

SUBMISSION TO THE HUMAN RIGHTS COMMITTEE

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Malta's 3rd periodic review Under the International Covenant on
Civil and Political Rights

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aditus
accessing rights

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M A I N O B S E R V A T I O N S

1. **aditus foundation** is a young, independent, voluntary, non-profit and non-governmental organization established in 2011 by a group of young lawyers dedicated to ensuring human rights access in Malta. Named for the Latin word meaning ‘access’, **aditus foundation’s** mission is the attentive analysis of access in Malta to human rights recognition and enjoyment. In practical terms, **aditus** was established to *monitor, report* and *act* on issues of fundamental human rights access for individuals and groups.
2. This report is being presented to the Human Rights Committee by aditus foundation in view of Malta’s 3rd periodic review under the International Covenant on Civil and Political Rights (ICCPR).
3. The report is divided into thematic sections which outline concern in relation to the effective implementation of the ICCPR in Malta. The final section lists a number of recommendations that Malta would need to take into consideration in order to be fully compliant with the ICCPR.

National Human Rights Institution

4. aditus has been following the development of the draft Human Rights and Equality Commission Bill¹ and the Equality Bill² since their inception, regularly engaging with the Equality Ministry on their general approach as well as on their technical content. We feel that the two Bills have the potential of radically

¹ Human Rights and Equality Commission Bill: <https://parlament.mt/media/101106/4-bill-97-the-human-rights-and-equality-commission-bill.pdf>.

² Equality Bill <https://parlament.mt/media/101105/3-bill-96-equality-bill.pdf>.

altering the face of Malta's human rights protective framework in a manner that renders it more accessible, inclusive and effective.

5. However, although we are aware that the Bills went through a number of re-drafting stages, we are concerned that the Bills have been pending for a number of years. aditus has expressed its concern, by drawing clear red lines, that the proposed Human Rights and Equality Commission Bill will establish an entity that is too close to government for it to be truly independent³. The drafts of the Human Rights and Equality Commission Bill that aditus has reviewed continue to raise issues in relation to the lack of conformity to the Paris Principles. Our main concern lies with the method of appointment of the Equality Board which, in our view fails, to guarantee the independence and impartiality of the its' members. In this regard, the appointment of the members of the Board by the President, based on rankings contained in an evaluation report drafted by a committee appointed by the Minister responsible for equality, is subject to influence of the ruling party of the day.

Participation of Women in political and public life

6. Malta's gender gap still remains one of the highest in Western European countries, yet it is positive to note that some measures were taken by the Government to support families. Malta ranks 15th in the EU on the Gender Equality Index. Its score is 4.9 points lower than the EU's score. Malta's scores are higher than the EU's scores in all domains, except the time and power domains. In the power domain, Malta's score is the lowest of all⁴.
7. Representation of women in Parliament remains very low. In the 2017 election, out of the 211 candidates, only 42 (19,9%) were women and finally out of the 67 elected MPs only seven are women. This is two less than the previous legislature, amplifying Malta's rank as the second lowest (after Hungary) for female representation out of all the European Union Member States⁵.
8. It is also noted that online misogynistic speech, and instances of hate speech against female politicians and women in public life remain high⁶. There have been threats of physical harm to female politicians, even coming from male colleagues in Parliament⁷, rape and murder threats to female activists⁸ and opposition MEPs⁹, many times without consequences. The continuous bullying and intimidation campaign against journalist Daphne Caruana Galizia culminated in her assassination on the 16th October 2017, as she worked to exposed corruption at the highest political levels in Malta¹⁰. Her vilification

³ aditus foundation, Input on the proposed Human Rights & Equality Commission Act, Equality Act (November, 2019) https://aditus.org.mt/Publications/inputonproposedequalityacts_2019.pdf.

⁴ EIGE: Gender Equality Index 2019: Malta <https://eige.europa.eu/publications/gender-equality-index-2019-malta>.

⁵ 'When the Nation Stood Still', 2017 Annual Human Rights Report <http://www.humanrightsplatform.org.mt/phromdocuments/2017ahrr.pdf>.

⁶Why the media portrayal of women matters, Brenda Murphy, 2020 https://www.maltatoday.com.mt/news/interview/100850/why_media_portrayal_of_women_matters_brenda_murphy#.X0ofA8gzPY.

⁷ Joe Debono Grech incident: 'Any form of verbal abuse should be sanctioned', 2015 <https://www.independent.com.mt/articles/2015-12-02/local-news/Joe-Debono-Grech-incident-Any-form-of-verbal-abuse-should-be-sanctioned-6736149628>.

⁸<https://www.facebook.com/aditus.accessingrights/photos/a.332433090170794.76719.110733245674114/895962903817807/?type=3&app%3Btheater>; <https://timesofmalta.com/articles/view/watch-i-have-a-bullet-ready-for-you-womens-rights-activists-regular.701734>; <https://lovinmalta.com/news/news-breaking/breaking-tony-zarb-apologizes-for-prostitute-comment-as-women-file-police-report-for-hate-speech/>.

⁹ You will end up like Galizia': Metsola files police report over threat, 2019 <https://timesofmalta.com/articles/view/you-will-end-up-like-galizia-metsola-files-police-report-over-threat.711432>.

¹⁰ "You cannot call for the national unity you all demolished!" <https://aditus.org.mt/cannot-call-national-unity-demolished/#.X0oingzZPY>.

continued after her death, at times in an organised manner, and her memorial was removed every day by the cleansing authorities in Valletta, up until January 2020¹¹.

9. Her investigative journalism looked into issues of institutionalised corruption and governance malpractice, alleging serious violations happening at the highest levels of Malta's government. Her murder shocked the nation and resulted in the creation of several movements calling for increased transparency, accountability and removal of political figures, including the Prime Minister's Chief of Staff, associated with Panamagate and other governance scandals. There is a feeling amongst human rights NGOs that justice will not be done, and that the true perpetrators will not be investigated or brought to justice.

