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Strengthening Access to Justice for Improved Human Rights Protection

A Prioritised List of Recommendations

aditus
accessing rights

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aditus foundation is an independent, voluntary & non-profit organisation (NGO) established by a group of lawyers with a mission to monitor, act & report on access to fundamental human rights in Malta. We believe in the universality, interdependence and indivisibility of all human rights.

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BACKGROUND

The *Strengthening Access to Justice for Improved Human Rights Protection* project has as its objective the improving of access to justice for individuals wishing to strengthen their human rights protection in those instances when they feel that they have been violated.

Whilst Malta has a relatively strong human rights regime that seeks to protect a long list of fundamental human rights, the practical protection offered to persons whose rights have been violated or might be violated is rather weak.

These obstacles to effective protection have been identified by aditus foundation and several esteemed reports and research, including by the Venice Commission, the European Parliament, the European Commission and in the *Kummissjonjoni Għal Riforma Ħolistika Fil-Qasam tal-Ġustizzja* report on Malta's justice system.

From these reports there is currently substantial list of recommendations relating to improving access to justice for strengthened human rights protection. The large number of recommendations makes it an extremely ardous task to advocate for since they are formulated

in various ways, target different stakeholders and are presented in various contexts. It is also complex for Government and other stakeholders to navigate through these recommendations and identify those which ought to be prioritised, fast-tracked, are easily implemented or which require long-term investment. It is therefore useful to have at hand a prioritised list of what needs to change in order for the exisitng framework to be dramatically improved.

However, in order to identify those recommendations that should be prioritised there was the need to have an informed, structured and consultative process. In this regard, the aditus project team carried out a comprehensive literature review of all recommendations made up until 2021, so as to avoid duplication of efforts and to build on previous expertise and efforts by other monitoring and professional entities. The reports, recommendations and decisions that were consulted as part of the literature review can be found in the Bibliography at the end of this publication.

The literature review constituted the basis for the formulation of SMART (*Specific, Measurable, Achievable, Relevant and Timebound*) recommendations[1]. In developing the SMART recommendations, we also recognise the limitations and risks of using fixed goals in an extremely dynamic and uncertain environment that is law making and governance in modern times. Whilst it easy to set specific and measurable goals in stable and predictable environments, it is not so easy when the landscape is unpredictable and can shift due to global events, such as the COVID-19 pandemic or elections.

The SMART recommendations were then used as a basis for discussions with stakeholders and with the relevant Ministries, authorities and bodies that were approached as part of this project. In total, we carried out 19 bilateral stakeholder meetings during which we advocated for an improvement in laws, policies and standards in accordance with the SMART recommendations.

Throughout the process, aditus also drafted and published a number of blogposts that focused on key areas of importance in relation to the rule of law and to the protection of fundamental rights of the most vulnerable. This was done in order to create a culture of understanding on the issues that have been flagged by key stakeholders. We published a blog post on justice and the rule of law[2], on the 6 Bills that were adopted in July 2020

1 aditus foundation, SMART Goals To Strengthen Access to Justice for Improved Human Rights Protection, October 2022.

2 aditus foundation, Rule of Law: Justice, March 2021.

further to the Venice Commission's 2020 Opinion[3] and on the 2021's European Commission's Rule of Law Report – Malta Country Chapter[4]. Furthermore, a legal analysis was published on the prosecution and imprisonment of refugees entering Malta using false documentation[5], as were the SMART Goals developed within the ambit of the project. Furthermore, in 2021 we also presented written feedback to the European Commissions' Directorate-General for Justice and Consumers in relation to the Malta country chapter[6].

This paper sets out the prioritised list of goals divided into key sectoral group as identified by aditus in the implementation of the Strengthening Access to Justice for Improved Human Rights Protection project. Whilst there is much to be done, we believe that changes in these areas would significantly improve effective protection for the fundamental rights of the most vulnerable in society.

Of course, it goes to say that without a proper space and opportunity for dialogue with government stakeholders and public consultation during decision-making processes it would be extremely hard to achieve all that we believe needs to be done. We are looking forward to continuing this work in the coming months.

Carla Camilleri
aditus foundation
May 2023

3 aditus foundation, Venice Commission: regrets that 6 Bills adopted before opinion could be finalised, before it could engage with the national stakeholders, August 2021.

4 aditus foundation, Two Steps Forward, One Step Back, October 2021.

5 aditus foundation, Prosecution and imprisonment of refugees entering Malta using false documents, July 2021.

6 aditus foundation, Feedback to DG Justice on the Malta Country Chapter – Rule of Law Report, April 2021.

