



# **GRETA**

Group of Experts on Action  
against Trafficking in Human Beings

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

First evaluation round

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on Action against Trafficking in Human Beings  
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## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims’ rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of fifteen independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

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## Executive summary

Since ratifying the Council of Europe Convention on Action against Trafficking in Human Beings, the Maltese authorities have taken a number of steps to develop the institutional and legal framework for combating trafficking in human beings. A Trafficking in Persons Co-ordinator was appointed in 2010, and a Human Trafficking Monitoring Committee bringing together all relevant governmental bodies was set up in 2011. The first National Action Plan on Combating Trafficking in Persons was adopted in October 2011. Further, a Stakeholder Task Force on THB was set up at the end of 2011 to discuss and report on anti-trafficking actions. Legislation against THB has also evolved over the years. That said, GRETA urges the Maltese authorities to strengthen co-ordination between the national authorities and civil society and to ensure that NGOs are involved in the planning and implementation of national anti-trafficking policy.

GRETA notes that action to raise awareness about THB has been limited and looks forward to the results of implementation of the first Action Plan. Further, GRETA urges the Maltese authorities to also take measures to discourage demand for the services of trafficked persons.

The number of victims of trafficking identified has been relatively low (a total of 25). The police are the only authority responsible for establishing whether a person is a victim of trafficking. That said, the Maltese authorities are in the process of adopting new indicators and defining a victim referral system with standards procedures. In this context, GRETA underlines that multi-agency involvement and regular training for relevant actors should be important elements of future policies.

GRETA stresses that all victims and potential victims of trafficking should have access to all the assistance measures provided for in the Convention. GRETA is concerned that there is no minimum length of the recovery and reflection period which, according to the Convention, should be set at 30 days, during which time the victim or potential victim of trafficking cannot be removed from Malta's territory. Further, GRETA urges the Maltese authorities to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit.

The IOM's RESTART programme, which facilitates voluntary return and sustainable reintegration of migrants, could be exceptionally used to return victims of trafficking on the basis of humanitarian grounds. That said, this possibility has not yet been used. GRETA encourages the Maltese authorities to adopt a clear framework for the return of victims of trafficking, in order to avoid re-trafficking and re-victimisation. GRETA further encourages the Maltese authorities to develop co-operation with the countries of origin of victims of trafficking, to ensure proper risk assessment and safe return.

Despite the existence of different avenues for victims of trafficking to claim compensation, no victim of trafficking has been awarded compensation. GRETA stresses the need to provide information to victims of trafficking about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid.

GRETA is concerned by civil society reports that victims of trafficking have been punished for acts committed when they were under the control of their traffickers and/or deported without being identified as victims of trafficking. GRETA stresses that lack of identification increases the risk for victims of trafficking to be punished for their irregular migration status or other unlawful acts that they were compelled to commit. GRETA underlines the need to apply a victim-centred approach in the application of Article 26 of the Convention and to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so.

Most THB cases prosecuted since 2006 are still pending. GRETA stresses the negative implications of lengthy legal proceedings on the redress of victims of trafficking and urges the Maltese authorities to take measures to ensure that THB-related crimes are investigated and prosecuted promptly. Further, GRETA considers that the knowledge and sensitivity of judges, prosecutors, police investigators and lawyers regarding THB and the rights of victims of trafficking should be improved.



## I. Introduction

1. Malta deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 30 January 2008. The Convention entered into force for Malta on 1 May 2008<sup>1</sup>.

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round (2010-2013), GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Malta being in the second group of 10 Parties to be evaluated.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Malta to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Malta on 25 February 2011. The deadline for replying to the questionnaire was 1 September 2011. Malta submitted its reply on the day of this deadline.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Malta, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Malta took place from 28 February to 2 March 2012, carried out by the following delegation:

- Ms Gulnara Shahinian, First Vice-President of GRETA;
- Mr Davor Derencinovic, Second Vice-President of GRETA;
- Ms Carolina Lasén Diaz, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings;
- Mr Gerald Dunn, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with officials from relevant ministries and public agencies, members of Parliament, the Ombudsman, judges, prosecutors, and representatives of the Chamber of Advocates (see Appendix II). These meetings took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs) and other members of civil society, as well as with relevant international organisations present in Malta. GRETA is grateful for the information provided by them.

7. Further, in the context of the country visit to Malta, the GRETA delegation visited the State shelter for victims of domestic violence which can also accommodate women victims of trafficking.

8. GRETA is grateful for the assistance provided by the contact person appointed by the Maltese authorities, Mr Joseph Ellul, Assistant Director of International Relations at the Development Directorate of the Ministry for Home Affairs.

9. The draft version of the present report was adopted by GRETA at its 14th meeting (25-29 June 2012) and was submitted to the Maltese authorities for comments. The authorities’ comments were received on 25 September 2012 and were taken into account by GRETA when establishing the final report, which was adopted at GRETA’s 15th meeting (26 to 30 November 2012).

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<sup>1</sup> The Convention as such entered into force on 1 February 2008, following its 10th ratification.

## **II. National framework in the field of action against trafficking in human beings in Malta**

### **1. Overview of the current situation in the area of trafficking in human beings in Malta**

10. Malta is a country of destination for victims of trafficking in human beings (THB), all 25 victims (24 women and one man) identified between 2003 and 2011 being foreign nationals subject to trafficking for the purpose of sexual exploitation. The victims originated principally from the Russian Federation, Ukraine and Romania and most of them had entered Malta legally. There have been no child victims of trafficking identified in Malta and no Maltese nationals identified as victims of trafficking. Two of the victims identified were subject to re-trafficking within Malta. In 2010-2012, three Nigerian women were granted refugee status on the basis of being victims of trafficking, although they were not formally identified as such. Further, the Maltese authorities have informed GRETA that three Chinese nationals (two men and one woman) have been identified as potential victims of trafficking in 2012.

11. The above figures may not reveal the real scale of the problem as there is no formalised procedure for identifying victims of trafficking in Malta, which is currently addressed by the Maltese authorities as part of the implementation of the first Action Plan on Combating Trafficking in Persons (see paragraphs 18-20). Some stakeholders have suggested that Malta may also be a country of transit, but this is contested by the Maltese authorities due to the lack of evidence.

### **2. Overview of the legal and policy framework in the field of action against trafficking in human beings**

#### **a. Legal framework**

12. At the international level, in addition to the Council of Europe Anti-Trafficking Convention, Malta is Party to the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both of which it ratified in 2003). Malta is also Party to the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified in 1990 and 2010, respectively), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1991), as well as conventions elaborated under the International Labour Organisation (ILO)<sup>2</sup>. Further, Malta is Party to a number of Council of Europe conventions in the criminal field which are relevant to action against THB<sup>3</sup>.

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<sup>2</sup> Convention concerning Forced or Compulsory Labour (No.29), Convention concerning the Abolition of Forced Labour (No.105) and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182).

<sup>3</sup> In particular the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols; the European Convention on Extradition and its Additional Protocols; and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

13. As a member of the European Union (EU), Malta is bound by the new Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA. Other relevant EU legislation applicable in Malta are Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who co-operate with the competent authorities, Directive 2004/80/EC relating to compensation to crime victims and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings<sup>4</sup>.

14. The specific offence of THB was introduced in the Criminal Code (CC) in 2002 through Act III entitled "Of the Traffic of Persons", subsequently amended by Act VII of 2010. The Maltese authorities have indicated that trafficking in persons is also dealt with in the sections of the CC related to Crimes against Humanity and War Crimes and Crimes against the Peace and Honour of Families and against Morals.

15. Particular mention should also be made of the 1930 White Slave Traffic (Suppression) Ordinance which criminalises forced prostitution (see paragraph 167). Further, subsidiary legislation was adopted in 2007 (SL 217.07) transposing EU Directive 2004/81/EC into Maltese law and establishing that victims of trafficking or illegal immigrants who co-operate with the Maltese authorities may obtain permission to reside in Malta for a period of six months (see paragraph 141). This legislation also provides a reflection period to victims of trafficking, in order to give them the opportunity to detach themselves from the influence of the perpetrators and enable them to make an informed decision on whether to co-operate with the authorities (see paragraph 133).

16. As regards children, the 1980 Children and Young Persons (Care Orders) Act regulates the care and assistance for children in need, including child victims of trafficking.

17. The first Action Plan on Combating Trafficking in Persons (see paragraphs 18-20) envisages a review of the domestic anti-trafficking legislation and monitoring its practical implementation while pursuing the full implementation of international legal instruments, including transposition of the above-mentioned Directive 2011/36/EU. The Maltese authorities have informed GRETA that a bill amending the anti-trafficking legislation is under discussion in Parliament. **GRETA would like to be kept informed of legislative developments in the area of action against THB.**

#### b. National Strategies and Action Plans

18. Malta's first Action Plan on Combating Trafficking in Persons<sup>5</sup> was adopted by the Human Trafficking Monitoring Committee (see paragraph 22) on 30 September 2011. The Action Plan covers the period from October 2011 to the end of 2012 and includes measures aimed at preventing trafficking, protecting victims and prosecuting offenders. The implementation of the Action Plan is supervised by the Trafficking in Persons Co-ordinator (see paragraph 21), with the support of all relevant Ministries and authorities, including the Human Trafficking Monitoring Committee.

19. The proclaimed purposes of the first Action Plan are to consolidate current procedures and initiatives; identify areas of concern requiring action; enhance accountability for the delivery of actions included in the Plan; provide the tools and resources necessary for the development of a holistic strategy in the fight against THB; raise awareness among public authorities about the importance of THB cases, in order to increase effectiveness in their prosecution and in the identification of victims; and enhance the administrative capacity of the authorities to deal with THB. Work is underway to prepare a media-based awareness-raising campaign and to finalise Standard Operating Procedures (SOPs) for the referral of victims of trafficking. A manual setting out the SOPs has already been prepared and is currently at the consultation stage.

<sup>4</sup> Directive 2012/29/EU of the European Parliament and of the Council, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, replaces Council Framework Decision 2001/220/JHA.

<sup>5</sup> See at [http://www.mjha.gov.mt/MediaCenter/PDFs/1\\_Action%20Plan%20Trafficking.pdf](http://www.mjha.gov.mt/MediaCenter/PDFs/1_Action%20Plan%20Trafficking.pdf)

20. The Maltese authorities have signed an agreement with the International Organisation for Migration (IOM) to assist them in the implementation of the first Action Plan through the project LIMES ("Launching Initiatives Supporting Malta's Efforts to Suppress Trafficking"), which includes training local stakeholders, assistance in the establishment of a formalised referral mechanism for victims of trafficking and an awareness campaign. Two training sessions were conducted in March and July 2012, focusing on developing a victim referral system and human trafficking indicators. A total of 62 346 Euros have been allocated to this project from the 2011 State budget.

### 3. Overview of the institutional framework for action against trafficking in human beings

#### a. Trafficking in Persons Co-ordinator

21. Malta's first Trafficking in Persons Co-ordinator was appointed by the Prime Minister in 2010, and tasked with the setting up of a Human Trafficking Monitoring Committee to develop the country's anti-trafficking strategy. The current post-holder is a public official at the Ministry of Finance, the Economy and Investment, who is assisted by officials from the Policy Development Directorate at the Ministry for Home Affairs.

#### b. Human Trafficking Monitoring Committee

22. The Human Trafficking Monitoring Committee convened for the first time in May 2011. The members of the Committee were appointed by the Prime Minister and include representatives from the Office of the Attorney General, the Police Force, the Ministry for Home Affairs, and the Office of the Prime Minister. The task of the Committee is to monitor the implementation of anti-trafficking commitments by the competent authorities in the fields of prevention, protection of victims and prosecution of offenders, with a view to assisting the Trafficking in Persons Co-ordinator. The Monitoring Committee has an annual budget of 100 000 Euros.

23. The first Action Plan provides for the regular convening of the Human Trafficking Monitoring Committee, with a view to ensuring that human trafficking is addressed in a strategically effective manner, that relevant stakeholders are being monitored and in order to make policy proposals. The Maltese authorities informed GRETA that the meetings of the Monitoring Committee had focused on the preparation of the first Action Plan, the conclusion of the agreement with IOM and the involvement of NGOs in this field.

24. In June 2012, the Monitoring Committee approved a Victim Referral System and decided that the Action Plan would be reviewed by the end of the summer 2012, with a view to preparing the second Action Plan. In August 2012, the Monitoring Committee decided that the Standard Operating Procedures should be formalised so that potential and confirmed victims of trafficking are referred to the entities providing assistance and support. **GRETA would like to receive a copy of the Victim Referral System and Standard Operating Procedures for the referral of victims of trafficking.**

25. The Monitoring Committee is requested to submit quarterly reports to the Prime Minister including statistics, actions taken, progress achieved and difficulties encountered, in addition to its annual report.

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c. Stakeholder Task Force on THB

26. The first Action Plan refers to the establishment of a Stakeholder Task Force on Trafficking in Human Beings, which was set up at the end of 2011. The Task Force is chaired by a representative of the Ministry for Home Affairs and includes representatives from the Office of the Attorney General; the Police's Vice Squad and its Prostitution and THB Unit (see paragraph 28) and Special Branch; the Ministry for Justice, Dialogue and the Family; the Employment and Training Corporation; the National Social Welfare Agency; the Central Visa Unit, the Citizenship and Expatriate Affairs Department; and the Ministry for Health and Elderly Care. Administrative support is provided by officials of the Policy Development Directorate at the Ministry for Home Affairs. Further, the NGOs Caritas and the Jesuit Refugee Service were invited to join the Stakeholder Task Force, and their representatives participated in the meeting held in September 2012.

