work and residence permits for expatriates, land registration and registration of public deeds, acts of civil status and individual investment programmes.

<sup>10</sup> <https://www.cepola.europa.eu/who-we-are/european-police-college/about-us>

<sup>11</sup> <http://frontex.europa.eu/news/frontex-publishes-vega-handbook-children-at-airports-bvtPly>

32. Further training for professionals from a range of public institutions was organised and funded by the Ministry for Home Affairs and National Security in co-operation with the Anti-Human Trafficking Monitoring Committee. The focus of the training in 2015 was on labour trafficking given that the awareness of it and experience in detecting it has been comparatively limited in Malta.

33. On 24 June 2016 a one-day training seminar on THB and the rights of victims was held for judges and magistrates as a part of a project between the Maltese authorities and the IOM, financed by the Irish Government (see also paragraph 44). Further, the Judicial Studies Committee<sup>12</sup> organises six seminars per year for judges and magistrates, each time on a different topic. Other institutions, such as the University of Malta, also organise training seminars for the judiciary. GRETA was informed that members of the Attorney General's Office have also received training on THB matters.

34. The Agency Appoġġ's child protection and community services staff has received training on the identification of child victims of trafficking, which was organised by the NGO Kopin and delivered by IOM experts.

35. The staff of the shelter for victims of domestic violence have received training on identification of victims of trafficking, including at a training event in The Hague, which was also attended by labour inspectors of the Employment and Training Corporation. Further, the labour inspectors of the Department for Industrial and Employment Relations have been trained in identifying victims of trafficking.

36. In a training event in July 2015, 150 Maltese diplomats and other staff working at Maltese representations abroad were briefed about THB and their role in preventing it.

37. The Ministry of Health provides training and raises awareness among health professionals as regards THB, including trafficking for the purpose of organ removal, groups at risk of trafficking and the use of trafficking indicators. All general practitioners have to undergo training about THB, which is also included in the training of medical students. Further, a training session addressing the issue of THB was held for health professionals working with migrants from 25 to 28 October 2015.

38. Staff working at the Safi Barracks detention centre for irregular migrants and failed asylum seekers awaiting deportation were given a presentation in January 2016 on the difference between human trafficking and migrant smuggling, the victim referral system and indicators of trafficking. However, GRETA is concerned that no other training has been provided to such staff on identifying victims of trafficking. On the positive side, NGOs have access to the detention centre and can detect victims of trafficking amongst detainees.

39. GRETA considers that the Maltese authorities should take further steps to provide systematic training about THB and the rights of victims of trafficking to all relevant professionals, including prosecutors, judges, labour inspectors, asylum officials and the staff of administrative detention centres, such as the Safi Barracks. The training should aim in particular at strengthening victim identification and protection, increasing the number of successful prosecutions, and guaranteeing compensation to victims.

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[http://judiciarymalta.gov.mt/judicial\\_studies\\_committee](http://judiciarymalta.gov.mt/judicial_studies_committee)

## 6. Data collection and research

40. In its first report, GRETA considered that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Maltese authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

41. The Policy Directorate within the Ministry for Home Affairs and National Security hosts a data base set up in 2014 which contains some data on perpetrators and victims. Stakeholders such as the police, the Jesuit Refugee Service and the Agency **Appoġġ** feed data into it. Safeguards are in place to avoid double counting.

42. GRETA considers that the Maltese authorities should continue their efforts to develop a comprehensive and coherent statistical system on measures to protect and promote the rights of victims as well as on the investigation, prosecution and adjudication of THB cases.

43. In 2013 research was conducted to assess the presence of persons having been subjected to human trafficking before their arrival in Malta or being vulnerable to trafficking among undocumented migrants arriving in Malta. The research did not find evidence of a significant number of migrants being trafficking victims at the time of arrival in Malta. By contrast, the research concluded that there was a notable risk of irregular migrants falling victim of THB in the future. The current National Action Plan foresees the conduct of research about the situation of women and children asylum seekers in open reception centres in Malta. However, at the time of GRETA's visit, there were no asylum seekers in such centres.

44. In February 2016 a research project on THB cases, agreed between the Maltese authorities and the IOM and funded by the Irish authorities, was launched. It will examine why offences which are investigated and/or prosecuted as THB often end up with convictions under other crime headings. The project also envisages a training component: a two-day training session on THB for judges (see paragraph 33).

45. GRETA considers that the Maltese authorities should continue to conduct and support research on THB-related issues as an important source of information for future policy measures. Possible research areas include trafficking for the purpose of sexual exploitation and the risk of trafficking of unaccompanied minors and refugee children.

### III. Article-by-article findings

#### 1. Prevention of trafficking in human beings

##### a. Measures to raise awareness (Article 5)

46. In its first report, GRETA considered that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and be focused on the needs identified. Increased emphasis should be placed on awareness raising and education aimed at eradicating gender-based violence and the stigmatisation of victims of trafficking.

47. Awareness of human trafficking was promoted by televised information broadcasts every day from June to September 2013. The 30-second broadcast provided information on different forms of THB (for sexual exploitation, labour exploitation and domestic servitude) and an encouragement to report suspected cases to the police. One of this campaign's aims was to avoid stigmatisation of THB victims

48. During the 8th Biennial Primary Health Care Conference on 16 October 2015 a paper entitled "Human Trafficking: Identifying Victims of Modern-Day Slavery" was presented by a representative of the Migrant Health Liaison Office, who also represents the Ministry of Health on the Human Trafficking Stakeholders Task Force. The paper was said to have generated considerable interest amongst health professionals who requested further training about THB. As a result, training was carried out with two groups of health professionals in November 2015 (see also paragraph 37).

49. GRETA welcomes the conduct of a general awareness campaign in 2013 and considers that the Maltese authorities should continue their efforts to raise awareness of THB and to design future actions in this area in the light of impact assessment of previous measures, focusing on the needs identified.

##### b. Measures to prevent THB for labour exploitation (Article 5)

50. The prevention of THB for the purpose of labour exploitation is addressed by means of labour inspections, for which two entities are responsible. The first one is the Employment and Training Corporation (ETC) which was founded in 1991 as a public employment service under the responsibility of the Ministry for Education and Employment. The ETC supervises adherence to employment legislation by checking the existence of employment contracts and their conformity with relevant legislation, but it does not control working conditions. The ETC in particular seeks to address three types of offences, namely employment of irregular migrants; employment of under-aged workers (below 16 years of age) and unemployment benefit fraud. The ETC carries out inspections at places of work, including massage parlours. While ETC inspectors have found irregularities, no case amounting to human trafficking has been found yet. ETC staff have received training about human trafficking. For example, ETC representatives attended training on THB in The Hague. The ETC takes a risk-based approach and has analysed in what sectors, at what times and among which sociological groups the risk of irregular employment, typically by young immigrants, is the highest and allocates its resources accordingly, e.g. for inspecting construction and hospitality services, in particular in tourist areas and especially during late hours. On occasion the ETC makes joint inspections with the Immigration Police. Possible sanctions for labour law offences include fines, withdrawal of operating licences and imprisonment of up to two years.

51. Labour inspections are also carried out by the Department of Industrial and Employment Relations, which is linked to the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties. These inspectors are known as EIRA inspectors after the Employment and Industrial Relations Act. Unlike ETC inspectors, EIRA inspectors inspect working conditions, including health and safety at work. They can enter private households to examine the working conditions of domestic workers or workers carrying out renovation work. EIRA inspectors have received training on how to identify victims of THB and some victims of trafficking have been identified by the police as a result of EIRA inspector referrals. This Department also issues licences for private employment agencies, but does not monitor their work once the licences have been issued.

52. The Government of Malta has issued Circular No. 12/2013 on public sector offices, prohibiting the contracting of work to any company whose employees are not paid at least the national minimum wage or whose employment conditions infringe the standards established in Malta's employment legislation. Public sector offices must calculate whether bids in response to public tenders effectively cover the costs of paying minimum wages and assess whether related employment is in line with legislation. Wherever it is considered that a company would not be paying at least the national minimum wage to its employees, the company is not contracted even if its bid is the cheapest.

53. In line with the Third National Action Plan (2015-2016), a brochure containing information about labour conditions and wages in Malta was published in the English, Chinese, Arabic, Russian and Filipino languages. It explains the risks of THB for labour exploitation and provides phone numbers of institutions which can be contacted for help in case of exploitation. The brochure will be distributed by Maltese consular representations to foreigners who plan to work in Malta.

54. The Ministry for Social Dialogue, Civil Liberties and Consumer Affairs initiated in 2015 a process to establish a national temporary employment agency with several local offices, aimed at creating a more transparent and regulated access to temporary employment<sup>13</sup> for migrants and refugees. While there is a concrete proposal for the creation of such an agency, at the time of the adoption of this report the public consultation process was ongoing and the proposal had not yet been adopted.

55. Residence permits for third-country nationals working in Malta are usually dependent on their employment with a particular employer. According to the Maltese authorities, safeguards against abuse by employers exist in Maltese anti-trafficking and labour laws. GRETA considers that the practice of linking visas or residence permits to a single employer could increase the risk of labour exploitation as an employee would in practice be unable to leave the individual employer.

56. GRETA welcomes the measures taken by the Maltese authorities to prevent THB for the purpose of labour exploitation and considers that these efforts should be intensified, including by further sensitising relevant officials about trafficking for the purpose of labour exploitation and the rights of victims, and working closely with the private sector, in line with the Guiding Principles on Business and Human Rights.<sup>14</sup>

c. Measures to prevent trafficking in children (Article 5)

57. The Office of the Commissioner for Children has designed and implemented various awareness-raising activities, including on online safety for children. The child protection services of the Agency **Appoġġ** and the Police co-operate in preparing and delivering training and awareness-raising programmes against child abuse, including trafficking. Further, the NGO Kopin participated in a European Union anti-trafficking project entitled "Catch & Sustain" on methodology building for prevention of child trafficking. An officer from the Maltese Ministry for Home Affairs and National Security delivered training on child trafficking indicators to the participants in this project.

<sup>13</sup> Temporary employment is defined as work lasting between a few hours to 600 hours per year.