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I. EQUALITY LEGISLATION

A corner stone of human rights is having a solid equality legislation that guarantees protection against discrimination on varied and intersectional grounds of protected characteristics. As an integral part of this framework there needs to be an independent, impartial and effective route through which individuals can file complaints and subsequently challenge any decisions on such complaints.

A comprehensive national framework that encompasses anti-discrimination legislation and supporting policies is crucial to mainstreaming and integrating people belonging to the various minority groups that exist within our society, such as gender and sexual minorities, religious minorities, racial or ethnic minorities, persons with a disability, age minorities and the like. Minority groups face daily discrimination in education, employment, accessing goods and services, access to housing and healthcare, in the neighbourhood, in the use of public transport, when approaching public officers and authorities, in accessing places of entertainment and also in places of worship.

Although minority groups face discrimination in various spheres of life the number of complaints filed with the various existing equality bodies remains low. This could be attributed to a number of factors, such as lack of information, procedures being too burdensome, lack of specialised legal support and fear.

The current legal framework is piecemeal and is found in various legal instruments each having a different scope which in some instances overlap, a variety of actions for redress and different reporting or equality bodies. This illustrates the complexity of both the legal framework and the procedural elements involved, resulting in the enormous difficulty that individuals and their legal advisors face when filing a complaint.

In view of the above:

- The creation of one equality body to which in individuals can file a complaint in relation to prohibited grounds of discrimination is a positive step forward. Nevertheless, there needs to be clarity on the relationship and interplay between the Human Rights and Equality Commission and other equality bodies, such as the Ombudsman, the National Commission Persons with Disability and the Department of Industrial and Employment Relations;

- The consolidation of laws into one harmonised equality act, which includes standard definitions and procedures, was long overdue and can only better the possibilities for redress for those persons who feel aggrieved. It, however, remains unclear which laws will be consolidated into the recast Equality act and which laws will be repealed.
- The Act should reflect and make reference to Malta's international obligations under the Charter of Fundamental Rights of the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.

A process which started in 2014, the Equality Bill and Human Rights and Equality Commission Bill were tabled in Parliament during the legislature in 2019, however both Bills got stalled after the Second Reading at Committee Stage with the last sitting on the 20th November 2020. The elections in March 2022 spelled the end of the process for these two Bills and to date no new drafts have been submitted to Parliament. The main sticking points being political pressure to include a "*conscientious objection*" clause and an exception for religious institutions for the application of non-discrimination in employment in the Equality Bill. Furthermore, the proposed composition and structure of the Human Rights and Equality Commission was considered by NGOs to be problematic in the light of the UN Paris Principles.

The adoption of an Equality Act and a Human Rights and Equality Commission Act to effectively tackle intersectional discrimination in all its forms in all spheres of life is mentioned as a planned action to be carried out within the next 5 years in the Gender Equality and Mainstreaming Strategy & Action Plan, published in November 2022.

It is imperative that an Equality Act, without any opt outs on anti-discrimination legislation based on belief, is passed. This should be passed, together with an act that set ups a Human Rights and Equality Commission (or similar NHRI) which contains strong provisions relating to independent and effective decision-making, and an independent and effective remedy to challenge such decisions.

At the time of writing of this paper, aditus has not seen a draft nor a know of a consultation process for these two crucial laws.

Equality Legislation:
SMART RECOMMENDATIONS

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Approval of Act on Equality without any opt outs on anti-discrimination legislation based on belief.	Passing of Equality Act	All-inclusive protection for protected characteristics.	Participation in Parliamentary Committee Request new draft/s Meeting Minister concerned
Approval of Act on the Human Rights and Equality Commission in accordance with the Paris Principles.	Passing of Act on the Human Rights and Equality Commission	Independent and effective decision-making.	Participation in Parliamentary Committee Request new draft/s Meeting Minister concerned
Approval of Act on the Human Rights and Equality Commission with effective, independent and impartial remedies.	Passing of Act on the Human Rights and Equality Commission	Independent and effective remedy to challenge decisions.	Participation in Parliamentary Committee Request new draft/s Meeting Minister concerned

II. INDEPENDENCE OF THE JUDICIARY & SPECIALISED TRIBUNALS

Further to the recommendations that were proposed by the Venice Commission after the 2020 rule of law crisis in Malta, a number of legislative changes were carried out which drastically overhauled the judicial appointments procedures[7]. The procedure now involves the setting up of a Judicial Appointments Committee composed of the Chief Justice, two judges, two magistrates, the Auditor General, the Ombudsman and the President of the Chamber of Advocates that receives applications from prospective judges or magistrates and forwards a shortlist of names to the President of Malta. The President then appoints the required number from that shortlist.