Sexual & Reproductive Health

10. The total ban on access to abortion for women and girls exposes children to potentially life-threatening situations, early marriages and pregnancies. Under Maltese law no exception is admitted when the woman's life is in danger or in cases of unwanted pregnancies resulting from rape or incest¹². The state should ensure access to sexual and reproductive health services, including family planning, contraception and safe abortion.
11. It is therefore essential to ensure access to safe and legal abortion services under specific circumstances, in particular when a woman's life is in danger¹³.
12. Further to the lowering of the age of consent to 16, access to reproductive and health services including contraception should not require parental consent.

Freedom of thought, expression and assembly

13. NGOs reported that in 2017 they saw an increase of expressions of hatred towards their activities, staff and volunteers¹⁴. In 2018, Lifeline Captain Claus-Peter Reisch was arrested following the rescue of 234 people in the Mediterranean. He was charged with two offences: entering Maltese waters without the necessary registration or licence and using a vessel for commercial purposes without a licence. In 2020, the Criminal Court of Appeal cleared Capt. Reisch of all charges¹⁵. His arrest was seen by NGOs as an attempt to frustrate NGOs from rescuing migrants. In the same period Malta blocked a number of other NGO rescue ships from leaving Malta¹⁶.

¹¹ Behind the scenes: How Labour online groups reacted to Daphne Caruana Galizia's assassination, <https://theshiftnews.com/2018/05/24/behind-the-scenes-how-labour-online-groups-reacted-to-the-assassination-of-daphne-caruana-galizia/>; Decision to dismantle Daphne memorial was not taken out of pique, Bonnici insists, <https://www.independent.com.mt/articles/2020-01-31/local-news/Decision-to-dismantle-Daphne-memorial-was-not-taken-out-of-pique-Bonnici-insists-6736219122>; Daphne Memorial left untouched, <https://www.independent.com.mt/articles/2020-01-17/local-news/Daphne-memorial-in-Valletta-remains-untouched-after-PM-s-orders-6736218510>.

¹² Platform of Human Rights Organisations in Malta, Submissions to the Committee on the Rights of the Child, 81st Session, 2019 http://www.humanrightsplatform.org.mt/phromdocuments/PHROMCRCSubmission_2019.pdf.

¹³ Women's Rights Foundation, Women's Sexual and Reproductive Health and Rights – Malta, 2018, <https://goo.gl/YP1SAs>; Voice for Choice Coalition <https://www.v4c.mt/post/press-release-coalition-launch>.

¹⁴ Platform of Human Rights Organisations in Malta, Submissions to the Universal Periodic Review Of Malta, 31st Session (2018) http://www.humanrightsplatform.org.mt/phromdocuments/PHROM_UPR_Submissions_28032018.pdf.

¹⁵ Appeal Court Clears Lifeline Captain of all Charges – NGOs Continue to Rescue <https://www.ecre.org/seaappeal-court-clears-lifeline-captain-of-all-charges-ngos-continue-to-rescue/>.

¹⁶ Transport Malta fails to specify laws breached by NGOs, <https://newsbook.com.mt/en/transport-malta-fails-to-specify-laws-breached-by-ngos/>; Aquarius leaves port as other NGO ships remain blocked: https://www.maltatoday.com.mt/news/national/88864/aquarius_leaves_port_as_other_ngo_ships_remain_blocked#.X0ozDcgzZPY

14. In 2014 a man was arrested for staging a one-man protest outside the Prime Minister's office. Further to the institution of court proceedings, the police commissioner and the attorney general were ordered to pay compensation for the arrest¹⁷. Police officers have also been accused of being heavy-handed in their treatment of protestors during peaceful demonstrations, although inquiries absolved them of any wrong-doings¹⁸. It should be noted that the three members of the Independent Police Complaints Board are appointed by the Minister responsible for home affairs. The only requirement for the composition of the Board is that one member should be a retired judge¹⁹. Issues relating to the independence of such boards and tribunals are highlighted in the Rule of Law section below.
15. Further to Daphne Caruana Galizia's assassination, a spontaneous memorial was erected in front of the law courts as a form of protest by civil society activists. This memorial was routinely removed on orders of the Minister for Justice, Culture and Local Government. These actions represented an unequivocal repression of free and peaceful political and personal expression.
16. Protests relating to Daphne's assassination intensified in November and December of 2019 when a number of arrests were carried out. Although generally peaceful, the protestors were accused by a number of Government MPs of being violent and intent only on creating chaos or bloodshed²⁰. These claims were repeated on the Labour Party media station²¹. There were spontaneous gatherings of supporters of the Government who were then urged to stay home amidst rising tensions²². The now Prime Minister of Malta stated during a television interview that the only purpose of the ongoing protests, in early December 2019, was provocation and that although he tolerated peaceful protest, he would not tolerate anyone who was violent and tried to destroy the country²³.
17. On the 3rd of December 2019, Aditus issued a press statement warning that government actions were eating away at the right to peaceful assembly and the rights to freedom of expression. It was noted that a number of journalists were held at the Prime Minister's Office held by unidentified men in a bid to stop them from leaving the room and that at least one journalist was verbally and physically attacked by a staff member of the Parliamentary Secretary for Agriculture, Fisheries and Animal Rights. Furthermore, the public spaces used for the protests were being made smaller through the excessive use of metal barricades²⁴.

¹⁷ Court orders compensation for man who was arrested for protesting, <https://www.independent.com.mt/articles/2016-09-29/local-news/Court-orders-compensation-for-man-who-was-arrested-for-protesting-in-front-of-Castille-6736164415>.

¹⁸ Activists forcibly removed by police at peaceful demonstration at Planning Authority https://www.maltatoday.com.mt/environment/environment/89457/watch_activists_protest_pa_refusal_to_take_action_on_odz_fuel_station_policy#.X0ovlcgzZPY; Police rapped for 'disjointed' manhandling of Graffiti activists <https://timesofmalta.com/articles/view/police-rapped-for-manhandling-graffitti-activists-during-pa-protest.711854>.