<sup>14</sup> [http://www.ohchr.org/DOcuments/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/DOcuments/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

58. The Migrant Health Liaison Office, which organises health education sessions for migrants, delivered a session on human trafficking to unaccompanied minors, as the latter are considered to be a vulnerable group at risk of falling victim to human trafficking.

59. In 2015, representatives of the UNHCR office in Malta observed an increase in the number of separated children<sup>15</sup>, mainly from Syria and Libya, and carried out outreach activities in 2016 to get a better sense of the situation of such children, who are considered to be at risk of THB.

60. The Notification Office, which forms part of the Civil Registration Directorate, is responsible for receiving notice of all births that occur in Malta. A notice of the birth may be given by transmitting a certificate of baptism to the Notification Office. A notice of birth may also be given by means of a letter signed by the person giving the notice or verbally. The acts of birth are drawn up by the Notification Office and sent to the Public Registry for registration and safekeeping. Should the person having given notice of birth not be one of the parents of the new-born child, one of the parents must attend the office of the officer responsible and confirm the child's details before a birth certificate can be issued. GRETA notes with concern that difficulties have occurred with refugee children born while transiting African countries or in international waters, who were not registered in any country before reaching Malta and were not given Maltese citizenship, therefore remaining stateless, which creates a risk of falling victim to THB.

61. GRETA considers that the Maltese authorities should increase their efforts to raise awareness of child trafficking, including by continuing and expanding the provision of information to school children about this phenomenon.

62. Further, GRETA considers that Malta should, in line with Article 7 of the United Nations Convention on the Rights of the Child, grant Maltese citizenship to children who have not been registered as born in another country before reaching Malta and who run the risk of remaining stateless.

- d. Measures to prevent trafficking in human beings for the purpose of organ removal (Article 5)

63. GRETA notes that while trafficking in human beings for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs<sup>16</sup> are distinct crimes, they share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put people in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal, and the reverse is also true.<sup>17</sup> Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

<sup>15</sup> Separated children are children, as defined in Article 1 of the Convention on the Rights of the Child, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives.

<sup>16</sup> Opened for signature in Santiago de Compostela on 25 March 2015.

<sup>17</sup> See Council of Europe/United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, in particular pages 55-56; OSCE, *Trafficking in human beings for the purpose of organ removal in the OSCE region*, OSCE Occasional Paper No. 6, 2013.

64. Trafficking for the purpose of organ removal is criminalised by Article 248C of the CC (see paragraph 133).

65. The Ministry of Energy and Health has drafted a bill which is intended to better regulate organ donation in Malta, namely Bill 141 for Human Organs, Tissues and Cells Donation Act. It was published in 2016 and is going through Parliament. The Act will contain provisions on organ trafficking and is meant to meet the terms of the Council of Europe Convention against Trafficking in Human Organs. The CC is also expected to be amended by Bill 141 to meet the requirements of the latter convention. GRETA encourages Malta to sign and ratify the Council of Europe Convention against Trafficking in Human Organs.

66. The Human Bloods and Transplants Act, Cap 483 and Subsidiary Legislation 01-06 of the Laws of Malta regulate the collection and testing of human blood and blood components and establish quality and safety standards for human tissues and cells intended for human transplants.

67. At the moment only one general hospital in Malta is allowed to carry out organ transplants, namely of kidneys, corneas and hearts.

68. So far no suspected cases of THB for the purpose of the removal of organs have been encountered in Malta. As noted in paragraph 48, health-care professionals receive training on THB, including for the purpose of organ removal.

e. Measures to discourage demand (Article 6)

69. The use of services of victims of trafficking with the knowledge that the person concerned is a victim of THB has been criminalised since 2013 (see paragraph 140) but there have been no prosecutions in this regard. Further, companies who offer employment under "precarious conditions" can be penalised by means of a Legal Notice and thereby prevented from winning public contracts for a period from six to 24 months. There is no definition of "precarious work" in Maltese legislation, but the Maltese authorities have explained that by virtue of the Public Procurement (Amendment) Regulations 2015 (L.N. 68 of 2015), the Director of Industrial and Employment Relations can ask the Commercial Sanctions Tribunal to blacklist companies if they have failed to adhere to the conditions listed in the Regulations.

70. GRETA considers that the Maltese authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector.

f. Border measures (Article 7)

71. In its first report, GRETA considered that the Maltese authorities should make further efforts to detect cases of THB in the context of border control, including through the provision of regular training to immigration officers and staff employed in diplomatic and consular offices. GRETA also considered that the authorities should introduce a checklist to identify potential THB-related risks during the visa application system.

72. As noted in paragraph 31, border guards are trained both locally and abroad on the detection of possible victims of trafficking. The training includes the detection of traffickers and victims and gathering first-line information. Maltese border guards participated in Project Vega Children organised by Frontex and actively contributed to the handbook developed under this project.

## 2. Measures to protect and promote the rights of victims, guaranteeing gender equality

### a. Identification (Article 10)

73. In its first report on Malta, GRETA urged the Maltese authorities to improve the identification of victims of trafficking by ensuring multi-agency involvement in victim detection and identification and providing operational indicators, guidance and toolkits to frontline staff. Further, GRETA stressed the need for improved identification of victims of trafficking amongst asylum seekers and irregular migrants in detention, including through regular training of immigration officers and enhanced co-operation with the UNHCR.

74. A National Referral Mechanism (NRM) has been in use in Malta since 2013, following its formal adoption by the Anti-Human Trafficking Monitoring Committee on 19 June 2012. It defines the stakeholders (both governmental and non-governmental entities) who can be involved in the identification of victims or potential victims of trafficking and can refer them to assistance and support, and the relevant procedures, such as issuing of residence and work permits, the provision of health care and possible preparations for a voluntary return.

75. The NRM is accompanied by standard operating procedures (SOP), adopted by the Anti-Human Trafficking Monitoring Committee in 2013 and published by the Ministry of Home Affairs and National Security in 2014.<sup>18</sup> The SOPs provide detailed information on the steps to be taken at the following stages: 1) identification; 2) follow-up and provision of initial support to victims; 3) police formal identification interview; 4) provision of formal information to victims; 5) needs assessment; 6) issuance of residence permits; and 7) assisted voluntary return.

76. A list of national indicators for identifying victims of human trafficking has been developed. The list was disseminated amongst stakeholders likely to encounter potential victims or victims of human trafficking, including the police (Vice Squad, Immigration and Border Control), the Agency **Appoġġ**, the Agency for the Welfare of Asylum Seekers (AWAS), the office of the Commissioner for Refugees, the Employment and Training Corporation (ETC), the Jesuit Refugee Services and Caritas Malta. Representatives of these stakeholders were involved in drawing up the indicators. The indicators include inability to speak Maltese or English; inability to indicate place of residence; absence of identification documents; fear of the authorities; constantly being accompanied by a person speaking on the possible victim's behalf; limited freedom of movement; excessively long working hours; overcrowded accommodation; and signs of being accommodated at the work place.

77. The formal identification of victims of trafficking is the responsibility of the Vice Squad of the Malta Police Force, following referral by other stakeholders having encountered a possible victim of trafficking, such as the Immigration Police, the Employment and Training Corporation, the Department of Industrial and Employment Relations, the Central Visa Unit of Identity Malta, the Department of Citizenship and Expatriate Affairs, the Office of the Refugee Commissioner, the Agency **Appoġġ** and NGOs. Victims of trafficking can also contact the authorities on their own initiative. As an example, the authorities have referred to a case where a Filipino woman was employed by a foreign family in Malta and made to work very long hours without any days off. Her passport was kept by her employers. She was helped to escape the household after having sent a message over the internet, which was picked up by an NGO. The victim did not wish to report the case to the police but was placed in a shelter and provided with assistance by the Agency **Appoġġ** and the Jesuit Refugee Service.

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<sup>18</sup> <https://homeaffairs.gov.mt/en/MHAS-Information/Documents/Trafficking%20in%20Human%20Beings/Booklet%20for%20Professionals%20Malta%202014.pdf>



78. As an example of the NRM being applied, reference can be made to the so-called "Leisure Clothing factory case". In this case one Chinese and nine Vietnamese workers were employed at a leisure clothing factory. They had been promised wages of 600 Euros per month, but were made to sign contracts for a much lower salary while the Maltese Employment and Training Corporation was shown false work contracts. Based on such false premises, the workers were issued visas and work permits and arrived in Malta. The victims were living in very cramped and poor conditions and were locked in at night. Their passports were taken away and they were told they would be sent back to their countries of origin if they complained. The case was detected by an NGO after which the Vice Squad provided the persons with interpreters and formally identified them as victims of THB. The Police requested assistance from the Agency Appoġġ and the Jesuit Refugee Service. Appoġġ provided them with emergency shelter, clothing and culturally appropriate food, linked up with medical services for the provision of medical assessments and treatment and liaised with the Immigration Police and Visa Department in view of having residence permits issued, as well as with the Employment and Training Corporation regarding the possibility of new employment. The Jesuit Refugee Service provided support and legal advice to the victims during interviews by the Police and the subsequent court hearings.

79. The largest case so far detected in Malta of trafficking for the purpose of labour exploitation took place in 2016 and concerned 31 Filipino victims who had been hired to provide cleaning services at national hospitals after their employer had won a public tender for providing these services. In breach of their contracts, the victims were forced to clean other premises, such as factories, office buildings and private households. The exploitation was detected as a result of a work place inspection by the Department of Industrial Relations and Employment during which the inspectors spoke to the victims. The inspectors reported the case to the police. All 31 victims were assisted by a lawyer and co-operated with the police (see also paragraph 92). The investigation into this case was ongoing at the time of adoption of this report.

80. Some civil society representatives met by GRETA were not aware of the existence of the NRM while others considered that the role foreseen in it for NGOs is not clear and NGOs should have a more prominent role, given that a large share of the victims have been detected by NGOs.