Although the Venice Commission welcomed the introduction of a public call for vacancies, it noted that the announcement of the short-listed candidates together with the name of the appointed candidate, and not before, does not meet the recommendation in their June 2020 Opinion. The Commission considers that the publication of the names before the President takes a decision is a key element required to ensure transparency of the process.

The Commission has also recommended the depoliticisation of the appointment of the Chief Justice. Amendments carried out in 2020 made provision for the Chief Justice to be appointed by the President in accordance with a resolution passed in Parliament supported by a minimum two-thirds majority. Although this majority vote is instrumental in ensuring that both parties in Parliament would have to assent to a specific contender for the appointment of the Chief Justice to take place, there still remains concerns relating to the possibility of lobbying politicians for the post.

The Venice Commission was also critical of the fact that the amendments did not consider an anti-deadlock mechanism in the eventuality that the qualified majority voting system leads

7 See articles 96, 96A and 100 of the Constitution of Malta.

to a Parliamentary impasse. It is clear that there is the need to depoliticise the appointment of the Chief Justice by involving the judiciary in the appointment of the person to the role and by requiring that the appointment must be made from among existing senior judges.

At the time of writing Article 96 of the Constitution requiring the appointment of the Chief Justice in accordance with a two-thirds majority in Parliament remains unchanged. The anti-deadlock mechanism remains problematic and could potentially lead to a similar situation that was faced in the appointment of the Ombudsman and in the appointment of the Commissioner for Standards in Public Life in 2023[8].

Independence of the Judiciary: SMART RECOMMENDATIONS

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Strengthen appointment system by making shortlisted candidates public before appointment.	Amendment to Constitution	Transparency in appointment process.	Push for Constitutional Reform Highlight with CoE, EC, LIBE
Ensure an anti-deadlock mechanism in the appointment of the Chief Justice.	Amendment to Constitution	Ensure the filling of the role.	Push for Constitutional Reform Highlight with CoE, EC, LIBE

The Commission has also recommended the depoliticisation of the appointment of the Chief Justice.

8 Kevin Aquilina, A defective anti-deadlock mechanism for the Standards Commissioner, The Malta Independent, 2023; Jacob Borg, Ombudsman flags 'demotivation' in his office over failure to appoint replacement, Times of Malta, 2022.

Depoliticise the appointment of the Chief Justice by involving the judiciary in the appointment.	Amendment to Constitution	Depoliticisation of process.	Push for Constitutional Reform Highlight with CoE, EC, LIBE
Depoliticise the appointment of the Chief Justice by requiring that appointment be made from among senior judges.	Amendment to Constitution	Depoliticisation of process.	Push for Constitutional Reform Highlight with CoE, EC, LIBE

Several Acts of Parliament grant individual Ministers the authority to appoint members of quasi-judicial bodies, committees, commissions and similar entities, these having the mandate to decide on appeals or applications presented to them by any person. The International Protection Appeals Tribunal (IPAT) and the Immigration Appeals Board are deciding on crucial issues relating to detention, refoulement and asylum amongst others, which have clear implication on fundamental rights. In a recent case, S.H. V Malta, the European Court of Fundamental Rights found that the IPAT was not an effective remedy and that in 2021 it had carried out a total of 482 reviews (during accelerated procedures appeals) and confirmed 478 of them. Furthermore, in communicated case A.D. v Malta the ECtHR will be examining the question of whether or not the Immigration Appeals Board is an effective remedy due to the lack of independence and impartiality, in a case relating to an unaccompanied minor.

It should be noted that the Maltese legal system is largely built around these Tribunals, others include: Environment and Planning Review Tribunal, the Consumer Claims Tribunal, the Competition and Consumer Appeals Tribunal, the Industrial Tribunal, the Information and Data Protection Appeals Tribunal, the Mental Health Review Tribunal, the Patent Tribunal, the Police Licences Appeals Tribunal, the Panels of

Administrative Review Tribunals and the Prison Appeals Tribunal.

It should be noted that in Malta's Recovery and Resilience Plan agreed upon with the European Council in 2021, the Government bound itself to review of the independence of specialised tribunals which reform shall be implemented by 31st March 2026. The review will focus on (i) an assessment of the guarantees of independence for appointments of members to said specialised tribunals, (ii) an assessment of the guarantees which provide for the tribunals' decisions to be fully reviewed by the ordinary courts of appeal, and (iii) concrete and precise policy recommendations.

In the review of the tribunal structure there needs to be clear independent appointment and dismissal procedures, a change of the composition of the board to ensure impartiality and clear procedural guarantees.

