

The Platform of Human Rights Organisations in Malta (PHROM) on the Rights of the Child in Malta

**SUBMISSIONS TO THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
81ST SESSION (2019)**



April 2019

PHROM is a network of over 40 Maltese human rights NGOs and is itself an independent, voluntary and non-profit NGO established “*to provide a national forum for human rights organisations in Malta to develop, promote and advocate for the values of human dignity and equality more effectively.*”

PHROM believes that effective human rights recognition and enjoyment by all persons in Malta strengthens and empowers the whole of Maltese society.

PHROM holds that the multitude of human rights can only be fully realised if they are endorsed as interrelated and interdependent, embracing all civil, political, economic, social and cultural rights.

Established in 2014.

Member Organisations:

aditus foundation, African Media Association Malta, AIESEC, Amputees4Amputees, Association for Equality (A4E), Breaking Limits, Deaf People Association (Malta), Din l-Art Ħelwa, DRACHMA LGBT, DRACHMA Parents, Fondazzjoni Mid-Dlam Għad-Dawl, Foundation for Support and Shelter to Migrants, Gender Liberation, Gozo NGOs Association, Gozo Youth Council, Inspire Foundation Malta, Integra Foundation, Jesuit Refugee Service Malta, Kunsill Studenti Universitarji, LGBTI+ Gozo, Libya Foundation for Rehabilitation, Malta Humanist Association, MGRM, Migrant Women Association Malta, National Foster Care Association, Organisation for Friendship and Diversity, PRISMS, Richmond Foundation, SOS Malta, Spark15, St. Jeanne Antide Foundation, The Good Shepherd Sisters, Troupe 18:45, UpBeat Music House, Victim Support Malta, We Are, Why Not?, Women’s Rights Foundation, Xchange, YMCA Homeless.

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Introduction and Sources

1. **PHROM** is an independent, voluntary and non-profit NGO established “to provide a national forum for human rights organisations in Malta to develop, promote and advocate for the values of human dignity and equality more effectively.”
2. The views presented in these submissions do not necessarily reflect the views of all PHROM’s Member Organisations.
3. This report is being presented to the Committee on the Rights of Child in the context of its examination of the State Report to be submitted by Malta in accordance with the Convention.
4. Concerns, information and recommendations are largely based on the following sources:
 - a. PHROM, *Looking Beyond the Rainbow, Annual Human Rights Report 2014*, April 2015, <http://humanrightsplatform.org.mt/phromdocuments/2014ahrr.pdf>.
 - b. PHROM, *Greener and Cleaner, Annual Human Rights Report 2015*, April 2016, available at <http://humanrightsplatform.org.mt/phromdocuments/2015ahrr.pdf>.
 - c. PHROM, *Protecting Human Rights, Curbing the Role of Power, Annual Human Rights Report 2016*, August 2017, available at <http://www.humanrightsplatform.org.mt/phromdocuments/2016ahrr.pdf>.
 - d. Reports and papers drafted by Member Organisations which are referenced within the main text of this submission.
 - e. Member organisation feedback on the Malta III-VI Reporting Cycle of the Committee on the Rights of the Child 81st Session.
5. The report gives a general outline of the positive developments in recent years and list of issues that remain of concern. The report is then divided into thematic sections which outline concerns and recommendations for specific themes which have been highlighted by PHROM member organisations.
6. This report acknowledges extensive efforts made by the Maltese authorities in particular areas, as for example the effective work of the Office of the Commissioner for Children in disseminating the principles and contents of the Convention.

Malta’s International and Regional Obligations

7. Malta is party to most of the core UN human rights treaties yet retains a number of reservations that raise concern.
8. Malta still has not accepted some individual complaint procedures, such as:
 - a. the *Optional Protocol to the Convention on the Rights of the Child (CRC-OP-IC)*;
 - b. the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (CESCR-OP)*.
9. Malta has not signed or ratified the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