27. The Stakeholder Task Force puts forward proposals on the basis of which the Human Trafficking Monitoring Committee takes policy decisions. The Stakeholder Task Force met in February, May and September 2012 to discuss the identification of victims of trafficking, training, assistance to victims, co-operation among key actors, the new Victim Referral System and Standard Operating Procedures for victim referral.

d. Specialised Police Unit on Prostitution and Trafficking in Human Beings

28. Within Malta's Police Force, anti-trafficking work has been carried out by the Vice Squad, which is also responsible for sexual offences, child abuse, domestic violence, etc. In January 2012, a new specialised police unit on Prostitution and THB was set up within the Vice Squad. This unit includes an assistant commissioner, a superintendent, an inspector, a sergeant and two police constables. It covers THB for the purpose of both sexual and non-sexual exploitation. The person in charge of the unit is the national contact point within the Malta Police Force who liaises with all other stakeholders on matters related to THB and makes the necessary referrals to other entities in the course of investigations. The Prostitution and THB Unit reports to the Commissioner of Police, while keeping other senior officials informed of the outcome of inspections, operations and investigations. Whenever necessary, additional human resources may be provided to it by the Economic Crime Department. Staff of the Prostitution and THB Unit received training in 2012. GRETA stresses the importance of the tasks assigned to this specialised police unit, and the need to provide it with adequate resources to carry out its work.

e. National Social Welfare Agency

29. The National Social Welfare Agency (hereafter referred to as "the Appoġġ Agency") is part of the Foundation for Social Welfare Services within the Ministry for Justice, Dialogue and Family (formerly the Ministry for Social Policy) and is responsible for supporting persons in need of counselling and social assistance, including victims of domestic violence, human trafficking and other forms of abuse. The Appoġġ Agency provides psycho-social services to victims and potential victims of trafficking referred by the Police, in line with a Memorandum of Understanding (MoU) signed between Malta's Police Force and the Ministry for Social Policy in March 2008. The MoU is currently under review in the context of the implementation of the first Action Plan and the on-going project with IOM. The Appoġġ Agency is also involved in raising awareness about THB (see paragraphs 86-88).

30. Two staff members of the Appoġġ Agency specialise in assisting victims of trafficking. One of them (the service manager) liaises with Malta's Police Force and other professionals within the Appoġġ Agency itself, particularly with regard to the identification, assessment and support to victims of trafficking (see paragraph 102). The Agency's general budget covers their work to combat THB and assist victims of trafficking. **GRETA stresses the importance of the work carried out by the Appoġġ Agency and the need to increase its resources to improve its anti-trafficking activities and the services provided to victims of trafficking.**

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f. NGOs

31. NGO involvement in anti-trafficking action in Malta has been limited and has focused on supporting potential victims of trafficking identified through working with irregular migrants and asylum seekers. Some NGOs have expressed regret at the lack of formal involvement in the institutional structures to address prevention and prosecution of THB and the protection of victims of trafficking.

32. As mentioned above, since September 2012 two NGOs participate in the discussions of the Stakeholder Task Force on THB, namely Caritas and the Jesuit Refugee Service. Caritas' mission is to alleviate poverty and promote human development and social justice, in particular through offering help to persons with social and psychological problems, including the homeless and persons suffering from drug or alcohol abuse problems. The Jesuit Refugee Service works with asylum seekers and displaced persons who arrive in Malta, including the provision of advice and interpretation services. Other relevant NGOs in Malta include Aditus, the Integra Foundation, the National Council of Women, the People for Change Foundation, Malta Emigrants Commission, Victim Support Malta and the Young Men's Christian Association (YMCA-Valletta).

### III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta

#### 1. Integration of the core concepts and definitions contained in the Convention in the internal law

##### a. Human rights-based approach to action against trafficking in human beings

33. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”<sup>6</sup>.

34. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights<sup>7</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.

35. GRETA considers that the human rights-based approach to action against THB requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework, irrespective of their residency status. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

36. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments<sup>8</sup>.

<sup>6</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>7</sup> *Rantsev v. Cyprus and Russia*, no. 25965/04, paragraph 282, ECHR 2010.

<sup>8</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

37. As far as the situation in Malta is concerned, the Maltese authorities have referred to the Constitution of Malta and the European Convention Act XIV of 1987 ratifying the ECHR, both of which set out the principles for the protection of human rights. Although the offence of THB is not specifically included in the Constitution of Malta as a breach of human rights, the elements of this offence clearly impeach on a number of principles which are afforded protection as human rights and fundamental freedoms. In this respect, victims of trafficking can seek protection under fundamental rights provisions of the Maltese Constitution affording protection against forced labour (Article 35) and inhuman treatment (Article 36), and guaranteeing freedom of movement (Article 44). Victims of human rights violations can submit a civil court application to have the violation recognised and demand compensation for it. There is also a right of appeal to the Constitutional Court for human rights violations.

38. The human rights-based approach to action against THB entails transparency and accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the Maltese authorities in these fields.

b. Definitions of “trafficking in human beings” and “victim of THB” in Maltese law

i. *Definition of “trafficking in human beings”*

39. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action (“the recruitment, transportation, transfer, harbouring or receipt of persons”); the use of certain means (“threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”); and the purpose of exploitation (“at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”). In the case of children, pursuant to Article 4(c) of the Convention, it is irrelevant whether the means referred to above have been used.

40. Under Maltese law, the different elements of the definition of trafficking in human beings are found in several articles of Sub-title VIII-bis of the CC (“Of the traffic of persons”). Article 248E(1) of the CC defines THB as “the recruitment, transportation or transfer of a person, or of a minor, as the case may be, including harbouring and subsequent reception and exchange of control over that person, or minor, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the purposes mentioned in the preceding articles of this sub-title, as the case may be”.

41. Article 248A(2) of the CC provides the list of means as follows: “violence or threats, including abduction; deceit or fraud; misuse of authority, influence or pressure; and the giving or receiving of payments or benefits to achieve the consent of the person having control over another person”.

42. The types of exploitation are listed in three articles of the CC as follows:

- Article 248A(1): “the production of goods or provision of services (including under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety)”. This article was amended in 2010 to also include “slavery or practices similar to slavery, servitude, activities associated with begging and any other unlawful activities not specifically provided for elsewhere under this sub-title”.
- Article 248B: “for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material”.
- Article 248C: “for the purpose of exploiting that person in the removal of any organ of the body”.



43. The definition of THB under Maltese law concerning adults includes the three constitutive elements of THB mentioned in paragraph 39, in line with Article 4(a) of the Convention. Concerning the list of means for trafficking in human beings contained in Article 248A(2) of the CC, GRETA notes that it does not specifically refer to “abuse of a position of vulnerability” which, according to the Maltese authorities, would be covered by “misuse of authority, influence or pressure” and “deceit or fraud”. However, in order to be fully consistent with the definition of THB in the Convention, **GRETA urges the Maltese authorities to include the action of “abuse of a position of vulnerability” in the legal definition of trafficking in human beings.**

44. Regarding the forms of exploitation, although Article 248A(1) of the CC does not explicitly include forced labour, it covers the production of goods or provision of services under conditions and in circumstances which infringe labour, health and safety standards. GRETA notes that the infringement of labour, health and safety standards is likely to take place in cases of THB for the purpose of labour exploitation or forced labour, but it is not necessarily a pre-condition for it. ILO Convention No. 29 defines “forced or compulsory labour” as “work or services exacted from a person under the menace of a penalty and for which the said person has not offered him/herself voluntarily”. The Maltese authorities have informed GRETA that there is no case law interpreting THB for the purpose of the production of goods and services. **GRETA urges the Maltese authorities to explicitly include forced labour or services amongst the forms of exploitation in the definition of THB.**

45. As mentioned in paragraph 15, the 1930 White Slave Traffic (Suppression) Ordinance criminalises forced prostitution and overlaps with the CC provisions on THB for the purpose of sexual exploitation (see paragraphs 167 and 172)

46. As regards children, Article 248D of the CC applies to minors trafficked for any of the purposes mentioned in Articles 248A to 248C, even if none of the means mentioned in Article 248A(2) has been used. This is in line with the definition in the Convention. Pursuant to the CC, the use of any of the means listed in Article 248A(2) of the CC is considered as an aggravating circumstance in case of child trafficking (see paragraph 162).

47. The CC was amended in 2010 to introduce two new provisions regarding child trafficking. Article 248DA establishes the offence of acting as an intermediary for the adoption of a child and improperly inducing the consent of any person whose consent is required for the adoption, for the purpose of the types of exploitation set out in Articles 248A to 248C (see paragraph 42). Further, trafficking for the purpose of child labour is criminalised by Article 248DB.

48. There is no reference to the issue of consent in Sub-title VIII-bis of the CC. The Maltese authorities have indicated that the consent of victims of trafficking is not tantamount to the non-responsibility of traffickers. There is no case law on the issue of consent, as in all THB cases prosecuted so far the victims had not given their consent to the exploitation. **GRETA considers that spelling out the irrelevance of the consent of the victim to the intended exploitation where any of the means have been used would improve the implementation of anti-trafficking legislation.**

49. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 162-169.

*ii. Definition of “victim of THB”*

50. The Convention defines “victim of THB” as “any natural person who is subjected to THB as defined in Article 4 of the Convention”. Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

51. Maltese law does not contain a definition of a victim of THB. According to the Maltese authorities, any person who is subjected to trafficking would be deemed to be a victim of THB. If the victim is a minor, more consideration is given to their victimisation in the light of their vulnerability. Article 208AC(2) of the CC defines as vulnerable persons those “under the age of 15 years”, “suffering from a physical or mental infirmity”, or “any other person considered by the court to be particularly at risk of being induced into co-operating with the offender or into surrendering to the offender’s will”. That said, GRETA notes that the Civil Code establishes majority at 18 years of age and that Article 248D of the CC considers as child trafficking THB involving minors, which is in line with the Convention.

52. GRETA recalls that it is sufficient for persons to present reasonable grounds that they have been subjected to a combination of the three elements of the definition of THB referred to in paragraph 39 (action, means and exploitation) in order to be considered as victims of trafficking. In this context, GRETA refers to the 1985 United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, according to which a person may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted”.

53. The question of the definition of victim of THB will be further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them, along with the related proposals made by GRETA.

- c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation

- i. *Comprehensive approach and co-ordination*

54. One of the aims of the Convention is to design a comprehensive framework for the protection and assistance of victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

55. The legal and policy framework in the field of action against THB in Malta, which has been outlined above, is intended to cover all victims of THB subjected to different types of exploitation, both transnationally and nationally. The first Action Plan is comprehensive in nature, covering prevention, protection and prosecution measures. Overall responsibility for co-ordinating action against THB lies with the Trafficking in Persons Co-ordinator. Further, the composition of the Human Trafficking Monitoring Committee, in charge of assessing the implementation of the Action Plan, is multi-disciplinary in nature (see paragraph 22).

56. According to the Maltese authorities, exchange of information and co-ordination among different governmental services takes place to a certain extent in an informal way, given the tight-knit nature of the Maltese community. GRETA stresses the value of formalised agreements, in order to clarify roles and increase transparency and legal certainty. It welcomes the measures included in the Action Plan to formalise existing arrangements and conclude new ones, in particular by means of Memoranda of Understanding, for the identification and referral of victims of trafficking.

57. GRETA notes the lack of NGO participation in the Human Trafficking Monitoring Committee. As noted in paragraph 26, Caritas and the Jesuit Refugee Service joined the Stakeholder Task Force on THB in September 2012. While some NGOs provide ad hoc assistance to victims and potential victims, including accommodation and advice, no funding from the State is provided to NGOs. The Maltese authorities have informed GRETA that consultations with Caritas and the Jesuit Refugee Service were held in early October 2011, prior to the publication of the Action Plan. However, at that time the Action Plan had already been adopted by the Monitoring Committee. According to NGOs met during the country visit, civil society is not recognised as a key stakeholder in the implementation of the first Action Plan and NGOs would like to be more closely associated with the government's efforts to combat THB. GRETA notes that additional mechanisms for involving NGOs in the development and implementation of anti-trafficking policy are needed in order to create synergies and increase the impact of their work.

58. It is not envisaged to carry out an evaluation of the implementation of the first Action Plan by an independent body. GRETA notes that, in addition to the quarterly reporting system in use by the Monitoring Committee to the Prime Minister, such an independent evaluation could assist the authorities in assessing the impact of the activities and help them plan future policies and measures to combat THB. Consideration should also be given to developing future action plans which cover longer time periods, in order to ensure a more strategic and efficient approach.

59. The Maltese authorities do not consider that child trafficking is a problem in Malta and therefore there are no specific measures to address this issue. As noted in paragraph 10, there have been no identified cases of child trafficking in Malta. The Maltese Commissioner for Children is responsible for ensuring the rights of children in governmental decisions and policies affecting children and promoting the protection of children from physical or mental harm, including sexual abuse or exploitation, but has carried out no activities in relation to child trafficking.

60. Concerning THB for the purpose of labour exploitation, GRETA notes that there are high numbers of domestic workers from the Philippines employed in Malta and that a number of Chinese workers live in Malta as part of an agreement between the two countries. The Maltese authorities have informed GRETA that the same conditions of employment apply to all workers, irrespective of their nationality, and that inspections are carried out in sectors where there could be THB cases. Any reports or complaints from foreign workers are investigated by the Department of Industrial and Employment Relations. In addition, the awareness campaign envisaged by the first Action Plan will target all potential victims of trafficking, including domestic workers.

61. The Equality for Men and Women Act was adopted in 2003 and the National Commission for the Promotion of Equality (an independent body funded by the government) was set up in 2004. The previous action plan on violence against women has been subjected to review and a new action plan for the years 2012 to 2015 is under development. It will include issues addressed in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which Malta signed in May 2012. However, gender issues and gender mainstreaming also need to be addressed in Malta's anti-trafficking policy.

62. On a separate issue, GRETA notes that Malta's policy of detention of irregular migrants while their immigration status is under review makes it difficult for potential victims of trafficking to come forward (see also paragraph 110)<sup>9</sup>.