¹⁹ Minister's wife, PL candidate still on Police Complaints Board, but change may be afoot <https://www.independent.com.mt/articles/2020-05-16/local-news/Minister-s-wife-PL-candidate-still-on-Police-Complaints-Board-but-change-may-be-afoot-6736223220>.

²⁰ 'Demonstrators are seeking bloodshed' - Michael Falzon <https://timesofmalta.com/articles/view/demonstrators-are-seeking-bloodshed-michael-falzon.754543>.

²¹ One News faces libel case for claims protest aimed at Special Olympics athletes <https://timesofmalta.com/articles/view/one-news-faces-libel-case-for-claims-protest-aimed-at-special-olympics.757630>; 'We need your protection against the mafia that has taken over our country' – Repubblica <https://newsbook.com.mt/en/we-need-your-protection-against-the-mafia-that-has-taken-over-our-country-repubblika/>

²² As it happened: Muscat meets MEPs amid protests and murder claims in letter <https://timesofmalta.com/articles/view/live-blog-muscat-meets-meps-amid-protests-and-daphne-murder-claims.754507>.

²³ Protests' only purpose now is provocation - Robert Abela <https://timesofmalta.com/articles/view/protests-only-purpose-now-is-provocation-robert-abela.756109>.

²⁴ Watch the dividing line between maintaining public order and eating away at fundamental freedoms! <https://aditus.org.mt/press-statement-watch-the-dividing-line-between-maintaining-public-order-and-eating-away-at-fundamental-freedoms/#.XQpNbcgzZPY>

18. On the 14th December 2019, the Police Force issued a Press Release (PR 756/19)²⁵ that organisers of the protest held on the 13th December 2019 had not applied for a permit, as should always be done and is always done. We would like to reiterate that exercising the right to peaceful assembly should not be subject to the permission of the authorities and that protesters do not need to apply for a permit to be allowed to protest. The press release was issued after the Minister for Home Affairs made a similar (and erroneous) statement.

Racial Discrimination & Institutional Racism

19. Hate speech and hate crimes continue to be concerning priorities that need to be addressed adequately on both a legal and cultural level. Verbal violence and racial abuse by groups and individuals seem to be worryingly spreading on social media, particularly on Facebook²⁶.

20. On the 6th April 2019, Lassana Cisse Souleymane was shot dead whilst walking home in a racially motivated attack. Another two men, Ibrahim Bah and Mohammed Jallow, were also injured during the shooting. The shots were fired from a moving car by two off-duty army officers whilst the three men were walking in a country lane. Some months before another migrant, May Malimi, was hit by a moving car thought to be driven by the same two army officers²⁷. The two officer were released on bail in December 2019²⁸. An internal inquiry carried out by the Armed Forces of Malta found no sign of racism in the army²⁹. The inquiry report was not published or made available to the public.

21. This recent racial attack comes several years after the deaths of Ifeanyi Nwokoye and Mamadou Kamara³⁰. Nwokoye died on his way to hospital after being beaten by three former AFM soldiers³¹ in 2011, whilst Kamara died in 2012 whilst in the custody of Detention Services and AFM personnel³². The inquiry into Kamara's death was published in 2014³³.

22. In January 2018, a young Nigerian child was suspected to have died in a church residence where she lived with her parents and siblings³⁴. Further to her death, her siblings were placed under a care order and the Minister later clarified that the girl died in hospital as a result of a rare medical condition. An inquiry was launched to investigate the incident, whilst a separate magisterial inquiry is also being

²⁵<https://www.facebook.com/aditus.accessingrights/photos/a.332433090170794/2599183706829043/>.

²⁶Platform of Human Rights Organisations in Malta, Submissions to the Universal Periodic Review Of Malta, 31st Session (2018) http://www.humanrightsplatform.org.mt/phromdocuments/PHROM_UPR_Submissions_28032018.pdf.

²⁷ Who shot Lassana Cisse? Court hears of conflicting accounts <https://timesofmalta.com/articles/view/who-shot-lassana-cisse-court-hears-of-conflicting-accounts.718930>;

²⁸ Soldiers accused of Lassana Cisse murder released on bail https://www.maltatoday.com.mt/news/court_and_police/99184/lassana_cisse_murder_bail#.X0nzPMgzZPY.

²⁹AFM inquiry finds no sign of racism in the army <https://timesofmalta.com/articles/view/afm-inquiry-finds-no-sign-of-racism.794081>.

³⁰'Terrorist attack motivated by racial hatred': Graffiti calls for institutional reform https://www.maltatoday.com.mt/news/national/95077/terrorist_attack_motivated_by_racial_hatred_graffitti_calls_for_institutional_reform#.X0n11cgzZPY.

³¹Soldiers acquitted of involuntary homicide of Nigerian asylum seeker https://www.maltatoday.com.mt/news/court_and_police/81693/officers_acquitted_of_involuntary_homicide_of_nigerian_asylum_seeker#.X0n3jsgzZPY.

³²Mamadou Kamara's murder: migrant repeatedly kicked as he tried to stand up https://www.maltatoday.com.mt/news/court_and_police/75315/mamadou_kamaras_murder_migrant_repeatedly_kicked_as_he_tried_to_stand_up#.X0n4lsgzZPY.

³³PM publishes Kamara inquiry that shows Mifsud Bonnici stopped officers from being sacked https://www.maltatoday.com.mt/news/national/47318/pm_publishes_kamara_inquiry_that_shows_mifsud_bonnici_stopped_officers_from_being_sacked?fbclid=IwAR3u8Va_zWGDrgj_w9KRHLC3-f4FTsuaOJCKy0zeeq-OryNdgIqzpOYxfDg#.X0n4zcgzZPZ.

³⁴ Deceased girl, 7, was noticed absent from school since November <https://timesofmalta.com/articles/view/deceased-girl-7-was-noticed-absent-from-school-since-november.668843>.

carried out. In May 2018, the first inquiry was concluded and presented to the Minister of Social Solidarity but it was never made public³⁵.