General Comments

1. The PHROM Member Organisations have noted a number of positive developments that have broadened the scope and protection for children in Malta in recent years, these being:
 - a. The introduction of the *Gender Identity, Gender Expression and Sex Characteristics Act*¹ in 2015, which allows for the parents of transgender children under the age of 16 to request the Civil Courts (Voluntary Jurisdiction) to change the recorded gender and first name of the minor to reflect the minor's gender identity. Children over the age of 16 may request the Director for Public Registry to change their recorded gender and first name through a declaratory public deed drawn up by a notary. However, it should be noted that the procedures to revert back to their gender and name at birth remains unclear at law.
 - b. The *Gender Identity, Gender Expression and Sex Characteristics Act* also makes it unlawful for medical practitioners to conduct any sex assignment treatment or surgical intervention on the sex characteristics of a child under the age of 16 which treatment can be deferred until the person can provide informed consent. The minor may give informed consent through parents, guardian or tutor for the carrying out of sex assignment treatment or surgical intervention on the sex characteristics.
 - c. The *Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act*² criminalises conversion therapy practices and includes an aggravation in those instances where such practices are performed on vulnerable persons, which include children under the age of 16.
 - d. The passing of the *Civil Unions Act*³ and the *Marriage Equality Act*⁴ allows for the contracting of a civil union or marriage for same-sex couples and grants equal rights to same-sex couples and their children.
 - e. The introduction of the *Specific Residence Authorisation*⁵ which grants persons, whose asylum claims have been rejected and who, for some reason or another, have not or cannot be returned to their country of origin, a residence permit valid for two years. The SRA permit extends to family members, including children.
 - f. The passing of the *Gender-Based Violence and Domestic Violence Act*⁶ which aimed to implement the provisions of the Istanbul Convention into Maltese law through the amendment of various laws and the introduction of the Gender-Based Violence and Domestic Violence Act. The *Gender-Based Violence and Domestic Violence Act* now includes minors who are witnesses to the forms of violence within the term "victim" and strengthened the forms of protection that can be granted to victims. The main amendments brought by this Act to the Criminal Code included an increase in penalties of various offences such as prostitution of minors,

¹ Gender Identity, Gender Expression and Sex Characteristics Act, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12312&l=1>.

² Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12610&l=1>.

³ Civil Unions Act, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12172&l=1>.

⁴ Marriage Equality Act, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=28585&l=1>.

⁵ Policy regarding Specific Residence Authorisation, November 2018, <https://homeaffairs.gov.mt/en/media/Policies-Documents/Documents/SRAPolicyDocumentNov2018.pdf>.

⁶ Gender-Based Violence and Domestic Violence Act <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29057&l=1>.

defilement of minors and instigation of underage persons to participate in pornography. The Act also lowered the age of consent from 18 to 16 and included an amended to allowed for the Court to proceed in cases of defilement of minors even if the complaint is withdrawn.

- g. The 2015 *Victim of Crime Act*⁷ obliges the government to provide free support services, and protection to victims of crime, including the right to free legal aid. The Act also allows for the possibility of providing a children's advocate in certain cases.
2. Generally, human rights NGOs are concerned that the following areas in relation to the protection of child rights in Malta require further attention:
 - a. the need for clear and public guidelines on how to determine the best interests of the child in any and all decision-making processes, including in the area of migration;
 - b. the need for a more comprehensive sex education programme in schools;
 - c. the need to educate children about equality, diversity, and human rights and active citizenship;
 - d. access to sexual and reproductive rights;
 - e. the lack of visibility of different types of families;
 - f. lack of awareness amongst children, educators regarding LGBTIQ issues and identities;
 - g. the need for supportive environment for children who might be struggling with their identity, especially in terms of transgender children;
 - h. the rise in poverty, including difficulties in accessing housing, with children being one of the groups identified as being the most vulnerable;
 - i. the rise in health problems relating pollution and environmental degradation;
 - j. reform of the care and guardianship legislation and policy, specifically the prolonged delay in the enactment of the Child Protection Bill;
 - k. the juvenile justice system in relation to criminal procedures involving children;
 - l. immigration and asylum, including children within the asylum system, child trafficking, access to citizenship and related matters;
 - m. the need to develop dedicated services for children with disabilities including those in education, training, health care services, rehabilitation services and recreation.

Juvenile Justice

3. Member Organisations highlighted the fact that the Juvenile Court Act⁸ only applies to children under the age of 16 and that this falls beneath the standards required by the Convention on the Rights of the Child. This results in children between 16 and 18 years of age being subject to criminal proceedings as adults and not as juveniles.⁹ 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

⁷ Victims of Crime Act,

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12306&l=1>

⁸ Juvenile Court Act, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8774&l=1>

⁹ United Nations Human Rights Committee, 'Concluding Observations on the Second Period Report of Malta', November 2014.

and name of a 17-year-old suspect was reported widely in national press¹⁰, he was later assaulted by 5 people¹¹.