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<sup>9</sup> The Third Report on Malta by the Council of Europe's Commission against Racism and Intolerance (CRI(2008)22) recommended that the Maltese authorities commit to a process aimed at identifying non-custodial alternatives for reception of irregular migrants, as the existing policy reinforces perceptions of immigrants as criminals. More recently, the Council of Europe Commissioner for Human Rights has strongly encouraged the Maltese authorities to bring their policy and practice relating to the detention of migrants into line with the ECHR and the case-law of the European Court of Human Rights (Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Malta from 23 to 25 March 2011. CommDH(2011)17, 9 June 2011).

63. GRETA welcomes the efforts of the Maltese authorities to adopt a comprehensive approach to action against THB, and wishes to stress that, while efforts to prevent and combat trafficking in women for the purpose of sexual exploitation are to be continued, the prevention, protection and prosecution policies in Malta should adequately address trafficking for the purpose of all types of exploitation.

64. **GRETA urges the Maltese authorities to strengthen co-ordination between the national authorities and civil society and to ensure that NGOs are involved in the planning and implementation of national anti-trafficking policy. This could involve the conclusion of written agreements between government departments and NGOs setting out the specific framework for co-operation, as well as periodic reviews of their application.**

65. **Further, GRETA urges the Maltese authorities to take further steps to ensure that national action to combat THB is comprehensive, in particular by:**

- **adopting a proactive approach to detecting human trafficking for the purpose of labour exploitation and child trafficking, as well as re-trafficking cases within Malta;**
- **ensuring that the gender dimension is reflected in all elements of Malta's anti-trafficking policy.**

66. **Further, GRETA invites the Maltese authorities to introduce an independent evaluation of the Action Plan as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.**

*ii. Training of relevant professionals*

67. According to information provided by the Maltese authorities, police officers undergo periodic training organised by foreign counterparts and NGOs with specialist knowledge in THB. In January 2009, 60 police officers were trained in the identification of victims of trafficking and the provision of assistance to them. In February 2009, IOM Malta organised a train-the-trainer seminar followed by a two-day training session covering relevant EU and national legislation, victim identification and assistance. This training was undertaken under the EU's AGIS Programme<sup>10</sup> and brought together the Appoġġ Agency, Malta's Police Force and the NGO People for Change Foundation. Approximately 80 professionals were trained, including social workers, persons working in the area of irregular migration, members of the police, medical staff and helpline volunteers.

68. In June 2011, five senior police officers from the Vice Squad took part in a training partly financed by the Office to Monitor and Combat Trafficking in Persons of the United States Department of State, and delivered by experts from the IOM. This training was also provided to officials from the Office of the Attorney General, the Appoġġ Agency, the Employment and Training Corporation (ETC), the Agency for the Welfare of Asylum Seekers (AWAS), the Central Visa Unit and the Ministry of Health.

<sup>10</sup> The project was entitled "Preventing and Combating Trafficking in Human Beings and Enhancing Victims Protection through Operational Networking and Co-operation and Joint Multi-Disciplinary Trainings for Counter-Trafficking Specialists in EU Member States, Candidate and Neighbouring Countries".

69. The first Action Plan stresses the need to enhance the capacity of the competent authorities in the fight against THB in the areas of prevention, protection and prosecution. A training programme was organised by the Ministry for Home Affairs and delivered by IOM at the end of March 2012, aimed at developing the victim referral system, which was adopted by the Monitoring Committee in June 2012 (see paragraph 24). In March 2012, 35 stakeholders were trained over four days, including the Anti-Human Trafficking Co-ordinator, officers from the Ministry for Home Affairs, AWAS, the Office of the Refugee Commissioner, the Appoġġ Agency, the Head of the shelter for victims of domestic violence, Caritas, the Jesuit Refugee Service, the Ministry of Health, the Police's Vice Squad and Immigration units, the Central Visa Unit, the Citizenship and Expatriate Affairs Department, the Department for Industrial and Employment Relations, the Employment and Training Corporation, the Office of the Attorney General, and the Ministry of Justice. The training highlighted the need to improve co-ordination and the referral of victims of trafficking, as well as the prosecution of traffickers. A follow-up four-day training session held in July 2012 was attended by 25 participants from the above-mentioned bodies, and focused on the identification of victims of trafficking, including locally relevant indicators.

70. GRETA welcomes the efforts made by the Maltese authorities to train relevant professionals working in the field of prevention of THB, identification and protection of victims of trafficking and prosecution of traffickers. GRETA notes the high level of awareness of THB among judges met during the evaluation visit, who recognised the need to improve training, refine their expertise and have specialised courts. However, there is a need for increased awareness and a more proactive attitude on the part of law enforcement officers and other frontline professionals who may detect potential victims of trafficking. The existence of stereotypes about victims of trafficking may be one of the reasons for the low number of victims of trafficking identified.

**71. GRETA considers that the Maltese authorities should take further steps to provide specialised, regular training about THB and the rights of victims of trafficking to all relevant authorities and professionals (such as law enforcement officials, labour inspectors, visa officers, judges and prosecutors). Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking and assist and protect them, as well as to secure convictions of traffickers. During the training, particular attention should be paid to overcoming negative attitudes and prejudices vis-à-vis victims of trafficking.**

*iii. Data collection and research*

72. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and the performance of the main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

73. The Maltese authorities have informed GRETA that statistics on human trafficking are collected and collated by Malta's Police Force. The social services collect data on the assistance provided to victims of trafficking separately. According to the Maltese authorities, victims of trafficking are referred to the Appoġġ Agency upon their express agreement and personal data is shared with the consent of the person concerned.

74. As previously mentioned, the Human Trafficking Monitoring Committee is required to publish an annual report on action undertaken to combat THB, including statistics on the number of perpetrators, victims of trafficking and types of THB. This report will be prepared by the Monitoring Committee in collaboration with all stakeholders and will be published before the end of 2012. The annual report will be formally approved by the Monitoring Committee, following consultations in the Stakeholder Task Force. **GRETA would like to receive a copy of the annual report in due course.**

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

76. As far as GRETA could ascertain, no research on THB has been carried out in Malta. NGOs have stressed the need for research on THB for the purpose of both sexual and labour exploitation. GRETA notes the concern of NGOs as to the lack of information and data on action against THB in Malta and their assertion that evidence-based research - rather than continued reliance on anecdotal information - must be at the forefront of any anti-trafficking strategy. In 2010, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) encouraged the Maltese government to undertake a study on THB, including its root causes, with a view to identifying priority areas for action and formulating relevant policies<sup>11</sup>. The first Action Plan envisages the completion of a study on the needs of victims of trafficking, based on available data and secondary sources. **GRETA would like to receive a copy of this study when it is available.**

77. **GRETA considers that the Maltese authorities should conduct and support research on THB-related issues as an important source of information for future policy measures. Areas where research is needed, in order to shed more light on the extent of the problem of THB, include trafficking for the purpose of sexual and labour exploitation, both to and within Malta, child trafficking, and trafficking among irregular migrants and asylum seekers.**

*iv. International co-operation*

78. The Convention requires Parties to co-operate with each other “to the widest extent possible” in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

79. The Maltese authorities have informed GRETA that pursuant to Article 649 of the CC, all investigative measures related to criminal offences (including THB) requested by a foreign judicial, prosecuting or administrative authority can be executed if they are permissible according to the relevant law in a similar domestic case, and when the request is made pursuant to and in accordance with any treaty, convention, agreement or understanding between Malta and a foreign country. In addition, Article 399 of the CC allows the Maltese authorities to request from foreign authorities all the investigative measures that are allowed under Maltese legislation.

<sup>11</sup> “Concluding observations of the Committee on the Elimination of Discrimination against Women – Malta”, CEDAW/C/MLT/CO/4, of 9 November 2010, paragraph 27.

80. Exchange of information on THB investigations among police forces is carried out through Interpol, Europol, Eurojust and the SIRENE systems. According to the Maltese authorities, all requests from foreign counterparts are dealt with in the shortest possible time. International letters rogatory are also dealt with promptly to ensure the maximum efficiency against THB.

81. Malta is bound by a number of international conventions and EU legislation on mutual assistance in criminal matters. It has signed agreements of co-operation against organised crime with Albania, China, Cyprus, Egypt, France, Hungary, Israel, Italy, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Malta has also signed bilateral agreements to enhance co-operation in criminal matters with countries such as China and the USA. In the absence of an applicable legal instrument for international co-operation, the Maltese authorities have resorted to seeking and providing mutual assistance in criminal matters on the basis of reciprocity.

82. The Maltese authorities have informed GRETA of a request for mutual assistance from the Russian Federation in November 2011, which involved the collection of data requested by the Russian authorities, including financial information to be used in investigations in Russia. Further, in February 2012, Malta received a request for international legal assistance from Poland, including the collection of evidence in a case of THB for the purpose of sexual exploitation. This investigation is still under way.

**83. GRETA considers that the Maltese authorities should continue to explore further possibilities for international co-operation to investigate and prosecute trafficking cases, as well as develop international co-operation to protect and assist victims of trafficking, in particular with the countries of origin of victims of trafficking.**

## **2. Implementation by Malta of measures aimed to prevent trafficking in human beings**

84. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

85. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking<sup>12</sup>.

### **a. Measures to raise awareness and discourage demand**

86. According to the Maltese authorities, efforts to prevent human trafficking in Malta have focused on information and awareness-raising campaigns. In 2008, the Appoġġ Agency produced a brochure<sup>13</sup> with information about THB, how to identify potential victims and where to find assistance, which was distributed in health clinics, community centres and churches, as well as in entertainment areas.

<sup>12</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>13</sup> Available on the website of the Appoġġ Agency: [https://secure2.gov.mt/socialpolicy/SocProt/family/fsws/appogg/appogg\\_downloads/appogg\\_publications.aspx](https://secure2.gov.mt/socialpolicy/SocProt/family/fsws/appogg/appogg_downloads/appogg_publications.aspx)

87. In 2009, the Appoġġ Agency and the Maltese franchise of the cosmetics company Body Shop formed a partnership to raise awareness on child trafficking for the purpose of sexual exploitation. The campaign, which ran until March 2012, raised 1 700 Euros. The money was given to the Appoġġ Agency in order to assist it in providing emergency services, such as health and accommodation for victims of trafficking. A pamphlet aimed at raising public awareness was also published.

88. The Appoġġ Agency runs a 24-hour free helpline, staffed by volunteers, for all types of issues requiring social assistance, including THB. There is no information on whether this helpline has received any calls related to THB.

89. The first Action Plan envisages measures to foster awareness among groups vulnerable to THB, such as irregular migrants and asylum seekers (in co-operation with UNHCR), other vulnerable groups and professionals working with vulnerable persons.

90. UNHCR representatives in Malta have prepared public information materials to raise awareness about migration-related issues, including five TV spots<sup>14</sup> to present the situation of refugees in Malta. The UNHCR office in Malta has also published a report on the public perception of refugees and migrants in Malta<sup>15</sup>.

91. Further, the first Action Plan envisages the carrying out of an awareness-raising campaign in 2012, to be organised by the Ministry of Justice, Dialogue and the Family, the Ministry of Home Affairs, and the Ministry of Foreign Affairs. The Maltese authorities have informed GRETA that TV and radio advertisements are being prepared, aimed at explaining what human trafficking is and whom to contact in case of need. In addition, information on THB has been published on the websites of the Ministry for Home Affairs and the Appoġġ Agency.

92. GRETA notes that action to raise awareness about THB has been limited and looks forward to the results of the implementation of the first Action Plan. **GRETA considers that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and focused on the needs identified. Increased emphasis should be placed on awareness raising and education aimed at eradicating gender-based violence and the stigmatisation of victims of trafficking.**

93. The number of premises where sexual services are provided in Malta is reportedly on the increase. The National Council of Women of Malta urged the Government to focus on demand for the services of victims of THB for the purpose of sexual exploitation, and to consider criminalising the purchase of sexual services<sup>16</sup>. The Maltese authorities have informed GRETA that a draft text on the criminalisation of the use of services of trafficked persons, with the knowledge that the person is a victim of trafficking, has been submitted for discussion to the Human Trafficking Monitoring Committee and the Parliament (see paragraph 169). **GRETA would like to be kept informed of the outcome of these discussions.**

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<sup>14</sup> One of the TV spots focuses on a victim of THB. They are available at:

[http://www.unhcr.org/mt/index.php?option=com\\_content&view=article&id=500&Itemid=170](http://www.unhcr.org/mt/index.php?option=com_content&view=article&id=500&Itemid=170)

<sup>15</sup> See at:

[http://www.unhcr.org/mt/media/com\\_form2content/documents/c8/a456/f40/what%20do%20you%20think\\_PPR%202012%20UNHCR%20.pdf](http://www.unhcr.org/mt/media/com_form2content/documents/c8/a456/f40/what%20do%20you%20think_PPR%202012%20UNHCR%20.pdf)

<sup>16</sup> See press release of 10 October 2011 at: <http://www.ncwmalta.com/councilviews?id=85>



b. Border measures to prevent THB and measures to enable legal migration

94. The Malta Police Immigration Section is responsible, *inter alia*, for border control at the airport, seaports, freeport and yacht marinas, as well as for liaising with other authorities on issues related to third-country nationals, enforcement of immigration breaches, liaison with Consular Offices and repatriation arrangements.

95. The Maltese authorities have informed GRETA that EU Regulation 810/2009 establishing the Community Code on Visas is one of the key tools for facilitating legitimate travel and tackling irregular migration. Information for migrant workers about legal entry and stay in Malta is disseminated through the website of the Ministry of Foreign Affairs<sup>17</sup>. Malta's diplomatic missions and consular posts also disseminate such information in the local languages.