Independence of Specialised Tribunals: SMART RECOMMENDATIONS

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Change appointment and composition of the International Protection Appeals Tribunal.	Amendment to IP Act; Amendment to COCP; or New Act.	Independent and effective remedy to challenge decisions.	Push for Reform Strategic/Impact Litigation
Change appointment and composition of the Immigration Appeals Board.	Amendment to Immigration Act; Amendment to COCP; or New Act.	Independent and effective remedy to challenge decisions.	Push for Reform Strategic/Impact Litigation

III. STRENGTHEN PROTECTION OF FUNDAMENTAL RIGHTS FOR ALL

The Maltese Courts have through their jurisprudence enshrined the principle that Constitutional Court judgements, including when the Constitutional Court declares that a specific law violates the Constitution or the European Convention, do not have *erga omnes* application. The Courts have relies on Parliament to amend, revoke or modify the law in order to bring it in line with the Constitution.

This principle enshrined by our Constitutional Courts goes against the principle of Article 6 of the Constitution, which proclaims the supremacy of the Constitution and that any law to the extent of its inconsistency with the Constitution, is null and void. Nowhere in the Constitution does it say that a declaration of inconsistency with the Constitution should only be effective between the parties to the suit. In order to ensure the supremacy of the Constitution and the European Convention of Human Rights, and to strengthen the certainty of rights, there is need to introduce legislative provisions to that effect.

However, one should note that when the Constitutional Court deems a law to be unconstitutional or breaching the European Convention of Human Rights it is obliged to send any such judgement in Parliament, however there is no obligation on Parliament to amend, revoke or modify the law within a stipulated time-frame.

In this regard the Prime Minister may within the period of 6 months from the date that the judgment has become *res judicata* and to the extent necessary in his opinion to remove any inconsistency with the Constitution or with the relevant human right or fundamental freedom, make regulations deleting the relevant instrument or any provision thereof declared to run counter to the Constitution or the European Convention of Human Rights[9]. The discretion of the Prime Minister whether or not to act on the unconstitutionality of a law as declared by the Constitutional Courts needs to be amended be replaced with an obligation to act.

9 Article 242 of the Code of Organisation and Civil Procedure, CAP. 12 of the Laws of Malta.

Constitutional Court Judgements: SMART RECOMMENDATIONS

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Ensure the *Erga Omnes* effect of constitutional court judgements.	Amendment to Constitution	Ensure a homogenous application of HR legislation/decisions.	Push for Constitutional Reform Highlight with CoE, EC, LIBE
Oblige Parliament to act on decisions of the Constitutional Court finding a legal provision unconstitutional by repealing or amending withing a limited timeframe.	Amendment to Constitution	Ensure a homogenous application of HR legislation/decisions.	Push for Constitutional Reform Highlight with CoE, EC, LIBE

The Attorney General still remains predominantly under the power of the Prime Minister. The Constitution provides that the President will appoint the Attorney General acting according to the advice of the Prime Minister. Confusingly, the Attorney General Ordinance[10] further to amendments in 2019, provides for the setting up of an appointment commission when a vacancy for office of the Attorney General occurs. The Minister for Justice appoints the 4-person committee from "*persons who in his opinion are respected and trusted by the public and are technically qualified*". However, there are no further details on what is meant by trusted or technically qualified. The Prime Minister's sole obligation is to give due consideration to the recommendations of this committee. This new procedure does not guarantee the impartiality in the appointments process, as it is ultimately up to the Prime Minister to appoint a person of his or her choosing from the list of applicants.

Furthermore, the removal of the Attorney General by a two-thirds majority in Parliament,

10 Article 2 of the Attorney General Ordinance, CAP 90 of the Laws of Malta.

is deemed to be inadequate by both the Venice Commission and the European Commission. The reports notes that the Venice Commission recommends that an expert body should decide on the grounds for removal or that there would be the possibility to appeal the removal to the Constitutional Court.

Although there has been a considerable reform of the office of the Attorney General, through the separation of its dual role with the State Advocate, there are still concerns relating to the transfer of prosecutions from the police. The shift of prosecution from the police to the Attorney General for crimes punishable with more than two years imprisonment which comprise serious crimes, including corruption and money laundering, was completed in 2020.

Again, the Government bound itself through the Recovery and Resilience Plan agreed upon with the European Council in 2021 to carry out an independent assessment to gauge how all other less serious crimes, that are carrying a fine or prison sentence of less than two years, shall be shifted from the police force to the Attorney General's office. The Government bound itself to implement any recommended legislative amendments by 31 March 2026.