81. The Jesuit Refugee Service and the UNHCR have access to migrants who have arrived and are kept in open reception centres. Their staff are trained in identifying victims of trafficking among irregular migrants and asylum seekers. The United Nations Special Rapporteur on the Human Rights of Migrants in the report on his 2014 country visit to Malta mentions the role of the Jesuit Refugee Service and UNHCR in assisting with the development of procedural safeguards in the context of reception of refugees.<sup>19</sup>

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<sup>19</sup> Report available at: [http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjXnu31-t7NAhVIWhoKHWLkCvUQFggnMAE&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA\\_HRC\\_29\\_36\\_Add\\_3\\_en.doc&usq=AFQjCNGno2rNi8\\_BRnvc0Sb4SHSntpPVnA](http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjXnu31-t7NAhVIWhoKHWLkCvUQFggnMAE&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA_HRC_29_36_Add_3_en.doc&usq=AFQjCNGno2rNi8_BRnvc0Sb4SHSntpPVnA)

82. The profile of asylum seekers in Malta has changed radically during the last few years. Whereas in 2012 almost all of the some 1 500 asylum applications per year came from people arriving in Malta by boat from Africa, there was only one such boat arriving in 2015, with about 100 asylum seekers. In 2016, pursuant to rescue operations at sea, a small number of migrants (16) were airlifted to Malta for urgent medical attention or because they were pregnant. In 2015, the asylum seekers were mainly Libyans who arrived with a valid visa and sometimes had purchased property in Malta before arriving and applying for asylum. While Malta has in the past pursued a policy of keeping asylum seekers in detention for prolonged periods of time, Legal Notice 417 of 2015 which amended SL 420.06 Reception of Asylum Seekers Regulations provides that “any person detained in accordance with these regulations shall, at the expiry of nine months, be released from detention if s/he is still an applicant”.<sup>20</sup> The detention requirement has been waived in the Maltese legislation with respect to vulnerable persons, including unaccompanied children and potential or identified victims of trafficking. The publication of the document “Strategy for the Reception of Asylum Seekers and Irregular Migrants”<sup>21</sup> by the Ministry of Home Affairs and National Security in 2015 is meant to clarify the rules for receiving and dealing with asylum seekers and irregular migrants, but there are no references to victims of trafficking, other than indirectly, through a reference to vulnerable groups.

83. There is reportedly a relatively large irregular labour market in Malta, attracting asylum seekers who have first been registered in Italy. Interlocutors met by GRETA pointed out that the fact that irregular workers usually get paid, though often not as much as agreed, makes the distinction between violations of labour legislation and THB less obvious and therefore the identification of trafficking victims challenging.

84. GRETA welcomes the creation of a National Referral Mechanism and the related Standard Operating Procedures and considers that the Maltese authorities should ensure the regular training of relevant officials in the use of trafficking indicators, including asylum officials and staff working in reception centres for asylum seekers and administrative detention centres.

b. Assistance measures (Article 12)

85. In its first report, GRETA urged the Maltese authorities to step up their efforts to provide assistance to victims of trafficking, from their identification through to their recovery, and in particular to ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their needs, gender and age; to ensure that victims of trafficking are provided with information on the services and assistance measures available, including the provision of legal advice or assistance, and how to access them; and to facilitate the reintegration into society of victims of trafficking who are lawfully resident in the country and help them to avoid being re-trafficked by allowing them access to education, vocational training and the labour market.

86. According to the Maltese authorities, both identified and presumed victims of trafficking and receive assistance, as long as they have cut all ties with the alleged traffickers, regardless of whether they have reported the offence to the Police and whether they co-operate in the investigation.

<sup>20</sup> For information on detention in a return context, see paragraph 129.

<sup>21</sup> Available at: <https://0d2d5d19eb0c0d8cc8c6-a655c0f6dcd98e765a68760c407565ae.ssl.cf3.rackcdn.com/ee87eb6093978ddf835be5759bc86d018724f3a8.pdf>

87. The Agency **Appoġġ**, which is part of the Foundation for Social Welfare Services within the Ministry for Justice, Dialogue and Family, is responsible for supporting persons in need of counselling and social assistance, including victims of domestic violence, human trafficking and other forms of abuse.<sup>22</sup> It operates an emergency shelter primarily aimed at catering for female victims of domestic violence, but also accommodating female victims of THB. GRETA visited the shelter, which has a capacity of 14 beds. In addition to the director of the shelter, there is one full-time social worker and one support worker, as well as nine part-time support workers. The support workers have received training on health and social care.

88. The Agency **Appoġġ** can arrange victims' access to health care in public hospitals or with private general practitioners. Psychological assistance is provided by the Foundation of Social Welfare Services. **Appoġġ** may also delegate to NGOs the provision of certain services, such as psychological support. **Appoġġ** also assists victims of trafficking who are in possession of a residence permit (which allows them to work) with finding employment. Moreover, free legal aid is provided to victims of trafficking during the recovery and reflection period. **Appoġġ** has an annual budget of approximately 33 500 Euros for assistance measures to victims of trafficking, excluding the costs of running the shelter for female victims of domestic violence or trafficking.

89. There are currently no dedicated accommodation facilities for male victims of trafficking in Malta. Accommodation for such victims is provided through public social partnership agreements with NGOs which provide accommodation and charge the authorities for their services.<sup>23</sup>

90. If victims or potential victims of trafficking are without financial means, they may, in addition to being provided with free accommodation and food, apply for a small allowance for purchasing food and personal necessities. There is no fixed daily rate for such financial support, but it corresponds to that given to asylum seekers. Civil society representatives pointed out that the low level of financial support may force trafficking victims to accept any job offer, thereby putting them at risk of exploitation.

91. Psychologists, social workers, psychotherapists and suitably qualified NGO representatives can be called to court hearings to support the victim and/or assist the court to understand the mental condition of the victim, which is also important for assessing the credibility of the victim. As noted in paragraph 78, the Jesuit Refugee Service provided support and legal advice to the victims in the Leisure Clothing factory case while these were being interviewed by police and during the subsequent court hearings.

92. GRETA was informed that in the case of 31 Filipino workers referred to in paragraph 79, the victims were provided with accommodation, subsistence, medical care, psychological support, and legal assistance before and during the court proceedings. Since the number of victims who needed accommodation was unusually high, they were placed in one of the open reception centres for asylum seekers which was empty at the time. The agency Identity Malta issued them with new residence and work permits issued and by the end of 2016 all but one of the victims were employed on new jobs in Malta.

93. GRETA urges the Maltese authorities to step up their efforts to provide assistance, including safe accommodation, which is adapted to the specific needs of victims of trafficking, including to male victims.

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<sup>22</sup> For further details, see paragraphs 29-30 of the first GRETA report.

<sup>23</sup> For example, the NGO the Emigrants Commission, which is run by the Catholic Church, charges 2.75€ per bed per night.

c. Identification and assistance of child victims of THB (Articles 10 and 12)

94. In its first report, GRETA urged the Maltese authorities to involve child specialists in the development and assessment of anti-trafficking policies, including in the preparation of a manual of procedures and guidelines to identify victims of trafficking, which should include a special referral mechanism for unaccompanied children. GRETA also urged the Maltese authorities to ensure that the system for providing assistance to child victims of trafficking is specifically tailored to their needs.

95. There is no specific National Referral Mechanism for children and the Maltese authorities consider that the NRM described in paragraph 74 is flexible enough to be applied both to adults and children. The Standard Operating Procedures of the NRM (see paragraph 75) oblige all relevant officials to undergo training on the identification and treatment of child victims of trafficking. Staff of the child protection service of the Agency **Appoġġ** have undergone training on identification of child victims of trafficking (see paragraph 34). Further, the National Action Plan for 2015-2016 foresees training on THB for law enforcement officers and service providers in the child care sector and the development of guidelines for the identification of child victims of trafficking.

96. Support services for child victims of trafficking are similar to those granted to unaccompanied asylum seeking children. The Agency **Appoġġ** is the main institution responsible for child protection, regardless of the origin or vulnerability of the child. Based on reports from **Appoġġ** and after an age verification where necessary (see paragraph 102), the Ministry for Family and Social Solidarity issues a care order which is aimed at ensuring the protection of the child and that his or her individual needs are met.<sup>24</sup> An individual care plan is drawn up following the care order, covering aspects such as tracing the child's family, health and education needs, secure environment and counselling. **Appoġġ** uses its psychological and family therapy services or those of partner NGOs if the child victim requires counselling. The Minister for Family and Social Solidarity is appointed as the child's legal guardian and a social worker from the Agency for the Welfare of Asylum Seekers (AWAS) who has undergone training in THB would be appointed for each child as an immediate support person to assist the child.

97. Only one child was detected as a presumed victim of THB during the period 2012-2015. She was assisted by **Appoġġ** and was granted asylum on the grounds of membership of a particular social group.

98. There is no place dedicated specifically to accommodating child victims of trafficking in Malta, neither are there any specific programmes for the rehabilitation and re(integration) of child victims of trafficking.

99. As noted in paragraph 59, there has been an increase in the number of separated children arriving in Malta. GRETA notes that the identification of child victims of trafficking is difficult due to a lack of systematic consideration of the possibility of trafficking by officials and professionals coming into contact with unaccompanied and separated children. In this context, GRETA recalls that the United Nations Committee on the Rights of the Child in its General Comment No. 6, paragraph 21 (2005), calls for a competent guardian to be appointed both in cases of unaccompanied and separated children.<sup>25</sup>

100. The Maltese authorities have indicated that no involuntary returns of children have been carried out. Every unaccompanied or separated child is asked whether he or she is in touch with his/her family and if the answer is negative, an assessment is made whether it is in the child's best interest that the process of family tracing is started. For asylum seeking children a return to the country of origin is usually not an option but should it nonetheless be deemed to be in the best interests of the child to be reunited with his or her family in the country of origin, then discussions between AWAS, UNHCR and IOM are pursued with the aim of organising a voluntary return.

<sup>24</sup> In line with the Children and Young Persons Care Orders Act - Cap. 247.

<sup>25</sup> Comment No. 6 available at: <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

101. When the age of a potential victim of trafficking is uncertain, an age assessment is conducted using a semi-structured interview by a team of relevant professionals. The benefit of the doubt is applied and only in cases in which it appears clear that the person is an adult and the person continues to insist that he or she is a child, the person is referred for a hand and wrist x-ray. The medical results are referred back to the age assessment team and are taken into consideration together with a psychosocial age assessment. The person is presumed to be a child until proven otherwise.