96. All visa applications need to be made in person at the relevant consular mission or diplomatic post of Malta. However, third country nationals who already hold a visa issued by one of the Schengen Member States are exempted from this requirement. The Maltese authorities have indicated that visas are issued after enquiries and examinations by consular officers abroad, who recommend that a visa be issued by the Police Immigration Services after clearance of several checks. Upon arrival, foreign nationals who are subject to a border check undergo a thorough check by immigration officers who refer them to further screening by a senior officer if there are suspicions related to THB. The Maltese authorities have informed GRETA that two officials from the Special Branch of the police responsible for immigration officers received training on THB in March 2012, and two further officers in July 2012.

97. Non-EU nationals require a permit to work in Malta. Such permits are issued to employers wishing to engage foreigners for a fixed period of time and for a specific purpose, after it has been ascertained that every effort has been made to engage a suitable Maltese citizen. The website of the Department of Industrial and Employment Relations provides information on the conditions of employment, including wage regulations for different sectors of activity<sup>18</sup>. Further, the website of the Employment and Training Corporation (ETC) provides information on the procedure for the recruitment of foreign workers, including any permits needed<sup>19</sup>. ETC has reportedly conducted information sessions at detention centres for irregular migrants to inform them about their rights and the work permit procedure in case they are granted asylum.

98. As noted in paragraph 10, the majority of victims of trafficking identified in Malta entered the country legally. That said, **GRETA considers that the Maltese authorities should make further efforts to:**

- **detect cases of THB in the context of border control, including through the provision of regular training to immigration officers and staff employed in diplomatic and consular offices;**
- **introduce a checklist to identify potential THB-related risks during the visa application system;**
- **provide information to foreign nationals planning to travel to Malta, in a language that they can understand, in order to alert them about the risks of THB for sexual and labour exploitation, inform them of their rights and where to turn to for advice and assistance.**

<sup>17</sup> See at <http://www.mfa.gov.mt> (in particular the section on "Services – Travelling to Malta")

<sup>18</sup> See at <http://www.industrialrelations.gov.mt/>

<sup>19</sup> See at <http://etc.gov.mt/etc-portal/page/3/ELU-Guidelines.aspx>

c. Measures to ensure the quality, security and integrity of travel and identity documents

99. The Maltese authorities have informed GRETA that the measures taken to prevent the unlawful creation and issuance of identity documents, as well as to ensure that they cannot easily be forged, are those established in European Council Regulation 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States. All new Maltese passports are biometric.

100. According to the Maltese authorities, training is provided to all immigration officers, border control officials and the staff of embassies and consulates, on the basis of the Frontex Advanced Tool, so that they can differentiate false, forged and authentic documents. This training covers issues such as document production, security features, printing techniques, document protection features, biometric passports, as well as hands-on training to detect false, falsified and counterfeit documents.

### 3. Implementation by Malta of measures to protect and promote the rights of victims of trafficking in human beings

a. Identification of victims of trafficking in human beings

101. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides for the rights of potential victims by establishing that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed and must receive the assistance required by the Convention.

102. The process of identification of potential victims of human trafficking is carried out by the police following a number of routes: statements of potential victims who report themselves to the police; police raids or inspections in areas suspected to be linked to THB; information from the Appoġġ Agency or NGOs which may have received a request for assistance from a victim; and information from the public.

103. According to the Maltese authorities, when a police officer suspects a case of THB, the case is referred to the Prostitution and Human Trafficking Unit which is responsible for performing further investigation. The police is the only authority responsible for establishing whether a person is a victim of trafficking and no appeals can be lodged against their decisions. The Maltese authorities have informed GRETA that there are no common criteria or formal procedure for granting the legal status of victim of trafficking. In assessing whether there are elements of THB, the police takes into account indicators formulated by the United Nations Office on Drugs and Crime (UNODC) and other international organisations. As mentioned in paragraph 20, new indicators were developed at the training session conducted by IOM in July 2012. These indicators are to be formally endorsed by the Monitoring Committee. **GRETA encourages the Maltese authorities to ensure that all relevant professionals are informed of the new indicators and receive instructions to apply them consistently.**

104. Pursuant to the 2008 Memorandum of Understanding between Malta's Police Force and the social services (see paragraph 29), all sex workers apprehended by the police should be screened for indicators of THB and potential victims of trafficking should be referred by the police to social workers.

105. NGOs consider that there is insufficient outreach work and a lack of proactive approach in the detection of potential victims of trafficking. The National Council for Women of Malta has called for stronger measures to combat THB, including to reform the procedures for the identification of victims of trafficking, to harmonise the regulations for immigrants suspected of being trafficked, and to establish contacts with NGOs working in this field<sup>20</sup>. The Maltese authorities have informed GRETA that there is no formal system for the involvement of NGOs in the identification process, but that both the police and the Appoġġ Agency take into consideration reports or possible referrals from NGOs. As mentioned in paragraph 26, since September 2012 Caritas and the Jesuit Refugee Service are members of the Stakeholder Task Force and are considered as key contact points for the victim identification process.

106. The Maltese authorities have indicated that every effort is being made to complete investigations in the shortest time possible and that identification decisions are communicated to victims in accordance with the established procedures involving victims of crime. This suggests a direct link between the identification of victims of trafficking and the conduct of criminal investigations for the offence of THB. GRETA recalls that Article 10(2) of the Convention establishes the obligation for Parties to adopt legislative or other measures as may be necessary to identify victims of trafficking and ensure that they receive the assistance set out in Article 12, independently and regardless of any related criminal investigations or proceedings. Further, GRETA stresses that in cases where the competent authorities have reasonable grounds to believe that a person may have been a victim of trafficking, and while the identification procedure is pending, he/she cannot be removed from the country's territory and should have access to assistance (see paragraph 132).

107. In its concluding observations issued in 2010, CEDAW called upon the Maltese authorities "to take all appropriate measures to ensure better identification and investigation of trafficking cases, particularly through the establishment of a mechanism to proactively ensure identification of and support for trafficked persons as well as enhanced training and capacity-building efforts for law enforcement officials, including immigration officials, so as to increase their ability to identify potential victims of trafficking"<sup>21</sup>. As mentioned in paragraph 24, a Victim Referral System was adopted in June 2012, and Standard Operating Procedures to refer potential and identified victims of trafficking for assistance are to be formalised soon. GRETA welcomes these measures and stresses the urgent need for formalised identification procedures, four years after the entry into force of the Convention.

108. The first Action Plan also provides for an assessment of existing procedures for the identification of cases of THB, prior to the initiation of prosecution proceedings. The Maltese authorities have informed GRETA that an IOM official conducted a fact-finding mission in May 2011, in order to assess the procedures for the identification of THB cases and related matters. The resulting recommendations regarding victim identification were discussed at the training sessions in 2012.

109. As noted in paragraph 10, a total of 25 victims of trafficking were identified between 2003 and 2011. Since 2008, when the Convention entered into force in Malta, only five victims of trafficking have been identified (a Swedish national in 2008, and four Romanian nationals in 2011. The three Chinese nationals detected in 2012 are considered as potential victims of trafficking.

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<sup>20</sup> "Not prostitutes but sex slaves", by. G Attard, first vice-president of the National Council of Women, published in The Times of Malta, 9 March 2012.

<sup>21</sup> "Concluding observations of the Committee on the Elimination of Discrimination against Women – Malta", CEDAW/C/MLT/CO/4, of 9 November 2010, paragraph 27.

110. As mentioned in paragraph 62, irregular migrants are held in detention<sup>22</sup> upon their arrival in Malta until their cases are processed, which can take months. Representatives of the UNHCR and the NGO Jesuit Refugee Service visit migrants in detention, but there is no system in place to detect potential victims of trafficking entering Malta as irregular migrants or asylum seekers. In this context, the United Nations Special Rapporteur on the human rights of migrants has warned about the consequences of the criminalisation of migration on the enjoyment of human rights by migrants and the disproportionate use of detention in migration management, as well as the inappropriateness of labelling migrants as “criminals” or “illegal”<sup>23</sup>. The Special Rapporteur has recommended that States ensure that their legislation prevents victims of trafficking from being prosecuted, detained or punished for illegal entry or residence in the country<sup>24</sup>. GRETA considers that the policy of detention of irregular migrants does not create an environment conducive to making potential victims of trafficking trust the authorities and come forward to seek help. Moreover, there is a risk that victims of trafficking may be recruited or controlled by traffickers during detention.

111. After detention, migrants can stay in open centres, managed by the Agency for Welfare of Asylum Seekers (AWAS), where they receive a monthly allowance and support from social workers. AWAS staff conduct vulnerability assessments and make recommendations to the immigration police about the release of irregular migrants held in detention. The Maltese authorities have informed GRETA that these assessments aim at implementing the fast-tracked policy for vulnerable asylum seekers. The criteria used in the assessment are medical difficulties, physical disabilities, older age, mental health and psychological difficulties. THB is not a criterion in itself, but THB-related indicators are an important component in the assessment made.

112. As already noted in paragraph 10, three Nigerian women were granted refugee status on the basis of being victims of trafficking (respectively in April 2010, November 2011 and March 2012). GRETA notes that these persons were not formally identified as victims of trafficking, which indicates shortcomings in the co-ordination between different government departments. Civil society representatives have stressed the need for additional capacity to engage directly with irregular migrants held in detention, especially women, in co-operation with specialised NGOs and UNHCR. The Maltese authorities have underlined that immigration police officers, AWAS officials and staff of the Office of the Refugee Commissioner participated in the training sessions that addressed co-ordination needs and the victim referral system (in March 2012) and the identification of victims of trafficking (in July 2012).

113. The Maltese authorities have referred to difficulties in finding interpreters covering the full range of languages spoken by irregular migrants and asylum seekers. The authorities are reportedly co-operating with UNHCR and the NGO Jesuit Refugee Service in order to access the interpretation services provided by them. GRETA stresses the importance of providing information and assistance to victims and potential victims of trafficking, in a language that they can understand and from the first stages of the identification procedure, so that they are fully aware of the implications of being identified as a victim of trafficking.

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<sup>22</sup> Except for families with children, unaccompanied minors, pregnant women, breastfeeding mothers, and persons with disabilities, serious or chronic physical or mental problems.

<sup>23</sup> Report of the Special Rapporteur on the human rights of migrants, United Nations General Assembly, A/65/222, August 2010, paragraph 17.

<sup>24</sup> Report of the Special Rapporteur on the human rights of migrants, submitted to the 20th session of the Human Rights Council (18 June - 6 July 2012), A/HRC/20/24, April 2012, paragraph 72(i).

114. As previously mentioned, no child victims of trafficking have been identified in Malta. A study by the EU's Fundamental Rights Agency notes that child trafficking has raised no public debate in Malta and stresses the lack of formal procedures for co-ordination and co-operation among stakeholders in this area<sup>25</sup>. GRETA notes that the Children Commissioner is not a member of the Human Trafficking Monitoring Committee. **GRETA urges the Maltese authorities to involve child specialists in the development and assessment of anti-trafficking policies, including in the preparation of the manual of procedures and guidelines to identify victims of trafficking, which should include a special referral mechanism for unaccompanied children.**

115. GRETA notes that THB for the purpose of labour exploitation is not considered a problem by the Maltese authorities. Taking into consideration the high number of Philippine nationals employed as domestic workers (see paragraph 60), as well as that of third-country nationals arriving in Malta to study English, an increased focus should be placed on detecting trafficking for the purpose of labour exploitation. Three potential victims of trafficking for the purpose of labour exploitation were detected in May 2012. The alleged trafficker (a Chinese national) operated a restaurant and two massage parlours, and had brought three Chinese nationals to Malta (one woman and two men). The case includes allegations of debt bondage, sexual exploitation and breach of the working conditions that had been agreed. The prosecution of this case is on-going.

116. GRETA welcomes the efforts made by the Maltese authorities to review the identification procedure through the new Victim Referral System and the Standard Operating Procedures for the referral of victims of trafficking. **GRETA urges the Maltese authorities to improve the identification of victims of trafficking by ensuring:**

- **multi-agency involvement in victim detection and identification, with clearly defined responsibilities and procedures of all frontline actors who may come into contact with victims of trafficking (including law enforcement officials, labour inspectors, social workers, medical staff and NGOs);**
- **the provision of operational indicators, guidance and toolkits to frontline staff for the identification of victims of trafficking for sexual and non-sexual forms of exploitation, and training on how to use those identification tools in order to ensure that they adopt a proactive approach to detecting potential victims of trafficking;**
- **improved identification of victims of trafficking among irregular migrants in detention and asylum seekers, including through regular training of immigration police officers and AWAS staff, and enhanced co-operation with UNHCR.**

117. Further, **GRETA considers that the Maltese authorities should:**

- **ensure that clear instructions are given to all relevant officials involved in the identification of victims of trafficking so that the identification procedure is carried out in a proactive manner and regardless of the willingness of potential victims to co-operate with the authorities in the criminal investigations;**
- **address the need for interpretation services regarding the languages of the main countries of origin of victims of trafficking identified in Malta.**

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<sup>25</sup> "Thematic Study on Child Trafficking - Malta", European Union Agency for Fundamental Rights, 2009, page 12. See at <http://fra.europa.eu/fraWebsite/attachments/Child-trafficking-09-country-mt.pdf>, pages 6 and 20.

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b. Assistance to victims

118. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

119. According to the Maltese authorities, the types of assistance described in Article 12 of the Convention are provided to all victims and potential victims of trafficking. Assistance is co-ordinated by the National Social Welfare Agency (the Appoġġ Agency). Pursuant to the MoU signed between the Police and the Ministry of Social Policy in 2008, victims of trafficking are referred to the Appoġġ Agency by the police. The MoU does not detail the types of assistance available to such victims, but the Maltese authorities have informed GRETA that the Appoġġ Agency provides victims of trafficking with accommodation, counselling, access to emergency medical treatment, psychological/psychiatric assistance, interpreters and cultural mediators, as well as liaison with NGOs. Medical and psychological support is provided by Malta's medical services free-of-charge. Further, GRETA notes that the 2008 MoU regarding assistance to victims of trafficking is under review. The Maltese authorities have underlined that the new Victim Referral System includes both the police and the Appoġġ Agency. The Standard Operating Procedures will further elaborate on the role of each body.