4. It was also reported by some PHROM Member Organisation that in one instance two unaccompanied minors were being interrogated at the police headquarters without the presence of any legal guardian or care providers, in breach of Article 355AUC(2) and (5) of the Criminal Code¹² and of the Fourth Schedule, paragraph 15 of the Police Act¹³.
5. It was also reported that the same 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 Facility. A 19-year old co-accused youth was also held in the same Division VI, for the same amount of time, and is currently being held in pre-trial detention at the Corradino Correctional Facility with a view to be moved to the Centre of Residential Restorative Services.¹⁴ The Centre of Residential Restorative Services hosts detainees under the age of 21. The law provides that Prisoners under twenty-one are kept separate from prisoners over that age group and are kept conditions which take account of the needs of their age and protect them from harmful influences.¹⁵
6. 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 reports.¹⁶ The most recent CPT reported that this Division had been closed down¹⁷, 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.

Poverty & Housing

7. Households with dependent children are more likely to experience poverty in Malta.¹⁸ The introduction of free childcare services for the unemployed poor as a measure to prevent

¹⁰ Underage hit-and-run driver who maimed police officer released on bail https://www.maltatoday.com.mt/news/court_and_police/89772/hit_and_run_underage_driver_who_maimed_police_officer_released_on_bail#.XLCs1-gzbc; Liam Debono has been given drugs by his mother since he was nine, court hears - Magistrate says he wished he could have attended march in support of the police <https://www.timesofmalta.com/articles/view/20180911/local/liam-debono-has-been-on-cannabis-since-he-was-nine-court-hears.688914>

¹¹ Five suspects questioned after Liam Debono is assaulted <https://www.timesofmalta.com/articles/view/20181102/local/five-men-attack-liam-debono-at-place-of-work.693263>.

¹² Criminal Code, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>.

¹³ Fourth Schedule, paragraph 15 of the Police Act, CAP 164 of the Laws of Malta <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8686>

¹⁴ El Hiblu 1: 'Age assessment confirmed two of the accused are minors' https://www.newsbook.com.mt/artikli/2019/04/11/el-hiblu-1-age-assessment-confirmed-two-are-minors-submissions-in-court-made/?lang=en&fbclid=IwAR215LvZLxrmA5TFkmQf9vek6zFAAqwe_kd_jy95eBToaAVnLKslpsNYXMY.

¹⁵ Regulation 12(d) and 12(4) of the Prisons Regulations, S.L. 260.03 of the Laws of Malta <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>

¹⁶ See paragraph 22, CPT/Inf (2013)12 <https://rm.coe.int/168069752e>.

¹⁷ See paragraph 56, CPT/ Inf (2016) 25 <https://rm.coe.int/16806b26e8>

¹⁸ Caritas Malta, Pre-Budget Document – 'Delivering our Vision', September 2015. The document is only available upon request, yet reported on national media. The Malta Independent, Caritas Malta urges government to offer better protection against workers' exploitation, 29 September, available at

intergenerational poverty and to create a more harmonious environment for poor children has been flagged as one way of tackling child poverty.

8. Malta has almost no regulation in the rental market which has meant that skyrocketing rent prices over the last few years are hitting vulnerable groups the hardest, such as pensioners and low-income groups, including children and youth.¹⁹
9. Malta still lacks a comprehensive Housing Policy that aims to ensure the availability of affordable housing, including both affordable properties and affordable rent prices.²⁰ There are currently there are no specific schemes that address families with children accessing social housing, however general measures exist in relation to access to social housing or rental assistance which grant more favourable conditions for families with children. In addition, there are no measures in place for the protection or facilitation of access to housing for children and families at risk of homelessness.

Sexual and reproductive rights

10. The lack of a comprehensive and inclusive sex education programme for schools often punishes those with the least access to support, information and other preventative measures. There is the need for Malta, specifically health service providers and schools, to openly talk about sex, reproductive health and contraception.
11. 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 incest. The state should ensure access to sexual and reproductive health services, including family planning, contraception and safe abortion.
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.

Education

13. Human rights education remains a central gap identified by PHROM Member Organisations. They identified a low level of human rights awareness nation-wide and linked this with a lack of critical thinking and rights-based discourse in Malta.²¹ This was associated with a dogmatic education system that fails to encourage or coax students into independent thinking and, importantly, sharing of thoughts and views without fear of repercussions. Identified as problematic throughout Malta's educational system, it was generally defined as a lack of sensibility towards the core human rights values of equality,

<http://www.independent.com.mt/articles/2015-09-29/local-news/Caritas-Malta-urges-government-to-offer-better-protection-against-workers-exploitation-6736142786>.

¹⁹ A Proposal For Rent Regulation in Malta, 2018 <https://movimentgraffitti.org/A-Proposal-for-Rent-Regulation.pdf>.