102. GRETA urges the Maltese authorities to:

- take measures to ensure that the procedure for the identification and referral to assistance of child victims of THB takes into account the special needs and circumstances of children, through developing a specific referral mechanism for children involving child specialists, child protection services and specially trained police officers and prosecutors;
- ensure that child victims of THB benefit from the assistance measures provided for under the Convention, including appropriate accommodation and access to psychological support and legal assistance;
- step up their efforts to increase the training of relevant officials and staff on the identification of child victims of trafficking.

d. Protection of private life (Article 11)

103. According to the Office of the Data Protection Commissioner, the processing of personal data is in line with the principles of necessity, proportionality and purpose limitation. In addition, appropriate technical and organisational measures are implemented to protect the security of the data, in line with the legal obligations under the Data Protection Act (Cap 440) and the Subsidiary Legislation 440.05 applicable to law enforcement data processing in the area of criminal law. Personal data concerning victims of trafficking may be used and further processed if there is a legal justification and purpose (e.g. such data is necessary to offer specific protection to the victims or for the purposes of contacting them as witnessed in the context of criminal proceedings). The Maltese authorities have also referred to EU Directive 2016/680<sup>26</sup> which provides in Article 6 for a clear distinction between personal data of different categories of data subjects.

104. With regards to the possible use of personal data for research and statistics, this Office of the Data Protection Commissioner recommends that the data is rendered anonymous as soon as possible. To avoid double counting, personal data is codified by means of a unique code which cannot be traced to the original personal data.

105. In cases involving children, if the offence committed "offends decency and morality and affects the good order of families", the court may order that the name of the victim (and the accused) is not published. Moreover, under Articles 409 and 531 of the CC, court proceedings may be carried out behind closed doors, especially in cases of sexual exploitation of children.

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<sup>26</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

e. Recovery and reflection period (Article 13)

106. In its first report, GRETA urged the Maltese authorities to ensure that all victims and potential victims of trafficking are systematically informed of the possibility to benefit from a recovery and reflection period and its implications and are effectively granted such a period. GRETA stated that the need to co-operate with the authorities as a pre-condition for being granted a recovery and reflection period should be removed, and that a minimum duration of 30 days should be established for the recovery and reflection period, during which time it is not possible to remove the victim or potential victim of trafficking from the country's territory. According to GRETA, no termination of the recovery and reflection period should be carried out on the grounds that victims have "actively, voluntarily and on their own initiative renewed contact with the perpetrators" without due regard to the person's individual situation, which involves an examination of his/her case.

107. Subsidiary legislation (S.L.) 217.07 on "Permission to reside for victims of trafficking or Illegal Immigration who co-operate with the Maltese Authorities' Regulations" provides as follows:

"3. (1) When it appears to the Principal Immigration Officer that the third-country national is co-operating in the fight against trafficking of human beings or, where applicable, against action to facilitate illegal immigration, he/she shall inform the third-country national concerned of the possibilities offered under these regulations.

(2) The Principal Immigration Officer may invite a non-governmental organisation or another relevant association to give such information to the third-country national concerned.

(3) The Principal Immigration Officer shall grant a period of reflection of not more than two months, with effect from the day when the information referred to in paragraph 1 is given by the Principal Immigration Officer, for the third-country national to detach him- or herself from the influence of the perpetrators of the offence so as to enable him/her to take an informed decision on the possibility of co-operating.

(4) During the reflection period the third-country national shall not be removed from Malta.

Provided that the reflection period shall not create any entitlement to residence under these regulations.

(5) During the period of reflection, while due regard is given to his/her safety and protection needs, the third-country national who does not have sufficient resources<sup>27</sup> shall be provided with:

(i) standards of living capable of ensuring his/her subsistence;

(ii) access to emergency medical care and, where applicable:

(iii) attention to the needs of the most vulnerable;

(iv) psychological assistance;

(v) translation and interpreting services;

(vi) free legal aid.

In case the third-country national is a minor, he/she shall have access to the public education system under the same conditions as Maltese nationals.

(6) The period of reflection shall be terminated at any time by the Principal Immigration Officer for reasons relating to public policy or the protection of national security or if he/she establishes that the third-country national concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences of trafficking of persons or facilitating illegal immigration."

<sup>27</sup> According to the Maltese authorities, this legislation does not preclude assistance to people with financial means and, in practice, no means tests are conducted as a prerequisite for assistance.

108. The above provisions apply only to third-country nationals, i.e. non-EU/EEA citizens. According to the Maltese authorities, the number of victims or presumed victims of trafficking granted a recovery and reflection period was two in 2014, 14 in 2015 and 31 in 2016.<sup>28</sup> According to the authorities, all victims of trafficking were informed about the availability of a reflection period but some did not use it because they immediately decided to co-operate with the police. The Maltese authorities have stressed that assistance is provided to all victims of trafficking, regardless of whether they co-operate with the authorities.

109. On 7 April 2015 training on the application of S.L 217.07 was provided to all members of the Stakeholders Task Force (see paragraph 18) as well as additional staff working on issues related to human trafficking.

110. GRETA notes with concern that the legal provisions concerning the recovery and reflection period have not been amended as recommended in its first evaluation report. GRETA recalls that Article 13, paragraph 3, of the Convention, refers to public order considerations and improperly claimed victim status as being the only grounds for terminating or not granting a recovery and reflection period. Consequently, GRETA once again urges the Maltese authorities to:

- remove the need to co-operate with the authorities as a pre-condition for being granted a recovery and reflection period;
- establish the minimum duration of the recovery and reflection period at 30 days, during which time it is not possible to remove the victim or potential victim of trafficking from the country's territory;
- ensure that no termination of the recovery and reflection period is carried out on the grounds that victims or presumed victims have "actively, voluntarily and on their own initiative renewed contact with the perpetrators" without due regard to the person's individual situation, which involves an examination of his/her case.

f. Residence permits (Article 14)

111. In its first report, GRETA urged the Maltese authorities to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit.

112. The rules concerning residence permits for victims of THB have remained unchanged since the first evaluation. Pursuant to Article 5(1) of the above-mentioned S.L. 217.07, victims of trafficking may be granted a renewable residence permit for six months, which is usually accompanied by a work permit, on condition of their co-operation with the investigation or criminal proceedings. Article 5(1) reads as follows:

"Without prejudice to any restrictions arising from public policy or public security, the Principal Immigration Officer may, at the end of the reflection period, or earlier if he/she is of the view that the third-country national already fulfils the conditions stipulated in paragraphs (a) to (c), recommend to the Director the issuing of a residence permit when it is clear that: (a) the permission to remain in Malta of the third-country national may present an opportunity for the investigations or judicial proceedings; (b) the third country national intends to co-operate with the Principal Immigration Officer; (c) the third country national has severed all relations with the persons suspected of committing the offences of trafficking of persons or facilitating illegal immigration."

113. Further, the Maltese authorities have indicated that if circumstances warrant it, victims of THB staying irregularly in Malta may be granted a residence permit on humanitarian grounds based on Article 3(7) of S.L. 217.12.

<sup>28</sup> All 31 victims in 2016 were from the Philippines; one of whom decided not to testify in court (see paragraph 79).

114. According to information provided by the Maltese authorities, in 2014, 14 victims of trafficking were issued temporary residence permits. In 2015, all victims in the Leisure Clothing case (see paragraph 78) were issued residence permits.

115. According to the Office of the Refugee Commissioner, refugee status was granted to applicants who substantiated their claims of being victims of trafficking. Thus in the reporting period, four Nigerian female victims of trafficking were granted asylum on the grounds of membership of a particular social group. However, in some cases the Refugee Appeals Board has confirmed decisions not to grant international protection to asylum seekers who claimed to be victims of trafficking, even though there was no negative credibility assessment.

116. GRETA recalls that Article 14 of the Convention allows Parties to choose between granting a residence permit in exchange for co-operation with the authorities or on account of the victim's needs, or indeed to adopt both simultaneously. There are situations in which victims might be afraid to co-operate in the investigation because of threats from the traffickers. Granting a residence permit on account of the personal situation of the victim takes in a range of situations, such as the victim's safety, state of health and family situation, and tallies with the human-rights based approach to combating THB. GRETA invites the Maltese authorities to consider expanding the grounds for granting temporary residence permits to victims of THB on the basis of their personal situation, in addition to the residence permit on the basis of the victim's co-operation in the investigation or criminal proceedings.

g. Compensation and legal redress (Article 15)

117. In its first report, GRETA urged the Maltese authorities to provide information to victims of trafficking about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid in this respect. Further, GRETA considered that the Maltese authorities should amend the Criminal Injuries Compensation Regulations (S.L. 9.12) so that all victims of trafficking have access to State compensation, without the precondition of having sustained grievous bodily harm as a result of THB.

118. The legislation regarding compensation from the perpetrator remains the same as described in GRETA's first report.<sup>29</sup> When an offender is convicted in a criminal court, the prosecution or the victim's representative can ask the court to consider ordering the offender to pay compensation to the victim. Victims of trafficking can also apply for compensation either through Civil Court action or through S.L. 9.12. on Criminal Injuries Compensation Regulation (see paragraph 121).

119. Article 5 of the Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations (S.L. 217.17) contains provisions on compensation for unpaid wages. Pursuant to them, the employer must pay any outstanding wages at least to the equivalent of the national minimum wage, in the absence of proof of a different agreement. The employer is also obliged to pay any social security contributions as if the third-country national had been legally employed and as well as cover the cost of sending the outstanding wages to the country to which the irregular employee has returned.

120. At the time of GRETA's visit, the 10 victims of trafficking in the Leisure Clothing factory case were involved in legal proceedings against their previous employer, requesting financial compensation for unpaid wages and outstanding leave. The NGO Jesuit Refugee Service provided them with *pro bono* legal assistance to this end.

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<sup>29</sup> See paragraphs 149-151 of GRETA's first report for more details.