Attorney General: SMART RECOMMENDATIONS

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Strengthen the appointment and removal of the Attorney General away from Prime Minister.	Amendment to Constitution	Appointment of independent prosecutor according to set criteria.	Push for Constitutional Reform Highlight with CoE, EC, LIBE
Transfer all prosecution, including for summary offences, to the Attorney General.	Amendments to Criminal Code	Ensure the complete separation from the investigative and prosecutorial functions.	Push for Reform with Ministry Highlight with CoE, EC, LIBE

The appointment and removal of the Ombudsman can only be carried out by the President further to obtaining a two-thirds majority resolution passed in Parliament. However, the former must be sought on the grounds of proven inability to conduct the functions pertaining to his office due to severe physical or psychological impairment or proved misbehaviour. The Venice Commission recommends that in view of the criminal connotation of "*proved misbehaviour*" then it is necessary that there is the possibility to appeal such findings to a court.

Furthermore, the difficulty in the appointment of a person to the office of the Ombudsman for several months highlighted the problem of not having an effective anti-deadlock mechanism. The failure to appoint a new person was due to a lack of agreement between the Prime Minister and the Leader of the Opposition during consultations on the choice of a successor.

The Commissioner for Children has the mandate to promote children's rights and to investigate any breaches or infringements of the rights of children. Although the office is set out in legislation[11], the office does not adhere to the UN Paris Principles in that the Commissioner is appointed by the Prime Minister and can be removed by the Prime Minister after consultation with the parliamentary committee for social affairs[12]. The Commissioner can only issue recommendations for action or compliance note in relation to breach of children's rights or of the UN Convention on the Rights of the Child and does not have any enforcement powers. There is a clear need for a reform of the office, in order to guarantee strengthened appointment and removal procedures, possibly with elevation to a constitutional level, in addition to a wider margin of power.

The Commissioner can only issue recommendations for action or compliance note in relation to breach of children's rights or of the UN Convention on the Rights of the Child and does not have any enforcement powers.

11 The Commissioner for Children Act, CAP. 462 of the Laws of Malta.

12 Child Participation Assessment Tool (CPAT), Country Report Malta, 2020.

Monitoring Bodies: SMART RECOMMENDATIONS

What is the specific aim?	**How will it be measured?**	What do we want to achieve?	STEPS TO BE TAKEN
Ensure an anti-dead-lock mechanism in the appointment of the Ombudsman.	Amendment to Constitution	Ensure the filling of the role.	Push for Constitutional Reform Highlight with CoE, EC, LIBE
Strengthen the independence of the Commissioner for Children.	Amendments to the Commissioner for Children Act	Effective and inde-pendent voice for children.	Lobby with Commissioner Push for Reform with Ministry Push for Reform with PS Equality

IV. GOVERNANCE AND TRANSPARENCY

Civil society and the media are facing an increasingly hostile atmosphere typified by a general lack of consultation and dialogue with, and access to information from Government actors. In its 2020 Opinion the Venice Commission had stated that "*Confining the discourse to political parties in parliament without meaningful public consultation is akin to denying citizens their democratic entitlement to have a say in the shaping of the constitutional order.*" The Venice Commission has repeatedly stressed the importance of public debates and consulting civil society.

In order to increase transparency and access to information for the public, it is vital to ensure the publicity of independent and public inquiries commissioned by the authorities. The Inquiries Act grants the Prime Minister or any Minister the authority to appoint members of the Board of Inquiries to investigate possible shortcomings in the conduct of public officers, government bodies or government services. An inquiry set up under the Inquiries Act is governed by its terms of reference laid down by the Prime Minister or Minister on an ad hoc basis. The proceedings can be held publicly or behind closed doors and there is absolute discretion whether or not to make the findings public.

In a context were the media and civil society face unanswered requests for information or silence, they are often left with no other choice but to file a freedom of information request. The exceptions contained in the Freedom of Information Act are often abused by public authorities to undermine the right to freedom of information, thereby creating issues of a lack of transparency and accountability.

The Freedom of Information Act stipulates that a document is an exempt document if its disclosure would be contrary to the public interest by reason that it would have a substantial adverse effect on the ability of the Government to manage the Maltese economy; or that it could reasonably be expected to result in an undue disturbance of the ordinary course of business in the community, or an undue benefit or detriment to any person or community. The significant delays and the frequent rejections of FOI

requests was flagged to the UN Human Rights Council by PEN International[13]. The broad definition of the grounds for refusal, as well as the administrative costs of the procedure often hinder access to public information. In the light of this, the Act should be updated, using available international models, to guarantee the transparency of the administration vis-à-vis the media and the citizens.