120. Victims of trafficking are usually housed in a State-run shelter for women victims of domestic violence which can accommodate up to two women victims of trafficking at any given time. If the shelter is full, victims of trafficking are placed in alternative accommodation such as YMCA hostels or hotels. A second shelter for women victims of domestic violence is run by a charity; this shelter is under no obligation to accommodate victims of trafficking, and the Maltese authorities have referred to forthcoming negotiations on the number of emergency places for victims of trafficking to be made available at it. That said, according to the authorities, the low number of identified victims of trafficking makes it difficult to justify additional funding to provide assistance to them.

121. The GRETA delegation visited the State-run shelter for women victims of domestic violence outside Valletta. It occupies the first floor of a two-storey building and can accommodate up to 17 persons. One manager and one co-ordinator work full time at the shelter, with seven experienced part-time female carers working in shifts round-the-clock. Residential social workers are present in the shelter during the day. There are no specific rules for victims of trafficking staying at the shelter, but the Maltese authorities have indicated that shelter procedures are to be updated. Women housed in the shelter cannot receive visitors but can go out freely. At the time of GRETA's visit, a potential victim of trafficking was housed in the shelter while her identification was pending.

122. The children of women admitted to the shelter can also be housed there. As for child victims of trafficking, only girls can be accommodated in the shelter. There are no specific facilities for male victims of trafficking, who in case of need may be accommodated in hotels or hostels, whereas boys are to be taken to centres for homeless people.

123. Police officers bring potential victims of trafficking to the shelter. According to the Maltese authorities, the average stay at the shelter is three to four days, most victims preferring to return to their countries of origin as soon as possible. Emergency funding is available if victims of trafficking need clothing, personal hygiene items and medication. Health care is also provided in case of need. There are no activities in the shelter to help the rehabilitation of victims of trafficking, due to their short stay. However, GRETA stresses the importance of providing victims of trafficking with education, vocational training and access to the labour market in order to help them re-integrate into society, and in line with Article 12(4) of the Convention.

124. If a child victim of trafficking is identified, he/she would be given the protection of minors in need of care as established by the Children and Young Person (Care Orders) Act. The law establishes that minors in care are placed within the mainstream educational system and have access to vocational training and education, as well as access to health and medical services. The Maltese authorities have stressed that unaccompanied minors are not subject to mandatory detention but are accommodated in open centres.

125. Pursuant to Subsidiary Legislation (S.L). 217.07, the Maltese authorities have the discretion to provide access to the labour market (i.e. by granting a work permit) to victims of trafficking for the duration of the residence permit and, in case of minors, access to vocational training and education. GRETA notes that no reference to such programmes and schemes is made outside the regulation of residence permits for third-country nationals who are victims of trafficking. The Maltese authorities have indicated that the offer of residence permits in accordance with S.L. 217.07 has not been accepted by the victims of trafficking identified so far, as they were not interested in staying in Malta. GRETA notes that it is envisaged that the new Standard Operating Procedures will refer to the assistance included in relevant Subsidiary Legislation, and procedures will be set up in a more formalised manner.

126. The first Action Plan envisages carrying out a study concerning the needs of victims of human trafficking, based on available data and secondary sources. GRETA welcomes this initiative **and would like to receive a copy of the study when it is available.**

127. GRETA draws the attention of the Maltese authorities to the importance of the definition of victim of trafficking and its implications for the identification and assistance of such victims. **GRETA urges the Maltese authorities to ensure that all persons who have been subjected to THB as defined in Article 4 of the Convention are granted access to the assistance and protection they are entitled to under the Convention.**

128. Further, **GRETA urges the Maltese authorities to step up their efforts to provide assistance to victims of trafficking, from their identification through to their recovery, and in particular to:**

- **ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their special needs, gender and age;**
- **ensure that the system for providing assistance to child victims of trafficking is specifically tailored to their needs;**
- **provide training to all professionals responsible for the provision of assistance and protection to victims of trafficking;**
- **ensure that victims of trafficking are provided with information on the services and assistance measures available, including the provision of legal advice or assistance, and how to access them. In this context, written information materials on the rights of potential and identified victims should be drawn up in an appropriate range of languages;**
- **facilitate the reintegration into society of victims of trafficking who are lawfully resident in the country and help them avoid re-trafficking by giving them access to education, vocational training and the labour market.**

129. In addition, **GRETA considers that the Maltese authorities should conclude protocols of co-operation with NGOs in order to provide assistance to victims, complementing the services provided by the Appoġġ Agency. The application of such protocols should be regularly monitored and assessed.**

130. **GRETA also invites the Maltese authorities to invest in the human and financial resources of the Appoġġ Agency so that it can effectively carry out the task of providing support and assistance to adult and child victims of trafficking.**

c. Recovery and reflection period

131. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The minimum 30-day period constitutes an important guarantee for victims and potential victims and it serves a number of purposes, including to allow them to recover and escape the influence of traffickers and/or to take a decision on co-operating with the competent authorities. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

132. Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities, has been transposed in Malta through Subsidiary Legislation (S.L.) 217.07, Legal Notice 175, of 2007. Pursuant to Article 3 of S.L. 217.07, the maximum duration of the period of reflection is two months, during which victims of trafficking cannot be removed from the country. There is no indication of the minimum length of this period. GRETA recalls that the Convention establishes that the recovery and reflection period should be of at least 30 days. In addition, GRETA stresses that the Convention provides for a recovery and reflection period to be granted not only to identified victims of trafficking but also when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure is completed. The Convention establishes the need to grant a recovery and reflection period to all victims and potential victims of trafficking, regardless of their nationality and immigration status.

133. The reflection period is intended to distance victims from the influence of the perpetrators and to give them sufficient time to take a decision on whether to co-operate with the authorities. Article 2 of S.L. 217.07 defines co-operation as giving information by third country nationals to the immigration authorities related, *inter alia*, to their arrival in Malta as victims of trafficking and including the names of traffickers and their accomplices and details regarding the places of departure. This information is to lead, or contribute significantly, to the tracing or prosecution of traffickers. The reflection period is granted by the Principal Immigration Officer if the latter considers that the victim of trafficking is co-operating. GRETA stresses that all victims and potential victims of trafficking should be informed of and granted a recovery and reflection period, and not just those who co-operate with the immigration authorities.

134. During the reflection period, victims of trafficking who do not have sufficient resources are to be provided with adequate standards of living, access to emergency medical care, and, where applicable, psychological assistance, translation and interpretation services and free legal aid. Child victims of trafficking have access to free public education during the recovery and reflection period. GRETA stresses that the Convention attaches no conditions to the entitlement of victims and potential victims of trafficking to the assistance measures contained in Article 12(1) and (2) during the recovery and reflection period. The Maltese authorities have affirmed that support to victims and potential victims of trafficking is provided unconditionally, free of charge and according to the specific circumstances and needs of each individual case.

135. The reflection period does not imply a right to permanent residence and can be terminated at any time by the Principal Immigration Officer for reasons of public policy, the protection of national security, or if the victim of trafficking voluntarily re-establishes contact with the traffickers. If a victim who has been granted a reflection period co-operates with the authorities and has severed all links with the traffickers, the Principal Immigration Officer can recommend that a residence permit be issued at the expiry of the reflection period (see paragraph 141). GRETA recalls that the reasons listed in Article 13(3) of the Convention as justifying the non-observation of the recovery and reflection period by Parties do not include the re-establishment of contact with the trafficker.



136. According to information provided by the Maltese authorities, victims of trafficking have been offered the recovery and reflection period, but none have accepted it.

137. **GRETA urges the Maltese authorities to:**

- **ensure that all victims and potential victims of trafficking are systematically informed of the possibility to use a recovery and reflection period and its implications, and are effectively granted such a period;**
- **remove the need to co-operate with the authorities as a pre-condition for being granted a recovery and reflection period;**
- **establish the minimum duration of the recovery and reflection period at 30 days, during which time it is not possible to remove the victim or potential victim of trafficking from the country's territory;**
- **ensure that victims and potential victims of trafficking have access to all the assistance measures provided for in Article 12 (1) and (2) of the Convention during the recovery and reflection period;**
- **ensure that no termination of the recovery and reflection period is carried out on the grounds that victims or potential victims have "actively, voluntarily and on their own initiative renewed contact with the perpetrators" without due regard to the person's individual situation, which involves an examination of his/her case;**
- **ensure that law enforcement officials are aware of the need to grant and respect the recovery and reflection period.**

138. **GRETA also invites the Maltese authorities to address the reasons why victims of trafficking refuse the recovery and reflection period.**

d. Residence permits

139. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

140. The Convention provides for two possibilities to issue residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings. EU Member States have been encouraged to follow the second option in their application of Council Directive 2004/81, which is the approach taken by Malta. However, Article 4 of the Directive allows Member States to adopt or maintain more favourable provisions for third-country nationals who are victims of trafficking. GRETA notes the report by the European Commission on the application of this Directive, which includes plans for the consideration of "the need for amendments to the Directive, including the possibility of issuing a temporary residence permit based on the vulnerable situation of the victim and not necessarily in exchange for co-operation with competent authorities"<sup>26</sup>.

<sup>26</sup> Report from the European Commission to the European Parliament and the Council on the application of Directive 2004/81/EC, 15 October 2010 [COM(2010)493 final].

141. Pursuant to Article 5 of S.L. 217.07, the Principal Immigration Officer may recommend to the Director of Citizenship and Expatriate Affairs the issuing of a residence permit to a victim of trafficking when certain conditions are met, including absence of contact with the perpetrators and the intention to co-operate in the investigation or the judicial proceedings. In case of child victims of trafficking, the Principal Immigration Officer must take due account of the best interests of the child and ensure that the procedure is appropriate to the child's age and level of maturity. Residence permits are issued for six months, renewable for further periods of six months if the above-mentioned conditions subsist.

142. Residence permits can be withdrawn or not renewed on the basis of a recommendation by the Principal Immigration Officer and if one or more of the circumstances listed in Article 6 of S.L. 217.07 are present, namely: the victim actively, voluntarily and on his/her own initiative renews contact with the suspected traffickers; the Principal Immigration Officer believes that the complaint or related co-operation were fraudulent; for reasons of public policy and national security; the victim has ceased to collaborate; and in case the Principal Immigration Officer decides to discontinue the proceedings. In case of withdrawal or non-renewal of the residence permit, all related benefits cease to apply and the status of victim of trafficking comes to an end.

143. The same rights and entitlements set out for persons under a reflection period apply for the duration of the residence permit. However, victims of trafficking are entitled to medical care only if they have special needs and lack sufficient resources. Pregnant women, disabled persons, victims of violence and minors are included in the "special needs" category.

144. Pursuant to Article 5(5) of S.L. 217.07, victims of trafficking who have received residence permits are to be granted, where applicable, access to programmes and schemes provided by the government, NGOs or associations having a specific agreement with Government, and aimed at the recovery of victims of trafficking, including courses to improve their professional skills or prepare the assisted return of victims of trafficking to their country of origin.

145. The Maltese authorities have informed GRETA that no victim of trafficking has been granted a residence permit.

**146. GRETA urges the Maltese authorities to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit.**

**147. Further, GRETA invites the Maltese authorities to consider granting a temporary residence permit not only to victims of trafficking who co-operate with the authorities but also on the basis of the vulnerable situation of victims of trafficking.**

e. Compensation and legal redress

148. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

149. Pursuant to Article 698 of the CC, Subsidiary Legislation (S.L.) 9.12 on Criminal Injuries Compensation Regulations (Legal Notice 190 of 2007) was adopted, transposing the provisions of EU Council Directive 2004/80/EC relating to compensation to crime victims. State compensation provided under S.L. 9.12 applies to victims of rape, homicide, grievous bodily harm, minors forced into prostitution, and any other offence which is accompanied by such crimes. THB is not expressly included in S.L. 9.12, but if the offence was accompanied by grievous bodily harm, victims of trafficking would be eligible to apply for compensation under this scheme. Applications for State compensation must be submitted not later than one year after the violent intentional crime was committed and must be accompanied by a police report. Only Maltese and other EU citizens were entitled to State compensation until the Criminal Injuries Compensation Scheme Regulations were amended in May 2012 to include all “habitual residents” in Malta (through Legal Notice 186). The State compensation scheme provides that the Government is subrogated in the rights of the victim of crime against the perpetrator, whether known or unknown. The ceiling on the amount of State compensation payable to any individual victim or group of victims of the same crime is set at 23 293.73 Euros.

150. GRETA notes that in 2009 the EU’s Fundamental Rights Agency raised concerns regarding the restrictions in Maltese legislation on compensation to victims of crime on the basis of the victim’s conduct, character or way of life, as this risks arbitrary restrictions of compensation where the Claims Officer disagrees with certain lifestyles and may raise questions of compatibility with the right to respect for private life<sup>27</sup>.

151. Compensation for damage caused to a victim of crime can also be demanded through a claim for damages before the Civil Courts. In addition, when an offender is convicted in a criminal court, the prosecution or the victim’s representatives can ask the court to consider ordering the offender to pay compensation to the victim, which may be reduced to what the offender can reasonably afford. Further, GRETA was informed that a system of *ex gratia* compensation payments for victims of crime exists in Malta, in case they do not qualify for the State compensation established by S.L. 9.12.

152. The Maltese authorities have informed GRETA that no free legal aid is available for compensation claims and that legal assistance related to compensation is provided by NGOs, such as Victim Support Malta. Victims of trafficking can also access the services of the Victim Support Unit within the Parole and Probation Department, which include legal advice.

153. No victim of trafficking has been granted State compensation or compensation from the trafficker in the period 2008-2012. GRETA is concerned that this situation may be linked to the lack of information provided to victims of trafficking on their rights and the assistance available, including legal advice on accessing compensation.