121. Since the first GRETA report, S.L. 9.12 on Criminal Injuries Compensation Regulations has been amended to explicitly include THB among the offences for which a victim may seek State compensation. By virtue of the Victims of Crime Act (Cap 539), enacted on 2 April 2015, victims of human trafficking and their families benefit from compensation under the Criminal Injuries Compensation Scheme. Article 4 of the Victims of Crime Act determines the conditions and procedure for accessing compensation and reimbursement of victims' expenses incurred as a result of their participation in criminal proceedings. Article 12 of the same Act refers to the victim's right to information about possibilities for compensation.

122. The Justice Unit which falls under the responsibility of the Ministry for Justice, Culture and Local Government, is responsible for administering State compensation claims. According to Article 9(1) of S.L. 9.12., EU citizens are entitled to claim compensation for crimes suffered in Malta's jurisdiction, even after having returned to their home countries. Non-EU victims of crimes may also seek compensation, but this is at the Claims Officer's discretion unless the payment of compensation has been ordered by a court. The Criminal Injuries Compensation Regulation gives the Claims Officer a wide discretion in deciding whether to grant compensation and, for example, he/she may decide not to grant it based on perceived insufficient co-operation by the victim with the police for the purpose of bringing the perpetrators to justice. Further, as mentioned in GRETA's first report, S.L. 9.12 allows an individual assessment of the victim's conduct, character or way of life as a ground for granting compensation or not. This risks arbitrary restrictions of compensation where the Claims Officer disagrees with certain lifestyles and may raise questions of compatibility with the right to respect for private life.

123. There is no concept of moral damages in Maltese legislation. In cases of THB for the purpose of labour exploitation, it is possible to claim unpaid earnings in court (see paragraph 119), but victims of trafficking for the purpose of sexual exploitation cannot claim compensation because prostitution is not considered to constitute employment.

124. The Maltese authorities are not aware of any cases of victims of trafficking having received compensation in the period 2012-2015.

125. There is a list of lawyers (currently 12) who may be called upon by magistrates to provide free legal aid in criminal proceedings. Such free legal aid is available to victims of THB, just as to any other victim of crime. However, none of the 12 lawyers is specialised in THB cases. In theory it is possible for victims of THB to get free legal aid for civil cases, but in practice this is very difficult, because there are no funds available for translation or interpretation for that purpose.

126. Article 23 of the Maltese CC regulates the identification, seizure, freezing and confiscation of assets. A number of provisions in the Act on the Prevention of Money Laundering are also relevant.<sup>30</sup> In the reporting period two large companies have had their assets frozen, but there has been no seizure or confiscation as the cases are still under judicial consideration. Maltese legislation does not allow compensation to victims through funds derived from confiscated criminal assets.

127. GRETA welcomes the explicit mention of victims of trafficking as eligible for State Compensation under S.L. 9.12 on Criminal Injuries Compensation Regulations. However, GRETA is concerned about the lack of cases in which compensation has been sought by and granted to victims of trafficking. GRETA urges the Maltese authorities to examine the reasons for the absence of compensation claims and awards to victims of trafficking and to make additional efforts to guarantee effective access to compensation for victims of THB, in line with Article 15 (4) of the Convention, including through the systematic provision of legal advice and information.

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<sup>30</sup> For further details, see paragraph 170 of GRETA's first report.

128. Further, GRETA considers that the Maltese authorities should review the provisions of Article 10 (in particular sub-points d and g) of S.L. 9.12 as regards grounds for refusing compensation to victims of crime with a view to ensuring that the right to private life and the right to compensation for victims of trafficking are respected.

h. Repatriation and return of victims (Article 16)

129. In its first report, GRETA urged the Maltese authorities to develop the institutional and procedural framework for the repatriation and return of victims of trafficking, with due regard for their rights, safety and dignity, which implies protection from re-victimisation and re-trafficking and, in the case of children, full respect for the principle of the best interests of the child. Particular attention should be paid to ensuring financial means for the travel of victims of trafficking.

130. Persons residing irregularly in Malta are issued with a return decision obliging them to leave the country. They may be detained for up to six months, a period which may be extended by a further 12 months in accordance with S.L. 217.12.

131. There have been very few returns of victims of trafficking from Malta in recent years.<sup>31</sup> The procedures for voluntary return of victims are laid down in the Standard Operating Procedures of the NRM, including steps to ensure that the return is safe and assistance to be provided. The Agency **Appoġġ** co-operates with IOM and the International Social Services to ensure that victims' voluntary return is safe and dignified. GRETA was informed that **Appoġġ** would usually carry out a risk assessment prior to return, though sometimes this was not been done because the victim was keen to return home without delay. There is a risk assessment template in the booklet "Support Tools for Service Providers on Trafficking in Human Beings and SOP's on Identification and Referral of (potential) Victims of Trafficking" which was published in collaboration between the Ministry of Home Affairs and National Security and IOM (see paragraph 75). Apart from **Appoġġ**, other actors, such as IOM, the Jesuit Refugee Service and UNHCR may also carry out risk assessments prior to return.

132. GRETA considers that the Maltese authorities should continue to take steps to ensure that the return of victims of THB is preferably voluntary, and is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention)<sup>32</sup> and, in the case of children, by fully respecting the principle of the best interests of the child.

<sup>31</sup> This was also noted by the United Nations Special Rapporteur on Human Rights of Migrants in his 2015 report on Malta (Paragraph 66):

[http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjXnu31-t7NAhVIWhoKHwLkCvUQFggnMAE&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA\\_HRC\\_29\\_36\\_Add\\_3\\_en.doc&usq=AFQjCNGno2rNi8\\_BRnvc0Sb4SHSntpPVnA](http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjXnu31-t7NAhVIWhoKHwLkCvUQFggnMAE&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA_HRC_29_36_Add_3_en.doc&usq=AFQjCNGno2rNi8_BRnvc0Sb4SHSntpPVnA)

<sup>32</sup> See also UNHCR 2006 Guidelines on the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked.

### 3. Substantive criminal law

#### a. Criminalisation of THB (Article 18)

133. As noted in paragraph 14, the Maltese CC provisions which criminalise THB have been amended in line with GRETA's previous recommendations. Articles 248A to E of the CC read as follows:

"248A. (1) Whosoever, by any means mentioned in sub-article (2), traffics an adult person for the purpose of exploiting that person in: (a) the production of goods or provision of services; or (b) slavery or practices similar to slavery; or (c) servitude or forced labour; or (d) activities associated with begging; or (e) any other unlawful activities not specifically provided for elsewhere under this sub-title, shall, on conviction, be liable to the punishment of imprisonment from four to twelve years. For the purposes of this sub-article exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in sub-article (1) are the following: (a) violence or threats, including abduction; (b) deceit or fraud; (c) misuse of authority, influence or pressure; (d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person; (e) abuse of power or of a position of vulnerability. For the purposes of this paragraph "position of vulnerability" means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

(3) The consent of a victim of trafficking to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in sub-article (2) has been used.

248B. Whosoever, by any means mentioned in article 248A(2), traffics an adult person for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material or other forms of sexual exploitation shall, on conviction, be liable to the punishment laid down in article 248A(1).

248C. Whosoever, by any means mentioned in article 248A(2), traffics an adult person for the purpose of exploiting that person in the removal of any organ of the body shall on conviction be liable to the punishment of imprisonment for a term from six to twelve years.

248D. Whosoever traffics a minor for any of the purposes mentioned in articles 248A to 248C, shall, on conviction, be liable to the same punishment laid down in those articles, as the case may be, even if none of the means mentioned in article 248A(2) has been used. Where any of the means mentioned in Article 248A(2) has been used for the commission of the offence under this article the punishment shall be increased by one degree.

248DA. Whosoever, for any purpose referred to in Articles 248A to 248C, acting as an intermediary for the adoption of a child improperly induces the consent of any person whose consent is required for the adoption shall on conviction be liable to the punishment laid down in article 248D.

248DB. Whosoever practices or engages in child labour for any of the purposes mentioned in article 248A shall, on conviction, be liable to the punishment established under article 248D. For the purposes of this article child labour shall include the coercion of a person under age into forced or compulsory labour for any purpose whatsoever, including the forced or compulsory recruitment of minors to take part in armed conflict.

248E.(1) In this sub-title, the phrase "traffics a person" or "traffics a minor" means the recruitment, transportation, sale or transfer of a person or of a minor, as the case may be, including harbouring and subsequent reception and exchange or transfer of control over that person or minor, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the purposes mentioned in the preceding articles of this sub-title, as the case may be.

(2) Where an offences under Articles 248A to 248D, (a) is accompanied by violence or has caused grievous bodily harm; or (b) generates proceeds exceeding 11 646.87 euros; or (c) is committed with the involvement of a criminal organisation within the meaning of Article 83A(1); or (d) is committed by a public officer or servant in the course of the exercise of his/her duties; or (e) is committed against a vulnerable person within the meaning of Article 208A(2); or (f) when the offender wilfully or recklessly endangered the life of the person trafficked, the punishment shall be increased by one degree."

134. Article 248A(1)(d) of the CC includes "activities associated with begging" as one of the exploitation purposes of THB. Exploitation of criminal activities and forced marriage are not explicitly mentioned among the forms of exploitation, but as the list of exploitation purposes in Article 248 A(1)(e) of the CC is open-ended ("any other unlawful activities not specifically provided for elsewhere under this sub-title"), they can be covered in practice. There have been no such cases to date.

135. GRETA notes that Article 208A(2) of the CC, which is referred to in Article 248E(2) (e) quoted above, defines a "vulnerable person" as any person younger than 15 years; any person suffering from a physical or mental infirmity; any person considered by a court to be particularly at risk of being induced into co-operating with the offender or into surrendering to the offender's will when taking into account the person's age, maturity, health, pregnancy, disability, social or other conditions, including any situation of dependence, as well as the physical or psychological consequence of the offence on that person. The Maltese authorities have indicated that regardless of this, all persons under 18 years of age are treated as children for the purpose of the anti-trafficking provisions of the CC and are *de facto* treated as vulnerable persons.