There are no legal provisions relating to the obligation to consult or to notify the public before or during the legislative process in Malta. However, Directive 6[14] creates a framework to be adopted by public authorities when carrying out public consultations issued by Principal Permanent Secretary. It applies to all ministries, departments, agencies and other entities falling under the Public Administration Act, and to all their employees. However, there are very few instances were there is an obligation, and not a suggestion, to carry out public consultations. In practice public consultations on draft legislation and policy are carried out by individual ministries on an ad hoc basis, however this is not prescribed by law.

A proposed bill must pass through 3 readings in Parliament. After the second reading, the bill is committed to a committee of the whole house or referred to a standing or select committee. During the select committee stage members appointed from the house discuss the contents of the bill and may propose amendments to such bill[15]. This process does not automatically involve the public, however any MP can invite persons the public to discuss particular issues. There is no formal procedure as to how this takes place and the participation of "*outsiders*" requires the permission of the committee to take part in the debate.

The Venice Commission has stated in 2020 that when adopting decisions on issues of major importance for society, such as a significant constitutional reform, wide and substantive consultations are a key condition. That this key condition presupposes transparency so that critical actors, including civil society, are able to voice their proposals and objections in a timely fashion. With this in mind, it is imperative to increase consultation and dialogue with civil society by strengthening the consultation process before, during and after the passing of legislation.

13 Times of Malta, 'Frequent' rejection of Freedom of Information requests flagged to UN, 2018.

14 Office of the Principle Permanent Secretary, Directive 6, 2011; Amendment to Directive 6 Consultation Exercises with Stakeholders Attachment 1, 2017.

15 Standing Orders of the House of Representatives Order, S.L. CONST.02.

Governance & Transparency: SMART RECOMMENDATIONS

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Ensure the publicity of public inquiries commissioned by the authorities.	Amendment to the Inquiries Act	Increased transparency and access to information for the public.	Push for Reform with Ministry
Amend the FOI Act to reduce the instances where a public authority may refuse to provide the requested information.	Amendment to the Freedom of Information Act	Increased transparency and access to information for the public.	Push for Reform with Ministry
Increase consultation of civil society in legislative and policy making processes.	Amendment to Standing Orders of the House of Representatives. Amendments to specific acts to allow for a period of consultation. Ensured compliance with Directive 6 relating to public consultations issued by the Principal Permanent Secretary. Digital Transformation of the Public Administration	Increased transparency and public participation.	Push for Reform with Ministries Justice, Home Affairs and PPS. Highlight with CoE, EC, LIBE, OSCE

V. CORRUPTION AND FINANCIAL CRIME

In recent years deep corruption patterns in Malta have been unveiled and this has raised a demand both from the Maltese public and also from the international community for the introduction of legislation relating to corruption and organised crime. There is no legislation that effectively combats bribery and corruption by means of unexplained wealth, criminal or 'mafia' association, abuse of office and obstruction of justice.

The introduction of legislation aimed at detecting unexplained wealth (or illicit enrichment) which goes beyond tax regulation to expand into criminal investigations and prosecutions by judicial authorities is key. Through unexplained wealth orders the courts can order an individual to reveal their source of income or "*unexplained wealth*" if there is suspicion of illicit conduct. If the individual fails to provide a statement or justify the origins of their wealth, then they could be subject to a confiscation of assets.

Furthermore, a need was felt for the introduction of a crime based on the Italian legislation relating to "*associazione di stampo mafiosa*" or "*of criminal mafia-style conspiracy*". According to Italian jurisprudence the crime subsists when in addition to the agreement to commit a crime, there is also an organised structure. This organised structure should contain elements of mafia-style organisations such as secrecy, the code of silence or *omerta*, stability and permanent and the like.

There is currently no legislation that imposes criminal or administrative responsibility for abuse of power of those in public office and neither for obstruction of justice. It is crucial to introduce a specific crime that would criminalise the behaviour of persons in public positions for actions that aim to hinder investigations being carried out by the police, prosecutors, investigators and other investigative public bodies, such as the Ombudsman. In addition, there is no specific crime

relating to abuse of office which is committed by a public official, or someone employed in the public service in the execution of their duties.

Amendments to these laws were seen by the members of the Board of Inquiry into the circumstances of Daphne Caruana Galizia's assassination as necessary to counter the culture of impunity that pervades the Maltese system. This state of impunity was thought to strengthen the arrogance of wrong-doers and shield them from judicial consequences through the wielding of political and economic power. It is this impunity that is "*the seed that sows corruption*"[16].