²⁰ A Proposal For Rent Regulation in Malta, 2018 <https://movimentgraffitti.org/A-Proposal-for-Rent-Regulation.pdf>.

²¹PHROM, Greener and Cleaner, Annual Human Rights Report 2015, April 2016, available at <http://humanrightsplatform.org.mt/phromdocuments/2015ahrr.pdf>.

human dignity, civic participation, mutual respect, transparency and social responsibility.

14. Increase of migrants in Malta has made it necessary to review the education system with regard to the participation of migrant children in schools. There is a need for the state to increase support to schools and educators in order for them to be able to facilitate the student's social, cultural and educational integration. Furthermore, the need to review the national curriculum framework with a view to ensuring the coverage of themes such as social justice, multicultural diversity, inclusiveness, contemporary cultures, awareness of ethnic diversity and the understanding of different religious beliefs has been flagged by PHROM Member Organisations.

Asylum, trafficking and citizenship

15. Member Organisations highlighted the need to further develop needs assessments of migrants in vulnerable situations, such as children.
16. Furthermore, Malta should guarantee that every unaccompanied child receives free legal assistance for the full duration of the administrative proceedings.
17. The current system for the care of unaccompanied minors is inadequate. Member Organisations are concerned that the current arrangements fail to ensure the appointment of legal guardians with sufficient expertise in asylum issues, this situation is exacerbated by the delay in the passing of the Child Protection Bill. In the current situation the appointed "legal guardians" are also the social workers responsible for the children and therefore the necessary distinction between the two roles is blurred.
18. Other issues relate to the fact that the appointed guardians lack independence from public authorities, qualifications for eligibility to act as guardian and that such guardians are only appointed once it is confirmed that the person is a child²². Whilst appreciating the resource limitation, it is also of concern that each legal guardian is responsible for a relatively large number of unaccompanied minors, with a possible negative impact on the quality of the service offered.
19. Although asylum legislation states that a minor has the right to make an application for international protection either on his own behalf if he has legal capacity²³, it is not clear what is meant by a minor who has "legal capacity". In practice it is ambiguous as to whether a minor may lodge an asylum application independently from his parents.
20. Unaccompanied asylum seekers who declare that they are below the age of 18 upon arrival or application are referred for age assessment procedure. It has been reported that authorities failed to apply the benefit of the doubt to persons declaring to be minors upon arrival (with very few exceptions), resulting in them being treated as adults until the age assessment outcome, which entailed detention in the IRC together with other adult asylum

²² aditus foundation, Unaccompanied Minor Asylum-Seekers in Malta: A technical Report on Age Assessment and Guardianship Procedures, October 2014, available at http://aditus.org.mt/Publications/uamsreport_102014.pdf. See also:

²³ Regulation 5(7) of the e Procedural Standards for Granting and Withdrawing International Protection Regulations, 2015
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10663&l=1>.

seekers.²⁴

21. In recent years the system has improved, it is still plagued by delays and a lack of adequate procedural guarantees, including lack of information about the procedure. It should also be noted that unaccompanied children get access to the asylum procedure only after the issuance of a care order and the appointment of a legal guardian, de facto these children would be prevented from having access to the asylum procedure, often for several months.^{25 26}
22. Age assessment decisions may be appealed before the Immigration Appeals Board. However, the decisions lack proper reasoning and individual assessment.²⁷

Reception & Detention

23. The need for improved reception conditions for migrant children, including the avoidance of their detention, and of accommodating them in sub-standard reception facilities has been consistently flagged by a number of PHROM Member Organisation.
24. The commencement of arrivals of migrants by sea again 2018 saw the implementation of Malta's 2016 reception policy²⁸. In the summer months, following disembarkation, rescued migrants were accommodated in an *Initial Reception Centre* (IRC). Most migrants at the IRC, including unaccompanied minors and families with children, were not permitted to leave the Centre pending their medical clearance. However, recently due to NGO intervention, the time period for the medical clearance was shortened.

Trafficking

25. Member Organisations are concerned at the possibility of migrant children being vulnerable to being trafficked primarily owing to their social, legal and economic vulnerability.
26. The identification of potentially-trafficked children remains a concern, particularly in relation to migrant children and thus an effective procedure for identification of victims of human trafficking should be implemented.
27. Furthermore, there is a lack of measures to respond to unaccompanied children going missing has also been noted. There is a need to increase efforts to provide assistance and support, such as safe and appropriate housing, legal assistance and residence documents, to all victims of trafficking, including children.