**154. GRETA urges the Maltese authorities to provide information to victims of trafficking about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid in this respect.**

**155. Further, GRETA considers that the Maltese authorities should amend the Criminal Injuries Compensation Regulations (S.L. 9.12) so that all victims of trafficking have access to State compensation, without needing to have sustained grievous bodily harm as a result of THB.**

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European Union Agency for Fundamental Rights, Annual Report, 2009, page 59.

f. Repatriation and return of victims

156. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB.

157. IOM runs a programme for the voluntary return for asylum-seekers who have not yet received a final negative decision, those enjoying international protection and those who no longer fulfil the conditions for entry or stay in Malta (the RESTART programme)<sup>28</sup>. The Maltese authorities have informed GRETA that there have been no cases of victims of trafficking returned to their country of origin by IOM, but approximately 60 persons have been returned through this programme. In addition, IOM runs a programme for the return of nationals from sub-Saharan African which can be exceptionally used to return victims of trafficking of other nationalities, on the basis of humanitarian grounds. Risk assessments are carried out in all cases before the return.

158. According to the Maltese authorities, there have been no cases of assisted return/repatriation of victims of trafficking in 2008-2010. The Maltese authorities have informed GRETA that the three victims of trafficking identified in 2011 were returned to their country of origin (Romania) at their own request. The potential victims identified in 2012 have not been returned.

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

**160. Further, GRETA encourages the Maltese authorities to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration.**

#### **4. Implementation by Malta of measures concerning substantive criminal law, investigation, prosecution and procedural law**

a. Substantive criminal law

161. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

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<sup>28</sup> The RESTART programme works towards integrated return management by facilitating voluntary return and sustainable reintegration in the country of origin for migrants in Malta.

162. As noted in paragraphs 40 to 47, THB is criminalised by Articles 248A to 248E of the CC. By virtue of Article 248A, paragraph 1, and Article 248B, the offence of THB for the purpose of exploiting a person in the production of goods, the provision of services, prostitution, slavery or similar practices, begging or any other unlawful activities, is punished by imprisonment for a term of from two to nine years. THB for the purpose of the removal of organs is punished by imprisonment for a term of from four to 12 years. Child trafficking carries the same penalty as trafficking of adults<sup>29</sup>, but when one of the means listed in Article 248A(2) of the CC has been used, the penalty is increased to a maximum of 12 years of imprisonment, as established by Article 248D. The same increased penalty applies to child trafficking for the purpose of child labour and for acting as an intermediary for adopting a child and improperly inducing the consent needed for an adoption, with the purpose of exploitation as set out in Articles 248A to 248C of the CC (see paragraph 42).

163. GRETA notes that as part of the preparation to transpose EU Directive 2011/36, a legislative bill is under discussion to increase the penalties for THB-related offences from the current two to nine years of imprisonment, to a term of from four to 12 years. In the case of trafficking for the purpose of the removal of organs, the penalty will be increased to between six and 12 years of imprisonment. Further, the draft Various laws (Criminal Matters) (Amendment) Act 2011 is expected to introduce the offence of inciting, aiding or abetting the trafficking of a person, which would carry a penalty of between three and seven years of imprisonment.

164. The aggravating circumstances envisaged under Article 248E, paragraph 2, of the CC concern THB which is accompanied by violence, generates proceeds exceeding 11 648.87 Euros, is committed with the involvement of a criminal organisation, by a public officer or servant in the course of the exercise of his/her duties, against a vulnerable person within the meaning of Article 204D(2) of the CC, or when the offender wilfully or recklessly endangered the life of the person trafficked. In these cases, the punishment is increased to a maximum of 12 years of imprisonment. GRETA notes that Article 204D refers to causing or compelling minors to take part in sexual activities and stresses that the Convention considers as an aggravating circumstance when the offence of THB is committed against a child, regardless of the type of exploitation. The Maltese authorities have informed GRETA that the interpretation of "recklessness" under Maltese criminal law makes "gross negligence" punishable, in accordance with the Convention.

165. The Maltese authorities have indicated that, pursuant to Article 31 of the CC, previous sentences for the crime of THB, issued either by other countries' courts or courts in Malta, can be taken into consideration by Maltese courts and increase the punishment by one degree, upon certain conditions. The Maltese authorities have informed GRETA that such information is generally obtained by police investigators from the relevant foreign bodies through Europol. A letter of request by the Attorney General, on behalf of the police, may be necessary for certain countries. The Maltese law on recidivism expressly establishes that if an accused person has committed an offence outside Malta, this can be taken into consideration by the court. The relevant information is brought to the court's attention by exhibiting the criminal record of the accused person and the judgement confirming this fact, if available.

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<sup>29</sup> Pursuant to the bill on Various Laws (Criminal Matters) (Amendment) Act, 2011, the penalty for child trafficking with the use of means would be raised to imprisonment for a term from two to 10 years. If none of the means are used, the penalty remains to be increased by one degree.

166. As regards the criminalisation of acts relating to travel or identity documents, Articles 179-190 of the CC criminalise the forgery of public documents. When the offence is committed by a public officer or servant the penalties range from 13 months to four years of imprisonment, depending on the offence (forgery, fraudulent alteration, delivery of forged documents). Other kinds of forgery and use of forged documents carry a penalty not exceeding six months of imprisonment, but if committed by a public officer, they are punishable with imprisonment for a term from seven months to one year. Further, the offence of “malicious use of forged documents” (Article 184 of the CC) covers the use of false acts, writings, instruments or documents, which carries the same punishment set for the forger. In addition, Article 3 of the Passport Ordinance criminalises the “transfer of passports”, i.e. delivery of a passport by any person, whether lawfully or unlawfully in possession thereof, to another person not entitled to use or have such passport, whether such delivery takes place gratuitously or for money or other valuable consideration, which is punished with imprisonment for a term not exceeding two years. The Maltese authorities have informed GRETA that there is no specific provision concerning the concealment, damaging or destruction of travel or identity documents in relation to THB, but that Article 189 of the CC is very generic and can also cover these situations. In addition, Article 111(2) of the CC refers to the suppression of information given by others to courts or competent authorities, including police officers, for the purpose of concealing an offence, which covers the suppression, destruction or alteration of all traces of a criminal offence. Further, Article 32(1)(f) of the Immigration Act criminalises the retention of public documents, including identification documents belonging to another person, as well as the forgery of such documents and the false or wrongful use thereof, whether or not committed by a public officer.

167. Another relevant offence is contained in the 1930 White Slave Traffic (Suppression) Ordinance, which establishes that compelling a person of at least 21 years of age by means of violence or threats, or inducing him/her by deceit, to leave Malta or to come to Malta from elsewhere for the purpose of prostitution, is punished with imprisonment for a term not exceeding two years. The penalty of imprisonment is raised to a term from two to 10 years if the offence is committed by a relative (i.e. an ascendant by consanguinity or affinity, adoptive father or mother, husband or wife, brother or sister), by means of abuse of authority, trust or domestic relations, habitually, or for gain. Article 3 of the White Slave Traffic (Suppression) Ordinance criminalises the same situation when involving persons under 21 years of age, which is penalised with two to five years of imprisonment. The above-mentioned aggravating circumstances are also applied, raising the penalty to imprisonment for a term from three to 10 years. Additional aggravating circumstances are to commit the offence with violence, threats or deceit and in case the victim is a child under 12 years of age. GRETA notes the overlap between the offences under the White Slave Traffic (Suppression) Ordinance and those established in Articles 248B and 248D of the CC concerning THB for the purpose of sexual exploitation. The Maltese authorities have informed GRETA that THB cases prosecuted in the last decade have referred mainly to the CC, but they were often accompanied by provisions from the White Slave Traffic (Suppression) Ordinance which did not overlap with the CC. However, in seven cases charges were brought both under the CC and the provisions of the White Slave Traffic (Suppression) Ordinance.

168. Pursuant to Article 248E(3) of the CC, Article 121 on corporate liability<sup>30</sup> in cases of corruption and embracery (attempt to influence a jury or juror by corrupt means such as bribery or threats) is also applicable to THB offences. The punishment for corporate liability in THB offences is a fine of between 11 647 and 1 863 500 Euros. To GRETA's knowledge, there have been no convictions of legal entities for THB offences. The Maltese authorities have informed GRETA that amendments to the CC are under discussion in order to increase the fines applicable to corporate liability for THB. These amendments, included in Bill 97, await parliamentary approval. **GRETA would like to be kept informed of the final adoption of this amendment, in due course.** The Maltese authorities have informed GRETA that the temporary administrative sanction of closure of establishments has been carried out in some THB cases.

<sup>30</sup> Article 13 of the Interpretation Act defines corporate liability as offences committed by a body or other association of persons, be it corporate or unincorporated, and for which responsibility lies on the director, manager, secretary or similar officer, unless they can prove that the offence was committed without their knowledge and that they exercised all due diligence.

169. As regards the criminalisation of the use of services with the knowledge that the person who provides them is a victim of trafficking, the Maltese authorities have informed GRETA that a specific provision to that effect may be introduced in the near future, as part of the transposition of EU Directive 2011/36/EU (see paragraph 93).

170. The seizure of criminal assets by the police, in order to prevent them from being concealed, lost, damaged, altered or destroyed, is provided for in Article 355P of the CC. The CC also contains provisions regarding freezing and confiscation orders of assets (Article 23B) and the enforcement of confiscation orders made by courts outside Malta (Article 435D). GRETA recalls that the confiscation of criminal assets, which requires prior detection, identification and seizure of the illegal assets at the time of the criminal investigations, is crucial to reinforce the effect of the penalty and to ensure the payment of compensation to the victim. The Maltese authorities have informed GRETA that there have been no cases of confiscation of assets in THB cases.

171. **GRETA urges the Maltese authorities to:**

- **introduce as an aggravating circumstance the offence of THB committed against a child, for any type of exploitation;**
- **introduce a specific criminal offence regarding the concealment, damaging or destruction of travel or identity documents in relation to THB.**

172. **GRETA considers that the Maltese authorities should conduct an assessment of the Criminal Code provisions concerning THB and the provisions of the White Slave Traffic (Suppression) Ordinance, with a view to avoiding any overlaps and improving legal clarity and certainty.**

173. **GRETA also invites the Maltese authorities to review the adequacy of legislation concerning the confiscation of criminal assets and the reasons for the lack of confiscation orders in THB cases.**

b. Non-punishment of victims of trafficking in human beings

174. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

175. Maltese legislation does not include a specific provision introducing Article 26 of the Convention. The Maltese authorities have informed GRETA that Article 248E, paragraph 6, of the CC refers to Article 33(b) of the CC to exonerate traffickers who may have been coerced into carrying out THB activities, which could include victims of trafficking forced to recruit or be involved in THB themselves. However, these provisions do not exempt victims of trafficking from responsibility for any unlawful acts that they may have been forced to carry out as victims of trafficking. The Maltese authorities have informed GRETA that the police refrain from taking action against victims of trafficking in such situations unless it is evident that the behaviour performed by the victim was in no way coerced and that the allegation of victimisation of THB, in the first place, is not substantiated in any way. Article 33(b) of the CC exonerates a person from criminal responsibility provided that the elements of coercion are proved to the court's satisfaction and in accordance with the law.

176. GRETA is aware of reports according to which potential victims of trafficking were punished for acts committed while being under the control of their traffickers and/or deported without being identified as victims of trafficking<sup>31</sup>. GRETA stresses that lack of identification increases the risk for victims of trafficking to be punished for their irregular immigration status or other unlawful acts committed in relation to their condition as victims of THB.

177. In addition, the previously mentioned FRA report<sup>32</sup> refers to the lack of exemption of legal responsibility for children regarding the offence of loitering for the purpose of prostitution and consequently any child victim of trafficking for the purpose of sexual exploitation would be liable to prosecution, in accordance with Article 7(2) of the White Slave Traffic (Suppression) Ordinance<sup>33</sup>. However, there is also a criminal offence for inducing a minor to prostitution, whereby the child is considered as the victim by whom no offence is seen to have been committed<sup>34</sup>.

**178. GRETA urges the Maltese authorities to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so.**

**179. Further, GRETA urges the Maltese authorities to improve the identification of victims among irregular migrants in order to ensure that victims of trafficking are not punished for immigration-related offences. GRETA recalls that while the identification procedure is ongoing, potential victims of trafficking should benefit from a recovery and reflection period and should not be removed from the Maltese territory.**

c. Investigation, prosecution and procedural law

180. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

181. In Malta, investigation of trafficking offences is carried out *ex officio* by the police or following a complaint by a victim of trafficking, but the latter is not required to initiate an investigation or a court case on THB. If the victim withdraws his/her complaint, the police would proceed with the investigation irrespectively. The Maltese authorities have informed GRETA that Articles 373, 374, 410, 421, 490(3) and 500A of the CC regulate the presence of the victim during the proceedings, and that these provisions are applicable to THB offences.

<sup>31</sup> In July 2010, a Somali woman who was a possible victim of trafficking received a six-month suspended prison sentence after being found guilty of making a false declaration to immigration officials and being in possession of false documentation (source: maltastar.com, 28. November 2011). See also US State Department TIP Reports from 2010 and 2011.

<sup>32</sup> "Thematic Study on Child Trafficking - Malta", European Union Agency for Fundamental Rights, 2009, paragraph 29. See at <http://fra.europa.eu/fraWebsite/attachments/Child-trafficking-09-country-mt.pdf>

<sup>33</sup> "Any person who in any street or other public place or in any place exposed to the public loiters or solicits for the purpose of prostitution or for other immoral purposes, shall be liable, on conviction, to imprisonment for a term of not more than six months".

<sup>34</sup> Articles 197, 204, 204A and 204B of the Criminal Code.