136. In accordance with the punishment scales provided in Article 31 of the CC, the maximum punishment in case of aggravating circumstances for may be increased to a maximum of 20 years' imprisonment. Nevertheless, GRETA notes that pursuant to Article 248D of the CC, trafficking a child continues to be considered as an aggravating circumstance only when any of the means mentioned in Article 248A(2) have been used, i.e. not all cases of child trafficking re considered as an aggravating circumstance.

137. Pursuant to Article 248F, aiding and abetting a THB offence is also punishable.

138. In its first report, GRETA asked the Maltese authorities to conduct an assessment of the CC provisions concerning THB and the provisions of the White Slave Traffic (Suppression) Ordinance, with a view to avoiding any overlaps and improving legal clarity and certainty. Regardless of the amendments made to the CC in December 2013, some overlap remains between the CC and the While Slave Traffic (Suppression) Ordinance, in particular with regard to sexual exploitation. According to the Maltese authorities, both laws have their specificities which may allow prosecution under one law, but not under the other. Between the two instruments, as a rule, prosecutors prefer to use the CC to prosecute traffickers.

139. GRETA welcomes the amendments to the Criminal Code made in line with its previous recommendations. However, GRETA one again urges the Maltese authorities to introduce as an aggravating circumstance the offence of THB committed against a child, regardless of the means used.

b. Criminalisation of the use of services of a victim (Article 19)

140. Article 248F(2) of the CC was amended in 2013 and reads as follows: "Any person who engages in or makes use of the services or labour as referred to in Articles 248A to 248D, in the knowledge that the person providing the service has been trafficked within the meaning of Article 248E(1), shall be guilty of an offence and liable, on conviction, to imprisonment for a term of eighteen months to five years". There have been no cases of prosecution under this amended legislation.

c. Corporate liability (Article 22)

141. As described in the GRETA's first report, corporate liability in the case of THB is regulated by Article 121D of the CC read in conjunction with Article 248E(3).<sup>33</sup> The rules were amended in December 2015 so that the legislation now applies to all cases, i.e. not only to cases involving corruption or embezzlement. The levels of the applicable fines have also been adjusted and range from 10 000 to 2 000 000 Euros in case of conviction.

142. These provisions have been invoked by the prosecution in the case *Police vs Han Bin* (also known as the Leisure Clothes factory case, see paragraph 78). GRETA would like to be kept informed of developments in this case.

d. Non-punishment of victims of trafficking in human beings (Article 26)

143. In its first report, GRETA urged the Maltese authorities to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so. Further, GRETA urged the Maltese authorities to improve the identification of victims among irregular migrants in order to ensure that victims of trafficking are not punished for immigration-related offences.

144. As was the case at the time of the first report, Article 248E(6) of the CC establishes that "the offences committed under this sub-title (i.e. trafficking in human beings) shall not be liable to punishment if the offender was compelled thereto by another person, where the provisions of Article 33(b) do not apply". Article 33(b) exonerates a person from criminal responsibility provided that the elements of coercion are ("irresistible external force") are proved to the court's satisfaction and in accordance with the law. The Maltese authorities have stated that in the case of THB the onus of proof of external constraint would not, contrary to other contexts, lie with the defendant, but victims of THB would not be prosecuted in the first place for crimes committed as a direct result of their trafficking victim status. For instance, if a person is compelled to engage in prostitution by a trafficker and is stopped by the Police on the grounds of "loitering for prostitution" (which is a criminal offence in Malta), the Police Vice Squad would not prosecute the person concerned. The Maltese authorities consider that the legal basis for the full application of the non-punishment provision of the Convention is in place.

145. GRETA considers that the Maltese authorities should ensure that there is sufficient awareness of the non-punishment provision and its scope amongst police, prosecutors and judges and that the relevant authorities exercise fully their discretion not to prosecute victims of trafficking for unlawful acts they were compelled to commit (both criminal and administrative offences). Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.<sup>34</sup>

<sup>33</sup> See paragraph 168 of GRETA's first report.

<sup>34</sup> <http://www.osce.org/secretariat/101002?download=true>

#### 4. Investigation, prosecution and procedural law

##### a. Measures related to effective investigations (Articles 1, 27 and 29)

146. In its first report, GRETA urged the Maltese authorities to take measures to ensure that crimes related to THB are investigated and prosecuted promptly and effectively, in order to speed up criminal proceedings. Further, GRETA considered that the Maltese authorities should facilitate the stay in Malta of victims of trafficking, so that they can testify and assist those victims who have returned to their countries of origin before the court proceedings to testify through video-conference or travel back to Malta.

147. The Police Vice Squad is the main entity investigating human trafficking offences in Malta, as well as cases of domestic violence and child abuse or neglect. The Vice Squad is also involved in tracing missing persons and taking actions against illegal gambling and paedophilia, including in the Internet. The Vice Squad currently employs 20 staff. One inspector and four constables are responsible for investigating THB cases, while other Vice Squad members provide support when needed. The Vice Squad staff responsible for THB cases co-operate closely with staff of the Economic Crimes Unit, for example in carrying out joint raids and investigating the financial aspects of THB cases (see paragraph 149). GRETA welcomes the increase in staff resources of the Police Vice Squad and the co-operation between police staff in investigating THB cases.

148. As a rule of thumb, any offences not falling under the jurisdiction of the Criminal Court fall under that of the Court of Magistrates and are prosecuted by the Executive Police, which in the case of THB is the Police Vice Squad. Offences carrying a maximum prison sentence of 10 years, occasionally up to 12 years,<sup>35</sup> are prosecuted by the Police Vice Squad and adjudicated by a magistrate, while offences carrying higher penalties are prosecuted by the Attorney General's office and adjudicated in a trial by jury.

149. The Economic Crime Unit of the police assists in the identification, seizure, freezing and confiscation of perpetrators' assets. By way of example, in the Leisure Clothing case, the Economic Crimes Unit was called to assist in identifying assets pertaining to Leisure Clothing Co Ltd and to identify movable and immovable assets pertaining to the directors of the mother company itself, both locally and overseas. The expertise of the money laundering section within the Economic Crime Unit was also used to analyse associated bank statements and accounts. Assets pertaining to one of the two defendants were identified by the Maltese Financial Intelligence Analysis Unit in an account held in Jersey (UK). As a result, the Maltese authorities asked the UK authorities to freeze these assets, based on Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence.

150. The use of special investigation techniques by the Maltese Security Service is regulated by the Security Service Act Chapter 391 of the Laws of Malta. The Minister responsible for authorising the use of such techniques is currently the Minister responsible for Home Affairs and National Security.<sup>36</sup> Special investigative techniques include electronic surveillance (obtaining, disrupting, destroying, opening, interrupting, suppressing, stopping, seizing, overhearing recording, copying, and viewing of communications and the extraction of information from such communication). However, GRETA was informed that phone tapping has not been used in THB cases. Controlled deliveries are also permitted by law, but not practicable in THB cases.

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<sup>35</sup> In line with Article 370(3)(a) of the CC.

<sup>36</sup> The Minister responsible for police forces in Malta is, as a rule, the minister responsible for the Security Services, but the portfolio of ministers and their precise responsibilities, and thereby titles, often change from one election and government period to another.

151. The blocking, filtering and take-down of illegal internet content is almost completely unregulated under Maltese Law. A limited number of relevant legal provisions are contained in the Article 208 and 208 A of the CC and the Data Protection Act (Article 40). The legal framework with respect to the take-down/removal of illegal Internet content mainly relates to violations against intellectual property rights on the basis of the Enforcement of Intellectual Property Rights (Regulation) Act. The implementation of any decision of a competent Maltese court ordering the blocking, filtering and take-down of illegal content would occur through the workings of the Police.<sup>37</sup>

152. The Police Cyber Crime Unit manages a Child Abuse Internet Filter. This crime-prevention initiative, which has been in place since 2009, blocks local internet users from accessing i websites which are being used to disseminate child abuse material by directing them to a 'STOP' Page. The list of websites being filtered through this initiative, managed by the Cyber Crime Unit, includes INTERPOL's "Worst Of" List (IWOL). All Maltese Internet service providers have agreed to participate in this voluntary initiative through signing a Memorandum of Understanding. The Child Abuse Internet Filter is a crime prevention initiative aimed at making access to websites containing child abuse material more difficult but it is recognized that this will not prevent all online abuse. The Agency **Appoġġ** runs an internet hotline, the aim of which is to report and take down websites with harmful content.

153. The annual breakdown of persons prosecuted for THB in the reporting period is as follows: one in 2012, four in 2013, three in 2014, and three in 2015. There have been no convictions for THB offences in the reporting period. One THB conviction from 2011 is now before the Court of Criminal Appeal. Altogether, since the adoption of the first anti-THB legislation, there have been 25 THB cases considered by courts in Malta, five of which are still pending.

154. In its first report, GRETA noted that legal proceedings concerning THB take a long time and stressed the negative implications that this had on the redress of victims of trafficking.<sup>38</sup> This problem remains acute. The Maltese authorities have referred to staff changes (the retirement of an Appeal Court judge) as one of the reasons for the delays.

155. GRETA once again urges the Maltese authorities to take measures to ensure that crimes related to THB are investigated, prosecuted and adjudicated promptly and effectively, including by providing regular training to judges and prosecutors on THB and the rights of victims and encouraging the development of specialisation among judges and prosecutors.

b. Protection of witnesses and victims (Articles 28 and 30)

156. In its first report, GRETA considered that the Maltese authorities should make full use of the available measures to protect victims of THB and to prevent intimidation during the investigation and during and after court proceedings.

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<sup>37</sup> See pp. 445-451 on Malta of the Comparative study on blocking, filtering and take-down of illegal Internet content in the 47 member States of the Council of Europe which was commissioned by the Secretary General of the Council of Europe and prepared by the Swiss Institute of Comparative Law in 2016. <http://rm.coe.int/168065553b>

<sup>38</sup> See paragraph 184 of GRETA's first report.