23. Refugees are a far higher risk of poverty than the national population. This is due to several factors, including difficulties accessing regular employment, vulnerability to labour exploitation, limited access to language education, insufficiency of social protection for persons unable to work, social protection dependant on immigration status rather than on individual need, limited access to psycho-social support for rehabilitation, no regulation of temporary employment³⁶.
24. In recent years, a number of raids and evictions from substandard accommodation started taking place regularly, as rental prices soared and social housing became increasingly scarce. The raids were carried out by police or planning officers and targeted accommodation being rented by migrants without alternative accommodation being offered³⁷. At times, it was reported that doors were kicked in³⁸ and valuables destroyed by police officers³⁹. These evictions, carried out on the pretext of health and safety, targeted black migrants and often resulted in them being taken in police vans for interrogation after police raids, some were cable-tied and all were rendered homeless⁴⁰.
25. It has repeatedly been reported that migrants being charged or accused in Court of criminal activities have been treated in ways that could prejudice the right to a fair trial and increase the stigmatisation of migrants in society. It has become common for arrested migrants to be brought to Court, handcuffed and escorted by a large number of gloved police officers, via one of Malta's busiest pedestrian streets. In one particular case migrants, including children, that were protesting against their illegal detention were arrested and brought into the Court buildings through the main thoroughfare in Valletta⁴¹. This group were tied together with cable ties, some without shoes and included minors. More information on this point is given in the Justice section below.
26. Public discourse by public figures, politicians and public officers has also been criticised as xenophobic and racist, many times without any consequence for the perpetrators⁴².

³⁵Inquiry into child's death concluded but will not be published just yet

<https://www.maltatoday.com.mt/news/national/86921/inquiry-into-childs-death-concluded-but-will-not-be-published-just-yet#.X0n7BMgzZPY>.

³⁶JRS Malta and aditus foundation, Struggling to Survive: an Investigation into the Risk of Poverty among Asylum Seekers in Malta, October 2016, available at <http://aditus.org.mt/Publications/strugglingtosurvive.pdf>.

³⁷Watch: Migrants found living "inhumanely" in cow stalls in Qormi <https://timesofmalta.com/articles/view/enforcement-team-hones-in-on-farmhouse-in-qormi.686704>.

³⁸"They committed no crime; they were too poor to afford decent accommodation" <https://newsbook.com.mt/en/they-committed-no-crime-they-were-too-poor-to-afford-decent-accommodation/>.

³⁹Hal Far migrants say valuables destroyed in police raid <https://timesofmalta.com/articles/view/hal-far-migrants-say-valuables-destroyed-in-police-raid.725392>.

⁴⁰Evicting the black unwashed - Mark Anthony Falzon https://timesofmalta.com/articles/view/evicting-the-black-unwashed-mark-anthony-falzon.733933?fbclid=IwAR3C8WTD71oojVUzRt9c4BXbZtScMI3c1Me4IuqeMGFT9rESpNgS8j-g_A.

⁴¹Shameful treatment of arrested migrants is a manifestation of institutionalised racism: <https://aditus.org.mt/shameful-treatment-of-arrested-migrants-is-a-manifestation-of-institutionalised-racism#.X0oKycgzZPY>.

⁴²'Seize the boat and sink it!' Malta social welfare boss Grixti on migrants pleading for safe port:

<https://www.maltatoday.com.mt/news/national/101609/seize-the-boat-and-sink-it-malta-social-welfare-boss-grixti-on-migrants-pleading-for-safe-port#.X0oSycgzZPY>; Surge in racist and hate speech online following government decisions:

<https://theshiftnews.com/2020/04/27/surge-in-racist-and-hate-speech-online-following-government-decisions/>; Gafà, the social media provocateur, weaponises Labour's immigration problem

<https://www.maltatoday.com.mt/news/national/104225/gaf-the-social-media-provocateur-weaponises-labours-immigration-problem#.X0oUF8gzZPY>; Foreigners laid off during Covid-19 crisis will be deported, minister says:

<https://www.maltatoday.com.mt/news/national/101099/foreigners-laid-off-during-covid19-crisis-will-be-deported-minister-says#.X0oVrsgzZPY>.

Detention

27. Although Malta ended its mandatory detention policy in 2015, in effect it returned to a policy of systematically detaining all those who arrived by sea, including children, by mid-2018. The authorities placed many new arrivals, including unaccompanied children in Safi and Lyster Barracks and the Initial Reception Centres. They soon became overcrowded, with serious hygiene and other issues, such as access to lawyers and civil society organisations.
28. Since the 2015 legislation did not authorise such large-scale and indiscriminate detention of asylum-seekers, the Maltese authorities chose to resort of public health laws that allow the Superintendent of Public Health to limit the free movement of persons in respect of whom there is suspicion that they might spread a contagious disease. Relying on the Prevention of Disease Ordinance⁴³, the Superintendent of Public Health has detained over 2,000 asylum-seekers in Lyster Barracks, Safi Barracks and the Initial Reception Centres.
29. The health legislation and its implementation in this context presents a series of concerns, as per the below:
- It is not a permitted ground for detaining asylum-seekers under international, EU and national law;
 - In terms of the Ordinance itself, in case of such a reasonable suspicion that a person may spread a contagious disease, the Superintendent of Public Health is only permitted to restrict a person's free movement and not entirely deprive of his/her liberty;
 - A maximum period of four weeks is permitted, only extendable to 10 weeks in exceptional cases;
 - The reasonableness of the suspicion that asylum-seekers arriving by boat may spread contagious diseases is dubious, not based on a case-base scientific assessment and tantamount to discrimination;
 - It is applied even in the case of vulnerable applicants and children, despite national law and policy underlining that vulnerable persons and children will not be detained;
 - No effective remedy is provided against such form of detention. There are no procedural guarantees in relation to this form of detention, saving the *habeas corpus* process under the Criminal Code, Article 409A.
30. Immigration detention under these health provisions was pronounced to be illegal by Maltese Courts in six cases brought by detained asylum-seekers at the end of 2019⁴⁴. Furthermore, UNHCR flagged that “(D)etention for medical reasons is lasting longer than the maximum time provided by law.”⁴⁵
31. Hundreds of asylum-seekers have been detained for over 5 months and some for up to ten months. From information available to us, none of them were formally notified that their deprivation of liberty was being extended due to the need to finalise microbiological tests.
32. They are being held in crowded, insanitary conditions, with almost no opportunity for recreation or constructive activity, hardly any contact with the outside world, limited access to open air, and a severe shortage of basic material necessities, which makes their detention even harder to bear. In these

⁴³ Prevention of Disease Ordinance, CAP 39, <https://legislation.mt/eli/cap/36/eng/pdf>.