Corruption and Financial Crime: SMART RECOMMENDATIONS

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Introduce crimes relating to "*associazione di stampo mafiosa*".	Amendments to Criminal Code	Prevention of crimes relating to corruption, financial crimes and abuse of public office.	Push for Reform with Ministries Justice, Home Affairs. Highlight with CoE, EC, LIBE.
Introduce legislation to combat unexplained wealth.	New laws on unexplained wealth orders	Prevention of crimes relating to corruption, financial crimes and abuse of public office.	Push for Reform with Ministries Justice, Home Affairs. Highlight with CoE, EC, LIBE.

There is currently no legislation that imposes criminal or administrative responsibility for abuse of power of those in public office and neither for obstruction of justice.

16 Bord ta' Inkjesta, Rapport tal-Inkjesta Pubblika Daphne Caruana Galizia, July 2021.

Introduce crimes relating to abuse of public office.	Amendments to Criminal Code	Prevention of crimes relating to corruption, financial crimes and abuse of public office.	Push for Reform with Ministries Justice, Home Affairs. Highlight with CoE, EC, LIBE.
Introduce crimes relating to obstruction of justice.	Amendments to Criminal Code	Prevention of crimes relating to corruption, financial crimes and abuse of public office.	Push for Reform with Ministries Justice, Home Affairs. Highlight with CoE, EC, LIBE.

VI. LEGAL AID

The legal aid system in Malta has been criticised for not being accessible enough in terms of the income requirements, and also in terms of the merit test applied. In this regard, in 2022 the law was amended to increase the value of assets held for persons to be eligible to benefit from legal aid from €7,000 to €13,000 for the preceding 12 months in order to be eligible for legal aid[17]. Furthermore, the amendment introduced a proviso that holds that in the calculation of the net asset value, account would be taken of any rent payable for property used as main residence and of any maintenance paid to spouse and children. However, the yearly income threshold remains that of the national minimum wage, which at the time of writing stood at approximately €10,020.

The above asset threshold is extremely low considering that the average price house price of €250,000, and with prices rising at an average of 15% each year pre-pandemic[18]. Furthermore, by fixing the income threshold at minimum wage would exclude anyone else that earns above but could still potentially not afford a lawyer. There is need to increase the minimum wage threshold to take into account the increase in the cost of living, especially in relation to individuals with families and older people who although may own property do not have substantial disposable incomes[19]. Caritas found that 18.4% of persons who were at-risk-of-poverty or social exclusion were homeowners, whilst 9.2% were owners paying a mortgage[20].

Furthermore, in order to be eligible for legal aid for civil or administrative proceedings the individual has to show that they have a probable

17 Article 912, Code of Organisation and Civil Procedure, CAP. 12 of the Laws of Malta.

18 MaltaToday, House prices still growing, but at slower pace compared to pre-pandemic levels, April 2023.

19 Times of Malta, Families spend €100 more a month on food, with elderly hit harder, May 2022.

20 Caritas Malta, A Minimum Essential Budget for a Decent Living, 2020.

cause for litigation, a *probabilis causa litigandi*. The criteria adopted in this assessment are unclear, as they are not contained in either the Code or in any other guidelines or regulations. Although there are a few exceptions, in the majority cases this means that an individual is not eligible for legal aid that covers pre-litigation advice. The restriction on the provision of legal aid to cases for which there is a probable cause for litigation creates a situation where persons who are at an economic disadvantage are unable to access any pre-litigation advice or assistance without charge. This constitutes a serious restriction on access to justice due to a lack of knowledge of their rights and the correct forum within which to file a complaint or action.

Legal aid should not be linked with any specific court, tribunal or be restricted to any single procedure. Once the benefit is granted, it should be exercised at any Court, at any tribunal wherever the benefit is admitted and for every procedure, including those that are extra-judicial. In the same vein, the assistance should cover mediation and arbitration proceedings; any procedures that may be filed in court; presentation of official letters, judicial letters, interpellator letters; submission of appeals, retrials and counterclaims; interventions in *statu et terminis*; third part in lawsuit; procedures during questioning by Police; procedures *parte civile*; procedures concerning sentenced persons; proceedings before quasi-judicial tribunals; out-of-court settlement proceedings; legal advice which does not necessarily lead to judicial proceedings; procedures for injunctions and any action provided by law, including *actio popolaris.*

In practice, once a lawyer is appointed as a legal aid lawyer that person is put on a generalised list of lawyers irrespective of qualifications and experience. This means that a lawyer on the list could be called to assist any person in judicial proceedings ranging from drug trafficking to personal separation or divorce. There is a need to move from the generalised list of legal aid lawyers to a system of specialised lists of legal aid lawyers to cater for the different needs of the client and different expertise of legal professionals. It was suggested that there needs to be at least two lists of legal aid lawyers: one list covering civil cases, administrative and cross-border cases and one list for criminal cases. The institute of legal aid should also be gender sensitive. This means the list of lawyers must contain male and female lawyers and the applicant would have the right to choose the preferred gender of the lawyer.