157. The range of protection measures available to witnesses and victims in THB cases has already been detailed in GRETA's first report.<sup>39</sup> The Police Act establishes a Witness Protection Programme which includes giving evidence behind a screen or via television transmission, and the resettlement of victims to other countries. **Appoġġ** officials can make requests to the Court of Magistrates to allow victims to testify by video-conferencing and to issue protection orders for victims. So far no such requests have been made in respect of victims of human trafficking. The protection orders based on Article 412C of the CC are essentially restraining orders prohibiting defendants from approaching the injured parties, rather than active protective measures. The a possibility to resettle victims in other countries has not yet been applied to victims of trafficking. Child witnesses may be allowed to testify by video link (based on Chapter 164 of the Police Act).

158. GRETA considers that the Maltese authorities should make full use of the existing legal possibilities to provide protection of witnesses and victims in THB cases.

c. Jurisdiction (Article 31)

159. According to Article 5 of the CC, Malta has jurisdiction over anyone committing an offence in Malta, regardless of nationality, as well as any case in which the victim of an offence is a Maltese citizen, no matter where the offence took place.

160. Article 248E(5) of the CC has incorporated additional instances when Maltese jurisdiction may apply with regard to THB, namely when: (a) only part of the action giving execution to the offence took place in Malta; or (b) the offender is a Maltese national or permanent resident in Malta or the offence was committed for the benefit of a body corporate registered in Malta; or (c) the offence was committed against a Maltese national or permanent resident in Malta.

d. International co-operation (Article 32)

161. In its first report, GRETA considered that the Maltese authorities should continue to explore possibilities for international co-operation in the investigation and prosecution of trafficking cases, as well as develop international co-operation to protect and assist victims of trafficking, in particular with countries of origin of victims of trafficking.

162. Malta is bound by a number of international treaties and EU legislation on mutual assistance in criminal matters. It has also ratified the Council of Europe Convention on Extradition and the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters. In addition, Malta has concluded bilateral agreements for co-operation in relation to organised crime, including THB, with Albania, Bulgaria, Croatia, Cyprus, Egypt, France, Georgia, Greece, Hungary, Israel, Italy, Jordan, Latvia, Libya, Montenegro, Qatar, Romania, Saudi Arabia, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey, UAE, Ukraine and UK.

163. Requests by Malta for co-operation in THB cases have been limited in number and have concerned assistance in criminal investigations, interrogation of suspects, interviewing of witnesses, collection of evidence or arrests for the purpose of extradition for prosecution in THB cases. There have not been any Joint Investigation Teams (JITs) in THB cases set up with the participation of Malta.

164. The Maltese border guards co-operate and exchange information with other EU Member States via the Schengen Information System or based on bilateral police co-operation agreements, which also exist with third countries.

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<sup>39</sup> See paragraphs 190-192 of GRETA's first report.



165. Malta participates in the EU NAVFOR Med operation whose mandate includes the identification, capture and dispose of vessels and enabling assets used by human trafficking networks in the Southern Central Mediterranean.<sup>40</sup>

166. GRETA notes the steps taken by the Maltese authorities in the area of international co-operation in combating THB and invites them to continue their efforts.

e. Co-operation with civil society (Article 35)

167. In its first report, GRETA considered that the Maltese authorities should conclude protocols of co-operation with NGOs in order to provide assistance to victims, complementing the services provided by the Agency *Appogg*. The application of such protocols should be regularly monitored and assessed.

168. As noted in paragraph 17, one NGO (Caritas Malta) is represented in the Anti-THB Monitoring Committee. Two NGOs - the Jesuit Refugee Service and Caritas Malta - are members of the Stakeholders Task Force on Human Trafficking. These two NGOs are involved in the preparation of national action plans and their implementation.

169. NGOs receive government funding for providing services to victims of trafficking, such as accommodation and legal support (see paragraphs 78 and 89). The Ministry for Social Dialogue, Consumer Affairs and Civil Liberties and the Ministry for the Family and Social Solidarity provide funding to NGOs working on social projects, with the latter ministry allocating some 250 000 Euros for this purpose, but there are no specific funds earmarked for NGOs working against THB or supporting victims of THB.

170. GRETA considers that the Maltese authorities should continue involving civil society actors in anti-trafficking work and should allocate appropriate funding to NGOs for the purpose of supporting victims of THB.

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[http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/index\\_en.htm](http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/index_en.htm)

## IV. Conclusions

171. Since the adoption of GRETA's first report on Malta in November 2012, progress has been made in a number of areas.

172. The Maltese authorities have further developed the legal framework for combatting trafficking in human beings. The expanded definition of THB in the Criminal Code, which explicitly includes "forced labour" and "activities associated with begging" among the purposes of exploitation and "abuse of a position of vulnerability" among the means for committing the offence, is in line with the recommendations made in GRETA's first report. Another positive legal development is specifying the irrelevance of the victim's consent to the intended or actual exploitation, where any of the means have been used.

173. The Third National Action Plan against THB (2015-2016) focused on the provision of assistance to victims of trafficking and on action against trafficking for the purpose of labour exploitation. In this context, GRETA commends the efforts made to provide training to a range of professionals and to raise awareness about this form of trafficking. The detection and investigation of two recent cases of trafficking for the purpose of labour exploitation is a reflection of these efforts. It is a positive reflection of the victim-centred approach adopted by the Maltese authorities that the victims identified in these cases were granted residence permits and received assistance in finding new employment in Malta.

174. GRETA commends the steps taken since its first evaluation to put in place a National Referral Mechanism (NRM), defining the roles and responsibilities of stakeholders in detecting, identifying and referring to assistance victims of trafficking. Both governmental agencies and non-governmental organisations are involved in the NRM, which is a positive development. A list of indicators for identifying victims of trafficking and Standard Operating Procedures have been adopted and disseminated to all stakeholders.

175. GRETA also welcomes the adoption of the new Victims of Crime Act, which includes provisions regarding access of victims of trafficking to assistance and compensation under the Criminal Injuries Compensation Scheme. The latter now explicitly mentions victims of trafficking as eligible for State compensation.

176. The reinforcement of the Police Vice Squad which deals with investigating and in most cases prosecuting human trafficking cases is another welcome development. This is accompanied by close co-operation between police staff from different units in investigating human trafficking cases, including financial investigations.

177. However, despite the progress achieved, some issues give rise to concern. In this report, GRETA requests the Maltese authorities to take further action in a number of areas. The position of the recommendations in the text of the report is shown in parentheses.

### Issues for immediate action

- GRETA urges the Maltese authorities to step up their efforts to provide assistance, including safe accommodation, which is adapted to the specific needs of victims of trafficking, including to male victims (paragraph 93).
- GRETA urges the Maltese authorities to:
  - take measures to ensure that the procedure for the identification and referral to assistance of child victims of THB takes into account the special needs and circumstances of children, through developing a specific referral mechanism for children involving child specialists, child protection services and specially trained police officers and prosecutors;
  - ensure that child victims of THB benefit from the assistance measures provided for under the Convention, including appropriate accommodation and access to psychological support and legal assistance;
  - step up their efforts to increase the training of relevant officials and staff on the identification of child victims of trafficking (paragraph 102).
- GRETA notes with concern that the legal provisions concerning the recovery and reflection period have not been amended as recommended in its first evaluation report. GRETA recalls that Article 13, paragraph 3, of the Convention, refers to public order considerations and improperly claimed victim status as being the only grounds for terminating or not granting a recovery and reflection period. Consequently, GRETA once again urges the Maltese authorities to:
  - remove the need to co-operate with the authorities as a pre-condition for being granted a recovery and reflection period;
  - establish the minimum duration of the recovery and reflection period at 30 days, during which time it is not possible to remove the victim or potential victim of trafficking from the country's territory;
  - ensure that no termination of the recovery and reflection period is carried out on the grounds that victims or presumed victims have "actively, voluntarily and on their own initiative renewed contact with the perpetrators" without due regard to the person's individual situation, which involves an examination of his/her case (paragraph 110).
- GRETA urges the Maltese authorities to examine the reasons for the absence of compensation claims and awards to victims of trafficking and to make additional efforts to guarantee effective access to compensation for victims of THB, in line with Article 15 (4) of the Convention, including through the systematic provision of legal advice and information (paragraph 127).
- GRETA one again urges the Maltese authorities to introduce as an aggravating circumstance the offence of THB committed against a child, regardless of the means used (paragraph 139).
- GRETA once again urges the Maltese authorities to take measures to ensure that crimes related to THB are investigated, prosecuted and adjudicated promptly and effectively, including by providing regular training to judges and prosecutors on THB and the rights of victims and encouraging the development of specialisation among judges and prosecutors (paragraph 155).

### Further conclusions

- GRETA considers that the Maltese authorities should keep under review the effectiveness of the Anti-Trafficking Monitoring Committee in fulfilling the role of a National Rapporteur or equivalent mechanism, and examine the possibility of designating as a National Rapporteur a separate organisational entity or another independent mechanism for monitoring the anti-trafficking activities of State institutions (paragraph 21).
- GRETA considers that the Maltese authorities should ensure that the budget allocated to action against THB is adequate to cover all actions needed to combat THB (paragraph 22).
- GRETA considers that the Maltese authorities should, especially in the absence of an independent National Rapporteur or equivalent mechanism, commission an external evaluation of the implementation of the current National Action Plan upon its expiry, as a basis for the development of the next National Action Plan (paragraph 27).
- GRETA considers that the Maltese authorities should take further steps to provide systematic training about THB and the rights of victims of trafficking to all relevant professionals, including prosecutors, judges, labour inspectors, asylum officials and the staff of administrative detention centres, such as the Safi Barracks. The training should aim in particular at strengthening victim identification and protection, increasing the number of successful prosecutions, and guaranteeing compensation to victims (paragraph 39).
- GRETA considers that the Maltese authorities should continue their efforts to develop a comprehensive and coherent statistical system on measures to protect and promote the rights of victims as well as on the investigation, prosecution and adjudication of THB cases (paragraph 42).
- GRETA considers that the Maltese authorities should continue to conduct and support research on THB-related issues as an important source of information for future policy measures. Possible research areas include trafficking for the purpose of sexual exploitation and the risk of trafficking of unaccompanied minors and refugee children (paragraph 45).
- GRETA welcomes the conduct of a general awareness campaign in 2013 and considers that the Maltese authorities should continue their efforts to raise awareness of THB and to design future actions in this area in the light of impact assessment of previous measures, focusing on the needs identified (paragraph 49).
- GRETA considers that the practice of linking visas or residence permits to a single employer could increase the risk of labour exploitation as an employee would in practice be unable to leave the individual employer (paragraph 55).
- GRETA welcomes the measures taken by the Maltese authorities to prevent THB for the purpose of labour exploitation and considers that these efforts should be intensified, including by further sensitising relevant officials about trafficking for the purpose of labour exploitation and the rights of victims, and working closely with the private sector, in line with the Guiding Principles on Business and Human Rights (paragraph 56).
- GRETA considers that the Maltese authorities should increase their efforts to raise awareness of child trafficking, including by continuing and expanding the provision of information to school children about this phenomenon (paragraph 61).
- Further, GRETA considers that Malta should, in line with Article 7 of the United Nations Convention on the Rights of the Child, grant Maltese citizenship to children who have not been registered as born in another country before reaching Malta and who run the risk of remaining stateless (paragraph 62).
- GRETA encourages Malta to sign and ratify the Council of Europe Convention against Trafficking in Human Organs (paragraph 65).