⁴⁴ Court of Magistrates (Malta) as a Court of Criminal Inquiry, *Application of Zeeshan Saleem*, 9 October 2019, https://aditus.org.mt/Publications/applicationofZeeshanSaleem_09092019.pdf; and Court of Magistrates (Malta) as a Court of Criminal Inquiry, *Application of Mohammed Abdallah Mohammed*, 8 October 2019, https://aditus.org.mt/Publications/applicationofMohammedAbdallahMohammed_08092019.pdf.

⁴⁵ Times of Malta, *Third detention centre opens amid questions over legality*, 15 March 2020, <https://timesofmalta.com/articles/view/third-detention-centre-opens-amid-questions-over-legality.778184>.

conditions it is not surprising that tension erupts in the centres, as people are worn down by the uncertainty and the strain of their prolonged and arbitrary detention.

33. It should also be noted that some asylum seekers are detained under Regulations 6(1)(a) and (b) of the Reception Regulations⁴⁶.
34. According to data relevant to 2019, 250 asylum-seekers were detained through the year. It is to be underlined, however, that this figure is provided by the Malta Police Force and does not include asylum-seekers detained under public health legislation as these fall under the remit of the Ministry for Health.
35. In the recent weeks the Government of Malta has issued a call for tender for the charting of vessels to accommodate migrants on quarantine ships⁴⁷. We would like to highlight that quarantine is a form of detention and that there are clear rules on how a state can detain people. Primarily, indefinite detention is not allowed, as is detention in a place where living conditions are undignified and substandard. Furthermore, people need to be allowed to access the asylum system, be provided with information and have contact with family and lawyers.
36. The issuing of the tender, comes after Malta held over 400 asylum-seekers rescued at sea on tourist ferry boats chartered by the Maltese State outside Malta's territorial waters, some of them from the 28th April 2020 to the 6th June 2020⁴⁸. The rescued migrants were being held on privately-owned tourist ferries boats that usually were only permitted to navigate within 3 nautical miles in favourable weather conditions. They had no contact with the outside world, no contact with the authorities, no access to the media and no contact with monitoring bodies or lawyers. They were not permitted to apply for asylum. Furthermore, due to the fact that they had no contact with lawyers they did not have access to any remedies to challenge their de facto detention.
37. This form of incommunicado detention, compounded by the lack of access to information, for an indefinite period of time constitutes the most serious violation of the norm protecting the right to liberty of human beings. They were intentionally and cynically left outside the cloak of any legal protection by the Maltese government.
38. aditus foundation, Jesuit Refugee Service and Integra Foundation, three Malta-based NGOs, filed three complaints with respect to the migrants held on the tourist ferries. Two complaints were sent respectively to the *UN Special Rapporteur on the Rights of Migrants* and to the *UN Working Group on Arbitrary Detention*. The complaints were based on the assertion that Malta's actions breached a number of articles contained in the *Universal Declaration of Human Rights* and in the *International Covenant on Civil and Political Rights*, in particular:
 - Right to be free from torture or to cruel, inhuman or degrading treatment or punishment
 - Right to liberty and security of the person
 - Right to be treated with respect for inherent dignity of the human person
 - Right to an effective remedy, and
 - Right to seek and to enjoy asylum from persecution.

⁴⁶ Reception of Asylum Seekers Regulations, S.L. 420.06. These were amended by L.N. 417 of 2015, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662&l=1>.

⁴⁷ No location yet for migrant quarantine ship: https://www.maltatoday.com.mt/news/national/103942/no_location_yet_for_migrant_quarantine_ship#.X0pdKMgzZPZ.

⁴⁸ All four boats carrying 425 asylum seekers to dock in Malta https://www.maltatoday.com.mt/news/national/102799/captain_morgan_migrant_protest_four_boats_dock#.X0ph4sgzZPY; Illegal floating prisons https://www.maltatoday.com.mt/comment/blogs/102694/illegal_floating_prisons_carla_camilleri#.X0pg5cgzZPY.

39. Furthermore, a complaint for breaches of European Union law was filed with the European Commission.
40. Malta has not invested in new reception facilities in recent years, although it received over 5 million euros in EU funds to build a new open reception centre. The same ministry received close to €6 million for the period between 2014-2022 to cover the costs of material conditions and support for asylum seekers being in open and closed centres, almost €1 million to support for psychosocial intervention services and over €1 million for the provision of security services in centres. It is therefore extremely worrying that although there was significant monetary allocation via European Union funding, the reception management system remains one of crisis-by-management.
41. Increased arrivals led to overcrowding, riots and arbitrary detention. The largest open reception centre, in Hal Far, hosted 1,200 people. In October 2019, a riot there led to the temporary suspension of food distribution and the arrest of 107 people, including unaccompanied children⁴⁹.