182. When a victim of trafficking institutes proceedings, he/she must be present in Court and may also be assisted by advocates or legal procurators. The victim may be accompanied in court by a social worker, a care worker or a member of Victim Support Malta. The victim may also be represented in court by a legal assistant appointed as *parte civil*. Vulnerable victims such as minors or persons with a disability are generally represented by a parent or a legal guardian or representative. Pursuant to Article 410 of the CC, in criminal proceedings before the Court of Magistrates<sup>35</sup> the injured party has the right to be assisted by an advocate or a legal procurator who may examine or cross-examine witnesses, produce evidence or make any other submissions. Further, for offences falling within the jurisdiction of the Court of Magistrates, where action lies upon the complaint of the injured party, the police may proceed *ex officio* if the victim fails to expressly renounce to the complaint within four days from the commission of the offence. The police may be assisted by the injured party or their lawyer during such proceedings. The Maltese authorities have informed GRETA that most THB cases have been initiated by the police, although victims of trafficking have also initiated some cases. The quarterly reports on the implementation of the Action Plan mention that 50 inspections in clubs and massage parlours were conducted in the first three months of 2012, and 85 inspections in the second quarter.

183. The Maltese authorities have informed GRETA that in the case of THB offences, the police make use of regular investigative techniques and also have the facility of surveillance techniques by a special surveillance team. Malta's Security Service assists the police in certain delicate and serious investigations, including THB, and uses special investigative techniques such as phone-tapping and bugging, with the authorisation of the relevant Minister, as established in the Security Service Act. In addition, a parallel financial investigation may be launched under the provisions for the prevention of money laundering, as funds raised from THB are deemed to be proceeds of crime. Other investigative techniques allowed under Maltese law include investigation and monitoring orders, and the taking of DNA samples. GRETA recalls Recommendation (2005)10 of the Council of Europe's Committee of Ministers on "special investigation techniques in relation to serious crimes including acts of terrorism", which provides principles and measures for the use of special investigation techniques at the national level, including conditions, operational guidelines, training, co-ordination and international co-operation.

184. According to information provided by the Maltese authorities, all but one of the THB cases prosecuted since 2006 are still pending. GRETA notes that legal proceedings concerning THB take a long time and stresses the negative implications that this has on the redress of victims of trafficking. In January 2010, the Police Commissioner instructed police staff to expedite and conclude THB cases within 90 days of arraignment. According to the Chief Justice of Malta, a faster processing of THB cases in order to expedite them is needed as there are no written rules on the prioritisation of cases, except for cases of sexual abuse of minors. The Chief Justice has made a number of proposals, including increasing his monitoring role on THB cases and the assignment of cases to particular courts, as well as the need to have specialised courts and to involve the Attorney General's office in THB cases considered by Courts of Magistrates.

185. As regards THB convictions, in 2003, two persons were sentenced to three years of imprisonment and another person was given a suspended two-year prison term. There were 10 convictions for THB in 2004 (two sentences of three years of imprisonment, one sentence of two and a half years of imprisonment, and seven suspended two-year prison terms). There was one conviction for THB in 2010, involving a fine and a suspended two-year prison term, which was appealed by the prosecutor. This appeal is still underway; with a hearing scheduled on 6 December 2012. The Maltese authorities have informed GRETA that, in March 2012, a Maltese national was sentenced to 10 years' imprisonment for THB for the purpose of sexual exploitation, and for living from prostitution-related earnings. The case, dating back to 2004, concerned Russian and Ukrainian women trafficked into Malta for forced prostitution. Three other people were accused of the same crime and they are being tried in separate cases. The case is under appeal.

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<sup>35</sup> In Malta, Courts of Magistrates deal with civil and criminal cases involving up to 10 years of imprisonment. Most cases of THB are adjudicated by these courts and their judgements can be appealed to the Criminal Courts.

186. **GRETA urges the Maltese authorities to take measures to ensure that crimes related to THB are investigated and prosecuted promptly and effectively, in order to speed up criminal proceedings.**

187. **Further, GRETA considers that the Maltese authorities should facilitate the stay in Malta of victims of trafficking, so that they can testify and assist those victims who have returned to their countries of origin before the court proceedings to testify through video-conference or travel back to Malta.**

188. **Further, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, police investigators and lawyers about THB and the rights of victims of trafficking (see paragraph 71).**

d. Protection of victims and witnesses

189. By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change, etc.) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

190. As mentioned in paragraph 132, Legal Notice 175 of 2007 grants assistance, support and protection to victims of trafficking who choose to co-operate with law enforcement authorities. The Maltese authorities have indicated that while investigations are underway, victims of trafficking are escorted to and from the shelter by police officers and social workers, and this escort continues during and after the court proceedings to ensure that the victims do not come into contact with their traffickers or accomplices. Further, the prosecutor may request to have the name of the victim suppressed from appearing in the media. Proceedings may also take place behind closed doors when it is possible for victims to testify via video-conferencing. The magistrate or judge in charge of the case decides on whether to implement such measures following a demand from the prosecution.

191. The Witness Protection Programme is established by Article 75 of the Police Act, which details the protection that can be granted to victims of crime, including giving evidence during the trial while being screened from the accused or by television transmission<sup>36</sup>. The programme includes the resettlement of victims in other countries<sup>37</sup> under a new identity, protection of their life and property, as well as the witness' family, and payment of a subsistence allowance. The decision on whether a person is to be admitted in the Witness Protection Programme rests with the Attorney General, upon request by the Commissioner of Police. The Maltese authorities have informed GRETA that the Witness Protection Programme has not been applied to victims of trafficking, but protection measures have been taken by the courts, upon the request of police officers, including the application of protection orders (Article 412C of the CC).

<sup>36</sup> Pursuant to Article 90(1) of the Police Act any minor, any victim of any crime against the peace and honour of families, and against morals, and any other witness who in the opinion of the court needs special treatment or protection, may be allowed to give evidence *viva voce* during the trial by contemporaneous television transmission.

<sup>37</sup> Should there be a need for the witness to be sent abroad to be afforded better protection, then the Minister responsible for Police is to enter into such an agreement with a foreign government.

192. The Maltese authorities have indicated that, in the case of witnesses considered vulnerable due to being minors, the nature of the offence, or threats made to them, video-conferencing facilities can be used so that victims/witnesses are not required to testify in the presence of the accused. Pursuant to Article 646 of the CC, if minors under 16 years of age give evidence by video-conference they do not need to be examined in court, unless it is deemed necessary. Audio-recording and video-conferencing of evidence from adult witnesses/victims is also possible in theory, but the code of practice mentioned in Article 647A of the CC has not yet been issued by the Minister of Justice. The Maltese authorities have informed GRETA that there are no developments regarding the code of practice. However, Article 646 of the CC can be applied to vulnerable victims such as victims of trafficking, subject to the decision of the presiding magistrate or judge, which has already taken place.

**193. GRETA considers that the Maltese authorities should make full use of the available measures to protect victims and to prevent intimidation during the investigation and during and after the court proceedings. In this context, the Maltese authorities should take additional measures to ensure that victims of trafficking are adequately informed of their rights and existing remedies, and assisted during the pre-trial and court proceedings.**

## **5. Concluding remarks**

194. GRETA welcomes the steps taken by the Maltese authorities to combat THB and support victims of trafficking, including the setting up of a Human Trafficking Monitoring Committee and a Stakeholder Task Force on THB which includes NGO representatives. The Maltese authorities have announced the development of standard operating procedures to refer victims and potential victims of trafficking for assistance, which should lead to improving the identification and assistance of victims of trafficking in Malta. GRETA hopes that the new identification and referral system will ensure that all persons subject to THB are identified as victims of trafficking and assisted accordingly. Identification should ensure that victims are informed of all their rights and options, including the possibility to use a recovery a recovery and reflection period, the right to compensation, the possibility to obtain a temporary residence permit, and protection from punishment for their involvement in unlawful activities while being trafficked.

195. GRETA considers that the return of victims of trafficking should be treated as an integral part of the process of referral, and a specific institutional and procedural framework should be set up for the safe repatriation and return of victims of trafficking, with due regard for their rights, protection from re-victimisation and re-trafficking.

196. Strengthening the effectiveness and expeditious investigations and prosecutions of THB-related offences, with a view to securing proportionate and dissuasive sanctions, is another area where further action is needed in order to apply the victim-centred approach promoted by the Convention.

197. All relevant professionals who may come into contact with potential victims of trafficking need to be continuously trained on the need to apply a human rights-based approach to action against THB on the basis of the Convention and the case-law of the European Court of Human Rights.

198. GRETA invites the Maltese authorities to keep it regularly informed of developments as regards the implementation of the Convention and looks forward to continuing its co-operation with the Maltese Government for achieving the purposes of the Convention.

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## Appendix I: List of GRETA's proposals

### Core concepts and definitions

1. GRETA urges the Maltese authorities to include the action of "abuse of a position of vulnerability" in the legal definition of trafficking in human beings.
2. GRETA urges the Maltese authorities to explicitly include forced labour or services amongst the forms of exploitation in the definition of trafficking in human beings.
3. GRETA considers that spelling out the irrelevance of the consent of the victim to the intended exploitation where any of the means have been used would improve the implementation of anti-trafficking legislation.

### Comprehensive approach and co-ordination

4. GRETA urges the Maltese authorities to strengthen co-ordination between the national authorities and civil society and to ensure that NGOs are involved in the planning and implementation of national anti-trafficking policy. This could involve the conclusion of written agreements between government departments and NGOs setting out the specific framework for co-operation, as well as periodic reviews of their application.
5. Further, GRETA urges the Maltese authorities to take further steps to ensure that national action to combat THB is comprehensive, in particular by:
  - adopting a proactive approach to detecting human trafficking for the purpose of labour exploitation and child trafficking, as well as re-trafficking cases within Malta;
  - ensuring that the gender dimension is reflected in all elements of Malta's anti-trafficking policy.
6. Further, GRETA invites the Maltese authorities to introduce an independent evaluation of the Action Plan as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.

### Training of relevant professionals

7. GRETA considers that the Maltese authorities should take further steps to provide specialised, regular training about THB and the rights of victims of trafficking to all relevant authorities and professionals (such as law enforcement officials, labour inspectors, visa officers, judges and prosecutors). Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking and assist and protect them, as well as to secure convictions of traffickers. During the training, particular attention should be paid to overcoming negative attitudes and prejudices vis-à-vis victims of trafficking.

### Data collection and research

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

9. GRETA considers that the Maltese authorities should conduct and support research on THB-related issues as an important source of information for future policy measures. Areas where research is needed, in order to shed more light on the extent of the problem of THB, include trafficking for the purpose of sexual and labour exploitation, both to and within Malta, child trafficking, and trafficking among irregular migrants and asylum seekers.

### **International co-operation**

10. GRETA considers that the Maltese authorities should continue to explore further possibilities for international co-operation to investigate and prosecute trafficking cases, as well as develop international co-operation to protect and assist victims of trafficking, in particular with the countries of origin of victims of trafficking.

### **Measures to raise awareness**

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

### **Border measures to prevent THB and measures to enable legal migration**

12. GRETA considers that the Maltese authorities should make further efforts to:

- detect cases of THB in the context of border control, including through the provision of regular training to immigration officers and staff employed in diplomatic and consular offices;
- introduce a checklist to identify potential THB-related risks during the visa application system;
- provide information to foreign nationals planning to travel to Malta, in a language that they can understand, in order to alert them about the risks of THB for sexual and labour exploitation, inform them of their rights and where to turn to for advice and assistance.

### **Identification of victims of trafficking**

13. GRETA urges the Maltese authorities to involve child specialists in the development and assessment of anti-trafficking policies, including in the preparation of the manual of procedures and guidelines to identify victims of trafficking, which should include a special referral mechanism for unaccompanied children.

14. GRETA urges the Maltese authorities to improve the identification of victims of trafficking by ensuring:

- multi-agency involvement in victim detection and identification, with clearly defined responsibilities and procedures of all frontline actors who may come into contact with victims of trafficking (including law enforcement officials, labour inspectors, social workers, medical staff and NGOs);
- the provision of operational indicators, guidance and toolkits to frontline staff for the identification of victims of trafficking for sexual and non-sexual forms of exploitation, and training on how to use those identification tools in order to ensure that they adopt a proactive approach to detecting potential victims of trafficking;
- improved identification of victims of trafficking among irregular migrants in detention and asylum seekers, including through regular training of immigration police officers and AWAS staff, and enhanced co-operation with UNHCR.

15. Further, GRETA considers that the Maltese authorities should:

- ensure that clear instructions are given to all relevant officials involved in the identification of victims of trafficking so that the identification procedure is carried out in a proactive manner and regardless of the willingness of potential victims to co-operate with the authorities in the criminal investigations;
- address the need for interpretation services regarding the languages of the main countries of origin of victims of trafficking identified in Malta.

16. GRETA encourages the Maltese authorities to ensure that all relevant professionals are informed of the new indicators and receive instructions to apply them consistently.

### **Assistance to victims of trafficking**

17. GRETA urges the Maltese authorities to ensure that all persons who have been subjected to THB as defined in Article 4 of the Convention are granted access to the assistance and protection they are entitled to under the Convention.

18. Further, GRETA urges the Maltese authorities to step up their efforts to provide assistance to victims of trafficking, from their identification through to their recovery, and in particular to:

- ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their special needs, gender and age;
- ensure that the system for providing assistance to child victims of trafficking is specifically tailored to their needs;
- provide training to all professionals responsible for the provision of assistance and protection to victims of trafficking;
- ensure that victims of trafficking are provided with information on the services and assistance measures available, including the provision of legal advice or assistance, and how to access them. In this context, written information materials on the rights of potential and identified victims should be drawn up in an appropriate range of languages;
- facilitate the reintegration into society of victims of trafficking who are lawfully resident in the country and help them avoid re-trafficking by giving them access to education, vocational training and the labour market.

19. In addition, GRETA considers that the Maltese authorities should conclude protocols of co-operation with NGOs in order to provide assistance to victims, complementing the services provided by the Appoġġ Agency. The application of such protocols should be regularly monitored and assessed.