- GRETA considers that the Maltese authorities should strengthen their efforts to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society and the private sector (paragraph 70).
- GRETA welcomes the creation of a National Referral Mechanism and the related Standard Operating Procedures and considers that the Maltese authorities should ensure the regular training of relevant officials in the use of trafficking indicators, including asylum officials and staff working in reception centres for asylum seekers and administrative detention centres (paragraph 84).
- GRETA invites the Maltese authorities to consider expanding the grounds for granting temporary residence permits to victims of THB on the basis of their personal situation, in addition to the residence permit on the basis of the victim's co-operation in the investigation or criminal proceedings (paragraph 116).
- Further, GRETA considers that the Maltese authorities should review the provisions of Article 10 (in particular sub-points d and g) of S.L. 9.12 as regards grounds for refusing compensation to victims of crime with a view to ensuring that the right to private life and the right to compensation for victims of trafficking are respected (paragraph 128).
- GRETA considers that the Maltese authorities should continue to take steps to ensure that the return of victims of THB is preferably voluntary, and is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention) and, in the case of children, by fully respecting the principle of the best interests of the child (paragraph 132).
- GRETA considers that the Maltese authorities should ensure that there is sufficient awareness of the non-punishment provision and its scope amongst police, prosecutors and judges and that the relevant authorities exercise fully their discretion not to prosecute victims of trafficking for unlawful acts they were compelled to commit (both criminal and administrative offences – paragraph 145).
- GRETA considers that the Maltese authorities should make full use of the existing legal possibilities to provide protection of witnesses and victims in THB cases (paragraph 158).
- GRETA notes the steps taken by the Maltese authorities in the area of international co-operation in combating THB and invites them to continue their efforts (paragraph 166).
- GRETA considers that the Maltese authorities should continue involving civil society actors in anti-trafficking work and should allocate appropriate funding to NGOs for the purpose of supporting victims of THB (paragraph 170).

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## Appendix

List of public bodies, intergovernmental organisations, non-governmental organisations and other civil society actors with which GRETA held consultations

### Public bodies

- Ministry for Home Affairs and National Security
- Ministry for Health and Energy
- Anti-Human Trafficking Monitoring Committee
- Office of the Attorney General
- Chief Justice (Chief Justice Chamber, Law Courts)
- Vice Squad (Police)
- Department for Industrial and Employment Relations (linked to Ministry for Education and Employment)
- Employment and Training Corporation
- National Social Welfare Agency (Appoġġ - part of the Foundation for Social Welfare Services under the Ministry for Justice, Dialogue and Family)
- Safi Barracks Detention Centre
- Refugee Commissioner
- Commissioner for Children
- Social Affairs Committee (Parliament)
- Parliamentary Ombudsman

### Intergovernmental organisations

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)
- (EU) European Asylum Support Office (EASO)

### NGOs and other civil society organisations

- Caritas Malta
- Malta Emigrant Commission
- The Jesuit Refugee Service
- The National Council of Women
- Young Men's Christian Association (YMCA)
- Chamber of Advocates

## Government's Comments

The following comments do not form part of GRETA's analysis concerning the situation in Malta

GRETA engaged in a dialogue with the Maltese authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Maltese authorities on 12 January 2017 and invited them to submit any final comments. The comments of the Maltese authorities, submitted on 27 February 2017, are reproduced hereafter.

## Responses of the Maltese Government in relation to GRETA Recommendations

Recommendation: Step up their efforts to provide assistance, including safe accommodation, which is adapted to the specific needs of victims of trafficking, including male victims.

Reply: The Maltese authorities acknowledge that further progress in this sphere is necessary. However, it has to be emphasized that all victims who required accommodation were in fact provided with such accommodation, including male victims. This is the case even if use had to be made for centres for asylum seekers. In Malta's specific circumstances, in view of economies of scale, it is difficult to have a centre dedicated exclusively to victims of trafficking.

Recommendation: Improve the identification and assistance of child victims of trafficking, in particular by:

- Taking measures to ensure that the procedure for the identification and referral to assistance of child victims of trafficking takes into account the special needs and circumstances of children, through developing a specific referral mechanism for children involving child specialists, child services and specially trained police officers and prosecutors;
- Reply: The development of guidelines to assist in the identification of child victims of trafficking is envisaged by the new Action Plan. It should be noted that so far no child victims of trafficking have been identified in Malta.
- Ensuring that child victims of trafficking benefit from the assistance measures provided for under the Convention, including appropriate accommodation and access to psychological support and legal assistance.
- Reply: Should child victims of trafficking be identified that would be provided with the necessary assistance as indicated in the Convention. Agenzija Appogg already has trained personnel who could provide the required psychological assistance. Moreover, Malta already has a set up in place to provide support to unaccompanied minors. This set-up could also avail children who are victims of trafficking should the need arise. Furthermore, Police officers and prosecutors have been made aware of the specific needs and requirements of child victims in specialised training delivered in partnership with IOM.
- Stepping up their efforts to increase the training of relevant officials and staff on the identification of child victims of trafficking.
- Reply: The new Action Plan provides for additional training in this sphere; hence Malta will be implementing this recommendation.

Recommendation: amend the legal provisions on the recovery and reflection period by:

- Removing the need to co-operate with the authorities as a pre-condition for being granted a recovery and reflection period;
- Reply: It should be noted that the pertinent legislation transposes an EU Directive which outlines that the need to co-operate with the authorities is a pre-condition for the recovery and reflection period. In this regard it should be stated that our objective should be to encourage cooperation so as to apprehend traffickers and prevent future victimisation of other people.
- Establishing the minimum duration of the recovery and reflection period at 30 days, during which time it is not possible to remove the victim or potential victim of trafficking from the country's territory;
- Reply: The current provision provides for a maximum period for recovery and reflection of two months, during which period the person concerned cannot be removed from Malta. The Maltese



authorities will be considering the specific reference to a minimum period for recovery and reflection in line with GRETA's recommendation.

- Ensuring that no termination of the recovery and reflection period is carried out on the grounds that victims of presumed victims have “actively, voluntarily and on their own initiative renewed contact with the perpetrators” without due regard to the person's individual situation, which involves an examination of his/her case.
- Reply: The Maltese authorities are not in agreement with this recommendation, as it is considered that this could undermine our efforts against human trafficking.

Recommendation: Examine the reasons for the absence of compensation claims and awards to victims of trafficking and make additional efforts to guarantee effective access to compensation of trafficking, in line with Article 15(4) of the Convention, including through the systematic provision of legal advice and information;

Reply: It should be noted that the Victims of Crime Act (Cap 539 of the Laws of Malta), which features specific provisions on victims of human trafficking, already provides for legal advice and information. It is therefore considered that this recommendation is already being implemented.

Recommendation: Introduce as an aggravating circumstance the offence of trafficking in human beings committed against a child, regardless of the means used;

An offence against child, even if it does not involve the use of the means in question, is subject to a penalty commensurate with one involving the victimisation of an adult with recourse to the means in question. Furthermore, if those have been used, the offence against a minor becomes subject to a further aggravation.

Malta considers that the present legislation is already dissuasive vis-à-vis human trafficking in general and human trafficking against children.

Recommendation: Take measures to ensure that crimes related to human trafficking are investigated, prosecuted and adjudicated promptly and effectively, including by providing regular training to judges and prosecutors on human trafficking and the rights of victims and encouraging the development of specialisation among judges and prosecutors.

During 2016, the Ministry for Justice, Culture and Local Government in collaboration with the International Organization for Migration (IOM) entered into an agreement to implement a six month project on how to Improve Quality of Prosecution and Protection of Victims of Trafficking through the Justice System in the Republic of Malta for the members of the Judiciary as well as police investigators and prosecutors. A research was undertaken for a period of six months examining judicial sentences regarding trafficking in persons. After which a two-day training event was held addressing the Judiciary. During the training it was emphasized that all efforts should be taken to protect the victim at all stages during the judicial process from the initial stage of identification until their reinsertion into society. It was also stressed that we must strive to make the Court environment as friendly as possible to these people including, wherever this is possible, through the minimisation of contact with the former exploiter. Topics covered during the training amongst other were: Major problems faced by the participants in the fight against trafficking in Malta, How can the Quality of Prosecution and Protection of Victims of Trafficking be improved? Maltese Legislation and gaps in the sphere of Trafficking, Challenges and Responses, Case Law and Pertinent Elements to Identify Victims of Human Trafficking.

Recommendation: Requests the Government of Malta to report to the Committee of the Parties on the measures taken to improve the implementation of the Convention in the above-mentioned areas by **10 March 2018**

Reply: N/A

Recommendation: Recommends that the Government of Malta takes measures to implement the further conclusions of GRETA's second evaluation report.

Reply: As per above.

Recommendation: Invites the Government of Malta to continue the dialogue in progress with GRETA and to keep GRETA regularly informed of the measures taken in response to GRETA's conclusions.

Reply: The Maltese authorities will continue cooperating with GRETA as necessary.