Access to protection, non-refoulement

42. On the 11th April 2020 the Maltese government issued a formal decree unanimously approving a Cabinet decision that declared Malta's ports unsafe due to the COVID-19 pandemic and stated that it was no longer able to accept asylum seekers and refugees, nor was it in the position to guarantee any rescues at sea⁵⁰.
43. During that period a number of dinghies in distress were spotted within the Maltese SAR zone or just outside it. Alarm Phone alerted the relevant Maltese and Italian authorities on these occasions but frequently received no response. On the 12th April 2020, 4 rubber dinghies were in Maltese SAR, whilst the Prime Minister insisted that the decision to close the ports to migrant rescue vessels was not racially motivated⁵¹. It was reported that two boats arrived in Pozzallo and Ragusa respectively. Migrants aboard the Pozzallo boat claimed that the Maltese Armed Forces turned them away at gunpoint and provided them with equipment to reach Italy⁵². Aita Mari, a Spanish NGO ship, rescued a number of other migrants from 3rd dinghy but it was refused entry into Malta.
44. On the 14th April 2020 the 4th dinghy was spotted in the Maltese SAR zone, the boat was in distress due to bad weather. Around this time, the cargo ship IVAN stopped one mile away from a migrant vessel in distress. IVAN was ordered by Malta to monitor the situation until rescue arrives, but it was unable to assist the migrant vessel due to bad weather conditions.
45. On the 15th April, Wednesday at 5am, a fishing vessel ex- Mae Yemanja, and a second, yet unidentified boat, arrived to the migrant vessel and took the survivors on board, under coordination by the Armed Forces of Malta and the IVAN was ordered to leave the scene shortly after. Alarm Phone received the

⁴⁹ FRA, Fundamental Rights Report, 2020 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-fundamental-rights-report-2020_en.pdf.

⁵⁰ Malta Cabinet declares island is no longer 'safe port for asylum seekers' <https://www.maltatoday.com.mt/news/national/101610/malta-cabinet-declares-island-is-no-longer-safe-port-for-asylum-seeker-s#.X0t9Z8gzZPY>.

⁵¹ PM accused of lacking humanity as he defends decision to close ports <https://timesofmalta.com/articles/view/decision-to-close-ports-not-rationally-motivated-abela.785135>; The nation cannot quietly celebrate Easter whilst men, women and children are drowning on our doorstep: <https://aditus.org.mt/the-nation-cannot-quietly-celebrate-easter-while-men-women-and-children-are-drowning-on-our-doorstep/#.X0ptQ8gzZPY>; Joint NGO Press Release on Malta's decision to close its ports and on the on-going detention of hundreds of migrants <https://aditus.org.mt/migrants-should-not-be-sacrificed-for-the-nations-well-being/#.X0ptYcgzZPY>.

⁵² "We give you 30 minutes": Malta turns migrant boat away with directions to Italy" <https://www.theguardian.com/global-development/2020/may/20/we-give-you-30-minutes-malta-turns-migrant-boat-away-with-directions-to-italy>.

information that the boat had been given permission in the afternoon to disembark in Libya, meaning that 51 people were returned to Tripoli on board of the fishing boat. The bodies of five people who died during the journey most likely due to dehydration and hunger were also handed over as it was firstly reported by Alarm Phone. The survivors stated that seven others were missing and affirmed that the crew of the fishing vessel led them to believe that they would be brought to Europe.

46. On their arrival the 51 survivors were locked in Tripoli's infamous detention centre, Tariq Al Sikka.
47. The NGO Repubblika filed a police complaint that claimed that the Maltese were responsible for the illegal pushback of 51 migrants to Libya and addressed the death of the 12 migrants stranded at sea, accusing Prime Minister Robert Abela and Armed Forces of Malta Brigadier Chetcuti of causing the death of those onboard⁵³.
48. On the 22nd April 2020, State television was informed that the fishing vessel, ex- Mae Yemanja, taking the migrants on board was a private boat commissioned by the Maltese Government to assist in the rescue. The private fishing boat was guided to the exact spot to carry out the rescue. Nello Scavo, a prominent Italian journalist investigating migration in the Mediterranean Sea, referred to the fishing boat as "*una nave fantasma*", since it had no name, carried no flag, had no call sign and there is no indication as to who was the captain, the crew or the country to which the boat was registered.
49. On the 30th April 2020, former government official Neville Gafà said under oath in the course of the criminal proceedings that he had coordinated the boat carrying 30 tons of food and water to the port of Tripoli, along with the return of the 51 migrants to Libya on the 15th April 2020. He stated that in doing so, he was only following the instructions of the Office of the Prime Minister, who asked him to assist through direct coordination with the Libyan Home Affairs ministry and the Libyan Coast Guard.
50. Neville Gafà also confirmed that he had been coordinating the operations for the past three years. He told the Times of Malta: "*I wish to confirm that during the years when I was coordinating such missions, no pushbacks have ever been done. I was only preventing migrants from entering Maltese SAR ... if we knew of any boats headed to Malta's SAR, we would draw the attention of the Libyan coastguards, who would re-divert any boats in Libyan waters, back to Libya.*"⁵⁴
51. On the 1st of May 2020 Prime Minister Robert Abela said that Malta had followed all its obligations and stressed that using private assets in order to facilitate rescues was not against international law. "*The obligations also state that countries can use their own assets or else send private assets to rescue boats in distress,*" he explained. Abela also stressed that Neville Gafa did not coordinate the mission but was simply asked to contact people he knew in the Libyan Home Affairs Ministry so that lives could be saved, but his involvement was limited only to this task. Prime Minister Robert Abela himself admitted commissioning a boat that returned migrants to war-torn Libya after Easter weekend but reiterated that it was a rescue mission and not a pushback⁵⁵.
52. It is clear that the actions described above amount to a push-back by proxy with the use of private vessels acting under the instruction of the Maltese government⁵⁶. Furthermore, this action or the lack

⁵³ Repubblika files criminal complaints against PM, AFM and Brigadier <https://newsbook.com.mt/en/repubblika-files-2-police-reports-over-migrants-death/>.

⁵⁴ Anger as Neville Gafà says he coordinated Libya pushback on OPM orders <https://timesofmalta.com/articles/view/neville-gafa-says-he-coordinated-libya-pushback-on-opm-orders.788951>

⁵⁵ Abela admits coordinating private boats that returned migrants to Libya <https://timesofmalta.com/articles/view/abela-admits-coordinating-private-boats-that-returned-migrants-to.789362>.