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Legal Aid			
Increase the income threshold to mean average wage.	Amendment to the COCP	Individuals who do not have sufficient financial means have access to free legal advice.	Push for Reform with Minister Justice.
Expand the merit test to include legal advice which extends beyond *probabilis causa litigandi.*	Amendment to the COCP Amendment to Legal Aid Agency (Procedures) Order	Individuals who do not have sufficient financial means have access to free pre-litigation legal advice.	Push for Reform with Minister Justice.
Establish specialised lists of legal aid lawyers to cater for the different needs of the client (gender, subject)	Amendment to the COCP Amendment to Legal Aid Agency (Procedures) Order	Individuals who do not have sufficient financial means have access to expert lawyers with due consideration to their situation.	Push for Reform with Minister Justice.

The institute of legal aid should also be gender sensitive. This means the list of lawyers must contain male and female lawyers and the applicant would have the right to choose the preferred gender of the lawyer.

VIII. INTERNATIONAL INSTRUMENTS

As part of Malta's international and regional commitments, it has been noted that Malta still has not accepted some individual complaint procedures in relation to a number of conventions that it has already ratified. It is through individual complaints that human rights are given concrete meaning by allowing individuals to complain directly should they feel that they were a victim of a violation of rights contained in international human rights treaties.

In this regard, the most notable are the complaints procedures under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Therefore, in order to strengthen access to justice for fundamental rights breaches, it is imperative that Malta ratifies the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (CESCR-OP,) and the Optional Protocol to the Convention on the Rights of the Child (CRC-OPIC).

Furthermore, in ratifying the CEDAW, the Government of Malta registered its reservation to a number of articles, in particular sub-paragraph (e) of paragraph (1) of article 16 in so far as the same may be interpreted as imposing an obligation on Malta to legalize abortion. This article states that women should have the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

In 2015, the Maltese government reported to Committee on the Elimination of Discrimination against Women that Malta "considers the termination of pregnancy through induced abortion as illegal. Malta can only accept language that does not carry any implication that a State is required to legitimise abortion or that abortion is a legitimate form of birth control". The Committee

urged Malta to review its legislation on abortion and consider exceptions to the general prohibition of abortion for cases of therapeutic abortion and when the pregnancy is the result of rape or incest. It further urged to remove from the punitive provisions in the Criminal Code for women who undergo abortion. The Council of Europe PACE Committee held that reproductive rights and health are a concern and a key aspect of women rights that need to be improved in Malta as a matter of priority. Similarly, the Commissioner for Human Rights reported that Malta's blank ban hinders access to sexual and reproductive healthcare which is crucial to preserve women's right to health, as well as other rights including the right to life, the rights to be free from torture and ill-treatment and from discrimination and the right to privacy.

Malta acceded to the 1954 Convention relating to the Status of Stateless Persons, which establishes a framework for the international protection of stateless people, on 11 December 2019. However, it failed to establish in law a statelessness determination procedure and protection status. Furthermore, there is no published guidance for decision-makers on how to identify or determine statelessness. As a result of this omission, stateless people in Malta remain unidentified and at risk of violations of their fundamental rights.

In order to grant the necessary protection for stateless persons it is crucial that a mechanism is setup to identify and determine statelessness, and to provide stateless protection status under the authority of the International Protection Agency. This should be done through specialised legislation that would regulate all aspects of statelessness and, at the very minimum, include a definition of statelessness, the designation of a determining authority, procedural guarantees relating to access to the procedure and list of rights attached to the status of statelessness.

What is the specific aim?	How will it be measured?	What do we want to achieve?	STEPS TO BE TAKEN
Ratify the Optional Protocols to CEDAW, CESCR and CRC.	Acceptance of Optional Protocols to CEDAW, CESCR and CRC	Ensure that individuals have access to further remedies for breaches of rights.	Push for Reform with Minister Justice, Foreign Affairs & PS Equality.
Remove Malta's reservations to CEDAW.	Removal of reservations	Ensure that women in Malta have access to rights ensured by CEDAW.	Push for Reform with Minister Justice, Foreign Affairs & PS Equality.
Establish an effective Statelessness Determination Procedure.	Amendments to IPAct; or Introduction of new legislation	Persons in Malta who are stateless are granted adequate protection and rights.	Push for Reform with Ministries Justice, Home Affairs. Strategic/Impact Litigation.

Therefore, in order to strengthen access to justice for fundamental rights breaches, it is imperative that Malta ratifies the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

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