²⁴ aditus foundation and Jesuit Refugee Service Malta, The Asylum Information Database (AIDA), December 2018 <https://www.asylumineurope.org/reports/country/malta>

²⁵ See also *Adullahi Elmi and Aweys Abubakar v. Malta*, ECHR, Application Nos 25794/13 and 28151/13, 2016

²⁶ aditus foundation and Jesuit Refugee Service Malta, The Asylum Information Database (AIDA), December 2018 <https://www.asylumineurope.org/reports/country/malta>

²⁷ aditus foundation and Jesuit Refugee Service Malta, The Asylum Information Database (AIDA), December 2018 <https://www.asylumineurope.org/reports/country/malta>

²⁸ Ministry for Home Affairs and National Security, Strategy for the Reception of Asylum-Seekers and Irregular Migrants, 2016, <https://homeaffairs.gov.mt/en/MHAS-Departments/awas/Documents/Migration%20Policy%20FINAL.pdf>.

Citizenship

28. Malta has some of the most restrictive laws and policies in relation to access to citizenship by naturalisation. There needs to be a simplified naturalisation procedure for former children who have resided in Malta for a substantial period of time to be granted citizenship. In addition, some Member Organisations have flagged situations where on the withdrawal of Maltese citizenship of one of the parents by the State, the children risked losing their Maltese citizenship.
29. Children who reside in Malta on the basis of their parent's residence permit lose their right to reside in Malta when they attain majority. The State requires them to apply for a residence permit based on employed or study, when they may not be in the situation to do this. This situation, coupled with the difficulties in acquiring citizenship by children, has led to a number of young people being asked to return to their country of origin even if they have lived in Malta for most of their childhood.
30. Malta has not signed or ratified the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. PHROM encourages Malta to do so without delay. Furthermore, it is recommended that Maltese citizenship must be granted to children born in Malta who are stateless, or who are stateless before arriving in Malta in order for them not to remain stateless.
31. The Citizenship Act does not automatically grant the child of a Maltese man and a foreign woman born out of wedlock to citizenship²⁹. Although the Strasbourg Courts have found this to be a breach of Article 14 and Article 8 of the European Convention on Human Rights in 2011, the law still has not changed.

Disability

32. PHROM Member Organisations have flagged the need to change the paternalistic approach to disability and focus on rights, advocacy, and capacity for self-determination of persons with disabilities in Malta, including disabled youth.
33. There is a need to specifically include children with disabilities within policy and legal discussions on themes affecting directly or indirectly them, through process methodologies that ensure their effective mainstreaming at the local and national levels.
34. The Commission for the Rights of Persons with Disability has reported that the amount of complaints filed by parents of children with disability concerning education have dramatically increased³⁰. They have reported a lack of support and resources to tackle

²⁹ Article 17(1)(a) of the Citizenship Act
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1>. See also *Genovese v. Malta*, Application no. 53124/09, ECHR, 2011

³⁰ Schools 'cannot handle' children with disability, parents say
<https://www.timesofmalta.com/articles/view/20190323/local/schools-cannot-handle-children-with-disability-parents-say.705288>

needs within schools, including a lack of equipment for support educators³¹.

LGBTIQ

35. Although there have been extremely positive developments within the LGBTIQ sector in relation to child rights, PHROM Member Organisations have flagged the need for a more supportive environment for children who might be struggling with their identity, especially in terms of trans children.
36. Specifically, in relation to education although the Government published its *Trans, Gender Variant and Intersex Students in Schools Policy*³² a lack of awareness amongst children, educators regarding LGBTIQ issues and identities was still flagged by Member Organisations.

Institutional issues

37. The PHROM Member Organisations, although recognising the work and responsiveness of the Office of the Commissioner for Children, call for the strengthening of the remit, power and independence of the Commissioner.
38. In this regard, there needs to be an increased allocation of resources and staff to bolster the Office of the Commissioner for Children.
39. Furthermore the role of the Commissioner should be strengthened by extending its role to include, for example, investigative functions relating to rights and interests of children, the power to initiate inquiries, the right to make representations on behalf of a child in certain sectors, the right to enter any premises for the purposes of observing standards of care and the obligation of public officials to provide information requested by the Commissioner.

³¹ Commission for the Rights of Persons with Disability (CRPD) <https://crpd.org.mt/press-releases/#1553681549732-ed0217dd-6949>

³² Trans, Gender Variant and Intersex Students in Schools Policy, <http://education.gov.mt/en/resources/Documents/Policy%20Documents/Trans.%20Gender%20Variant%20and%20Intersex%20Students%20in%20Schools%20Policy.pdf>