⁵⁶ Med: Former Maltese Official Admits Push-Back while another 62 People are Left Stranded <https://www.ecre.org/med-former-maltese-official-admits-push-back-while-another-62-people-are-left-stranded/>.

of timely rescue resulted in the death of 12 migrants on that dinghy. It is also clear that the return of migrants to Libya, in these particular circumstances, breaches the principle of non-refoulement.

Justice

53. The Juvenile Court Act⁵⁷ only applies to children under the age of 16 and that this falls beneath the standards required by ICCPR. This results in children between 16 and 18 years of age being subject to criminal proceedings as adults and not as juveniles⁵⁸. Furthermore, the safeguards found within the Juvenile Court Act, such as restrictions on reporting, would not be applicable to children between 16 and 18 years of age. In a recent case, the image and name of a 17-year-old suspect accused of attempted murder of a police officer was reported widely in national press, he was later assaulted by 5 people⁵⁹.
54. In 2019 two unaccompanied minors, aged 15 and 16, who were charged with terrorist activities on a commercial vessel after a rescue at sea were held for 11 days in pre-trial detention at high-security Division VI at the Corradino Correctional Facility⁶⁰. A 19-year old co-accused youth was also held in the same Division VI, for the same amount of time. It should be noted that Division VI is a high-security unit within Corradino Correctional Facility, an adult prison, which was flagged by the CPT in its county reports⁶¹. The most recent CPT reported that this Division had been closed down⁶², however it was used to host these three youths in April 2018 and consequently they had limited access to their lawyers and had no possibility of communicating with third persons, such as family or friends. The three teenagers were released on bail after eight months in prison⁶³.
55. The charges against the teenagers have been called disproportionate to the acts imputed to them and do not reflect the risks to their lives they would have faced if returned to Libya by Amnesty International⁶⁴. Amnesty International also expressed concern about their treatment and access to a fair trial in Malta and called on Malta to consider dropping the charges against the teenagers which are disproportionate to the acts imputed to them and to consider the application of grounds for excluding or mitigating criminal responsibility for any criminal acts, if proven in court.
56. In June 2019, the UN Committee on the Rights of the Child (CRC) also expressed concern that the two children were being charged before an adult court rather than a juvenile one⁶⁵.
57. In a recent study on the presumption of innocence and the presentation of suspects in Court, it was found that the use of restraints in public and the escorting of prisoners through the front doors of the court was more likely to happen to foreign defendants. In normal cases the defendants that were escorted under arrest were usually escorted by car through the back entrance of the court. It was

⁵⁷ Juvenile Court Act, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8774&l=1>.

⁵⁸ United Nations Human Rights Committee, 'Concluding Observations on the Second Period Report of Malta', November 2014.

⁵⁹ Five suspects questioned after Liam Debono is assaulted <https://www.timesofmalta.com/articles/view/20181102/local/five-men-attack-liam-debono-at-place-ofwork.693263>.

⁶⁰ Platform of Human Rights Organisations in Malta, Submissions to the Committee on the Rights of the Child, 81st Session, 2019 http://www.humanrightsplatform.org.mt/phromdocuments/PHROMCRCSUBMISSION_2019.pdf.

⁶¹ See paragraph 22, CPT/Inf (2013)12 <https://rm.coe.int/168069752e>.

⁶² See paragraph 56, CPT/Inf (2016) 25 <https://rm.coe.int/16806b26e8>.

⁶³ El Hiblu teenagers out on bail after eight months in detention, 21 November 2019

https://www.maltatoday.com.mt/news/court_and_police/98772/el_hiblu_teenagers_out_on_bail_after_eight_months_in_detention#.X0kvLsgzZPY.

⁶⁴ <https://www.amnesty.org/download/Documents/EUR3312702019ENGLISH.PDF>.

⁶⁵ Committee on the Rights of the Child, Concluding Observations on the combined third to sixth periodic reports of Malta, June 2019 <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/MTIndex.aspx>.

noted that many times foreign defendants were also presented in Court without being given any change of clothes or a suit⁶⁶.

58. In specific, after mass arrests are made of migrants that had been protesting or rioting in reception centres these are brought to court in vans parked in the main pedestrianised street in Valletta, usually tied together with cable ties, sometimes barefoot and never in appropriate court attire. These groups are usually given one legal aid lawyer for the whole group, as opposed to one lawyer per accused.

Right to Marry

59. In the current legal and policy framework, asylum-seekers and undocumented migrants in Malta face a complete ban when wishing to contract marriage and found a family in Malta, even if they are able to provide proof of identity and proof of single status. Under Maltese law any couple wishing to marry is required to request the publication of the marriage banns to the Marriage Registry at least 6 weeks before the date of the intended marriage. On presenting this request, the Registry requires proof that the persons wishing to marry either have regular residence in Malta or regular residence elsewhere together with a valid visa, should a visa be required to enter Malta.

60. This presents a problem for persons who are currently seeking asylum or have had their asylum application rejected but cannot return to their country of origin. It should be noted from the outset that persons who have applied for asylum are currently residing in Malta in a regular fashion under the asylum regime and that their papers showing their status should be enough to satisfy the Registry's requirement.

61. However, asylum-seekers are not deemed to be residing regularly for the purposes of the Registry. Whilst undocumented migrants, even if they have submitted a valid passport and all other required documents, would be automatically disqualified if they are residing in Malta irregularly⁶⁷.

62. Whilst it is understandable that the State wishes to prevent marriages of convenience that attempt to circumvent immigration rules, there should be in place techniques to assess the veracity of a marriage that do not discriminate and do not violate human dignity and do not impose a blanket ban of specific classes of people based on their residence status. It should be noted that systematic checks of specific nationalities or ethnic groups, religions and even gender, wherein couples with a female sponsor are more frequently under suspicion, may amount to discrimination.

Rule of Law

63. We believe that rule of law and good governance are key to the enjoyment of fundamental human rights at all levels. Where you find corruption, nepotism and failed institutions you also find human rights violations, possibly invisible at first, but then slowly growing and affecting more and more people and different sets of rights.

64. The continuing two-party dichotomy, loopholes in party financing rules and an electoral system that results in the impossibility of smaller parties making it to Parliament creates an environment in which successive governments have perpetuated the culture of winner-take-all-ism. The control of the

⁶⁶ aditus foundation, Presumption of Innocence, Suspect in Restraints https://aditus.org.mt/Publications/sir_maltalegalleport_2019.pdf & https://aditus.org.mt/Publications/sir_maltamediareport_2019.pdf.

⁶⁷ aditus foundation, (Ir)Regular Love – Migrants' Right to Marry, https://aditus.org.mt/Publications/IrRegularLove_Report_2020.pdf

Broadcasting Authority and the ownership of newspapers, television and radio stations by the two main political parties only serve to stifle and form of real dialogue and critique by civil society and dissenting voices. Furthermore, we see an increased use of publicly funded social media for political advertising and a substantial increase in trolling activities against political opponents, activists and NGOs that show disagreement with government policy.

65. We would also like to point out that several Acts of Parliament grant individual Ministers the authority to appoint members of quasi-judicial bodies, boards, committees, commissions and similar entities⁶⁸ having the mandate to decide on complaints, appeals or applications presented to them by any person. Although, reforms have been carried out in relation to appointment of the judiciary, no reform will be complete without a thorough overall of the method of appointment and removal of the members of these quasi-judicial bodies and the application of strict rules of procedure, specifically those that are linked to human rights sensitive fields, such as asylum and immigration, and social security.

Recommendations

1. Ensure that the National Human Rights Institution that will be set up by the Human Rights and Equality Commission Bill conforms with the Paris Principles.
2. Remove Malta's reservations to CEDAW.
3. Ensure access to safe and legal abortion services under specific circumstances.
4. Ratify the Optional Protocols to CEDAW, CESCR and CRC.
5. Ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
6. Ensure the protection of the right to freedom of assembly.
7. Make public the findings of inquiries commissioned by the authorities.
8. Organise national campaigns that condemn racism in all its forms, with a particular focus on institutionalised racism.
9. Improve the living conditions in the open centres and consider adopting a long-term plan aimed at shutting them down and resorting to a community-based approach to housing.
10. Improve the living conditions in the detention centres.
11. Allocate the resources necessary to strengthen our reception system and create sufficient reception spaces for asylum seekers to be hosted in accordance with Malta's legal obligations.
12. Release all of the people currently being held on medical grounds, unless their detention is clearly and objectively justified on health grounds in the individual case.
13. Open ports for migrant rescue NGO ships and private vessels that are involved in rescue operations.
14. Stop all returns to Libya of migrants rescued at sea.
15. Ensure that the right to a fair trial of persons facing criminal charges are not prejudiced by the way they are presented in Court.
16. Ensure that all defendants in criminal trials are afforded the equal treatment in relation to access to lawyers.
17. Ensure that minors that are facing criminal charges in court are afforded the protections and safeguards guaranteed at law.
18. Remove the blanket ban on marriages for asylum-seekers and undocumented migrants.
19. Review the method of appointment to quasi-judicial tribunals, boards, committees, commissions and similar entities to ensure independence from Government.

⁶⁸ This include the Independent Police complaints Board, the Refugee Appeals Board, the Immigration Appeal Board, Board of Visitors for Detained Persons, Information and data protection Tribunal, Board of Inquiries established under the Inquiries Act.

aditus foundation is a young, independent, voluntary, non-profit and non-governmental organization established in 2011 by a group of young lawyers dedicated to ensuring human rights access in Malta. Named for the Latin word meaning ‘*access*’, **aditus foundation’s** mission is the attentive analysis of access in Malta to human rights recognition and enjoyment. In practical terms, **aditus** was established to *monitor, report* and *act* on issues of fundamental human rights access for individuals and groups.

aditus foundation was founded on the principles of the universality, interdependence and indivisibility of all fundamental human rights, and we strive to promote their understanding and application. Being a generic human rights NGO, we work to adopt a broad perspective for human rights in Malta, identifying themes such as discrimination and access to effective remedies. Furthermore, while focused on Malta, we work towards highlighting the regional and international implications of local obstacles to human rights access.

Our main activities include the identification of priority areas, formulating advocacy strategies and working towards improvement in legal and administrative standards. This includes offering pro bono legal information and advice. Whilst we focus primarily on the government of Malta, we also address the EU institutions, the UN, the Council of Europe and other relevant agencies. We remain in constant communication and cooperation with governmental, intergovernmental and non-governmental entities to maintain a comprehensive approach in our activities.

aditus is committed to engaging the general public in a human rights discourse that is well informed, unbiased and effective, through press statements and television and radio appearances. Further, **aditus** makes full use of the Internet to disseminate information, raise public awareness, gather advocacy support and establish contact with individuals and networks. We have a comprehensive website and a busy Facebook page and Twitter account.

We firmly believe that professional research is a necessary advocacy tool and encourage its use by policy-makers in formulating national strategies and action plans. Accordingly, we prepare reports for various national, regional and international entities on the local human rights scenario, violations, law and administrative policy and practice. Another important example is our collaboration with other Maltese NGOs to draft a report on LGBTI children, children with disabilities and migrant children in Malta, for submission to the United Nations Committee on the Rights of the Child.

aditus is the Secretariat for the Platform of Human Rights Organisations in Malta (PHROM), Malta’s first and only national coalition of human rights NGOs. Apart from being registered with the Malta Commissioner for Voluntary Organisations, aditus has affiliations and memberships with the International Detention Coalition (IDC), the Platform for International Cooperation on Undocumented Migrants (PICUM), the European Council on Refugees and Exiles (ECRE) and the Anna Lindh Foundation.

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