20. GRETA also invites the Maltese authorities to invest in the human and financial resources of the Appoġġ Agency so that it can effectively carry out the task of providing support and assistance to adult and child victims of trafficking.

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## Recovery and reflection period

21. GRETA urges the Maltese authorities to:

- ensure that all victims and potential victims of trafficking are systematically informed of the possibility to use a recovery and reflection period and its implications, and are effectively granted such a period;
- remove the need to co-operate with the authorities as a pre-condition for being granted a recovery and reflection period;
- establish the minimum duration of the recovery and reflection period at 30 days, during which time it is not possible to remove the victim or potential victim of trafficking from the country's territory;
- ensure that victims and potential victims of trafficking have access to all the assistance measures provided for in Article 12 (1) and (2) of the Convention during the recovery and reflection period;
- ensure that no termination of the recovery and reflection period is carried out on the grounds that victims or potential victims have "actively, voluntarily and on their own initiative renewed contact with the perpetrators" without due regard to the person's individual situation, which involves an examination of his/her case;
- ensure that law enforcement officials are aware of the need to grant and respect the recovery and reflection period.

22. GRETA also invites the Maltese authorities to address the reasons why victims of trafficking refuse the recovery and reflection period.

## Residence permits

23. GRETA urges the Maltese authorities to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit.

24. Further, GRETA invites the Maltese authorities to consider granting a temporary residence permit not only to victims of trafficking who co-operate with the authorities but also on the basis of the vulnerable situation of victims of trafficking.

## Compensation and legal redress

25. GRETA urges the Maltese authorities to provide information to victims of trafficking about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid in this respect.

26. Further, GRETA considers that the Maltese authorities should amend the Criminal Injuries Compensation Regulations (S.L. 9.12) so that all victims of trafficking have access to State compensation, without needing to have sustained grievous bodily harm as a result of THB.

## Repatriation and return of victims of trafficking

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

28. Further, GRETA encourages the Maltese authorities to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration.

### **Substantive criminal law**

29. GRETA urges the Maltese authorities to:

- introduce as an aggravating circumstance the offence of THB committed against a child, for any type of exploitation;
- introduce a specific criminal offence regarding the concealment, damaging or destruction of travel or identity documents in relation to THB.

30. GRETA considers that the Maltese authorities should conduct an assessment of the Criminal Code provisions concerning THB and the provisions of the White Slave Traffic (Suppression) Ordinance, with a view to avoiding any overlaps and improving legal clarity and certainty.

31. GRETA also invites the Maltese authorities to review the adequacy of legislation concerning the confiscation of criminal assets and the reasons for the lack of confiscation orders in THB cases.

### **Non-punishment of victims of trafficking**

32. GRETA urges the Maltese authorities to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so.

33. Further, GRETA urges the Maltese authorities to improve the identification of victims among irregular migrants in order to ensure that victims of trafficking are not punished for immigration-related offences. GRETA recalls that while the identification procedure is on-going, potential victims of trafficking should benefit from a recovery and reflection period and should not be removed from the Maltese territory.

### **Investigation, prosecution and procedural law**

34. GRETA urges the Maltese authorities to take measures to ensure that crimes related to THB are investigated and prosecuted promptly and effectively, in order to speed up criminal proceedings.

35. Further, GRETA considers that the Maltese authorities should facilitate the stay in Malta of victims of trafficking, so that they can testify and assist those victims who have returned to their countries of origin before the court proceedings to testify through video-conference or travel back to Malta.

36. Further, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, police investigators and lawyers about THB and the rights of victims of trafficking (see paragraph 7 above).

### **Protection of victims and witnesses**

37. GRETA considers that the Maltese authorities should make full use of the available measures to protect victims and to prevent intimidation during the investigation and during and after the court proceedings. In this context, the Maltese authorities should take additional measures to ensure that victims of trafficking are adequately informed of their rights and existing remedies, and assisted during the pre-trial and court proceedings.



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## **Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations**

### Public bodies

- Ministry for Home Affairs
- Ministry of Foreign Affairs
- Ministry of Justice
- Office of the Prime Minister
- Police
- Office of the Attorney General
- Chief Justice
- The Refugee Commissioner
- APPOGG Agency
- Anti-Human Trafficking Co-ordinator
- Employment and Training Corporation
- Commissioner for Children
- National Commission for the Promotion of Equality
- Social Affairs Committee, House of Representatives
- The Ombudsman

### Intergovernmental organisations

- The European Asylum Support Office (EASO)
- The International Organisation for Migration (IOM)
- The Office of the United Nations High Commissioner for Refugees (UNHCR)

### Non-governmental organisations

- Aditus
- Caritas Malta
- Integra Foundation
- The Jesuit Refugee Service
- Malta Emigrants Commission
- The National Council of Women
- The People for Change Foundation
- Young Men's Christian Association (YMCA)
- The Chamber of Advocates

## **Government's comments**

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

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

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Maltese authorities on 11 December 2012 and invited them to submit any final comments. The Maltese authorities' comments, submitted on 20 December 2012, are reproduced hereafter.



**PERMANENT REPRESENTATIVE OF MALTA  
TO THE COUNCIL OF EUROPE**

20 December 2012

Ms Petya Nestorova  
Executive Secretary of the  
Council of Europe Convention on Action  
against Trafficking in Human Beings

Your ref: DG-1/PN/CLD/gm

Dear Executive Secretary,

Please refer to your letter dated 11 December 2012, addressed to Mr Joseph Ellul of the Ministry of Home and Parliamentary Affairs in Malta, and enclosing a copy of "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta", drawn up by GRETA.

I am pleased to attach the Maltese Government's response.

The Government welcomes the GRETA report which acknowledges that the authorities have taken steps "to develop the institutional and legal framework for combating trafficking in human beings." In this regard, reference is made to the appointment of an Anti-Human Trafficking Coordinator and the establishment of a Monitoring Committee and a Stakeholders' Taskforce. The GRETA report also makes reference to Malta's first National Action Plan in this sphere, which covers the period from the 4<sup>th</sup> quarter 2011 to the 4<sup>th</sup> quarter 2012.

Few cases of human trafficking have been encountered in Malta, but the authorities are making every effort to address this crime. Early in 2012 a Prostitution and Trafficking in Human Beings Unit was set up within the Police Vice Squad. Inspections and other activities to detect potential human trafficking cases are ongoing.

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In addition, information relating to human trafficking has been published on the websites of the Ministry for Home Affairs and *Aġenzija Appoġġ* and an awareness campaign is being launched in partnership with the International Organisation for Migration (IOM). Furthermore the Government has recruited an international expert to give on-the-ground training to relevant entities, such as the Agency for the Welfare of Asylum Seekers (AWAS), *Aġenzija Appoġġ*, Caritas and the Jesuit Refugee Service. The expert will also conduct research on human trafficking in Malta.

Stakeholders are currently discussing the setting up of Standard Operating Procedures (SOPs) which will enhance liaison between them and enhance victim referral. These initiatives, and the other measures referred to in the attached response, are already addressing or will address GRETA's recommendations.

The Government agrees with the objectives of GRETA's recommendations. Some of them are already being implemented or provided for by current legislation, while additional measures to implement the recommendations will be taken wherever necessary.

Let me reiterate the Government's commitment to implement the Convention, to apprehend traffickers and to provide assistance to victims of human trafficking.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Josephine Carri". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

<b>REQUEST FOR INFORMATION</b>	<b>INFORMATION PROVIDED BY MALTESE AUTHORITIES</b>
GRETA would like to be kept informed of legislative developments in the area of action against THB (Para 17).	<i>The Maltese authorities will be keeping GRETA informed of relevant developments.</i>
GRETA would like to receive a copy of the Victim Referral System and Standard Operating Procedures for the referral of victims of trafficking. (Para 24).	<i>The Victim Referral ‘map’ was sent to GRETA on 25<sup>th</sup> September 2012. The system contemplated by the ‘map’ is being elaborated by means of Standard Operating Procedures (SOPs), which are still subject to discussion among the stakeholders concerned. The finalised SOPs will be sent to GRETA as soon as available.</i>
The Maltese authorities have informed GRETA that a draft text on the criminalisation of the use of services of trafficked persons, with the knowledge that the person is a victim of trafficking, has been submitted for discussion to the Human Trafficking Monitoring Committee and the Parliament. GRETA would like to be kept informed of the outcome of these discussions (Para 93).	<i>A draft has been submitted to the Monitoring Committee as stated in para 93 of the GRETA report. GRETA would be informed of any further developments.</i>
The first Action Plan envisages carrying out a study concerning the needs of victims of human trafficking, based on available data and secondary sources. GRETA welcomes this initiative and would like to receive a copy of the study when it is available (Para 126).	<i>A copy of the study, which will be compiled by an expert whose services have been contracted by the Maltese Government, will be made available to GRETA as soon as available.</i>
<b>RECOMMENDATIONS</b>	<b>REPLIES BY THE MALTESE AUTHORITIES</b>
1. GRETA urges the Maltese authorities to include the action of “abuse of a position of vulnerability” in the legal definition of trafficking in human beings.	<p data-bbox="810 1361 1406 1525"><i>It should be noted that Article 248E(2)(e) within the “Of the traffic of Persons” section of the Criminal Code (Cap. 9 of the Laws of Malta) makes reference to a crime committed against a vulnerable person.</i></p> <p data-bbox="810 1559 1406 1727"><i>Measures against the abuse of a position of vulnerability are provided for by means of cross reference to Articles 204D(2) and 208AC(2) of the Criminal Code (Cap. 9 of the Laws of Malta).</i></p>
2. GRETA urges the Maltese authorities to explicitly include forced labour or services amongst the forms of exploitation in the definition of trafficking in human beings.	<p data-bbox="810 1765 1406 1928"><i>Article 248A within the “Of the traffic of Persons” heading of the Criminal Code (Cap. 9 of the Laws of Malta) provides against exploitation in the production of goods or provision of services.</i></p> <p data-bbox="810 1962 1406 2087"><i>The same Article stipulates that: “For the purposes of this subarticle exploitation includes requiring a person to produce goods and</i></p>

	<p><i>provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.”</i></p> <p><i>It is therefore considered that Maltese legislation already provides for the implementation of GRETA’s recommendation.</i></p>
<p>3. GRETA considers that spelling out the irrelevance of the consent of the victim to the intended exploitation where any of the means have been used would improve the implementation of anti-trafficking legislation.</p>	<p><i>It should be noted that present legislation is already in compliance with the Convention in this regard, in view of the fact that consent is irrelevant where exploitation has taken place.</i></p> <p><i>GRETA’s recommendation is however being taken into consideration.</i></p>
<p>4. GRETA urges the Maltese authorities to strengthen co-ordination between the national authorities and civil society and to ensure that NGOs are involved in the planning and implementation of national anti-trafficking policy. This could involve the conclusion of written agreements between government departments and NGOs setting out the specific framework for co-operation, as well as periodic reviews of their application.</p>	<p><i>It should be noted that in July 2012 an invitation was sent to Caritas and the Jesuit Refugee Service (JRS) to join the Stakeholders’ Taskforce that was set up in accordance with the National Action Plan on Combating Trafficking in Persons. Both organisations have accepted the invitation to join the Taskforce and have attended a Taskforce meeting for the first time on 13<sup>th</sup> September.</i></p> <p><i>The Taskforce is currently discussing draft SOPs that would involve both Public Authorities and NGOs.</i></p>
<p>5. Further, GRETA urges the Maltese authorities to take further steps to ensure that national action to combat THB is comprehensive, in particular by:</p> <ul style="list-style-type: none"> <li>- adopting a proactive approach to detecting human trafficking for the purpose of labour exploitation and child trafficking, as well as re- trafficking cases within Malta;</li> <li>- ensuring that the gender dimension is reflected in all elements of Malta’s anti-trafficking policy.</li> </ul>	<p><i>It is considered that the National Action Plan on Combating Trafficking in Persons already takes into account these factors, factors that will also be given due attention in the forthcoming Action Plan.</i></p> <p><i>It should be noted that National Human Trafficking Indicators have been drafted in order to facilitate the proactive identification of human trafficking situations. Consultations in relation to such indicators are presently ongoing.</i></p>
<p>6. Further, GRETA invites the Maltese authorities to introduce an independent evaluation of the Action Plan as a tool for assessing the impact of its activities and for planning future policies and measures to combat THB.</p>	<p><i>The Maltese authorities consider that present provisions relating to the impact of the Action Plan are adequate, particularly given that the final report is to be published.</i></p> <p><i>Notwithstanding this, the Maltese authorities will be taking GRETA’s recommendation into consideration in relation to the forthcoming Action Plan.</i></p>

<p>7. GRETA considers that the Maltese authorities should take further steps to provide specialised, regular training about THB and the rights of victims of trafficking to all relevant authorities and professionals (such as law enforcement officials, labour inspectors, visa officers, judges and prosecutors). Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking and assist and protect them, as well as to secure convictions of traffickers. During the training, particular attention should be paid to overcoming negative attitudes and prejudices vis-à-vis victims of trafficking.</p>	<p><i>It should be noted that following the visit of the GRETA delegation to Malta two experts from IOM (Rome) delivered training sessions on 17-20<sup>th</sup> July focusing exclusively on victim identification and support. These sessions were delivered to personnel from several authorities, including Aġenzija Appoġġ (Malta's social welfare agency), the Agency for the Welfare of Asylum Seekers (AWAS), the Employment and Training Corporation (ETC) and the Police among others. Moreover, Caritas and JRS officials also participated in the sessions.</i></p> <p><i>This training led to development of Human Trafficking indicators for Malta, in relation to which further consultations are ongoing.</i></p>
<p>8. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Maltese authorities should develop and maintain a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.</p>	<p><i>The Maltese authorities are in agreement with this recommendation, and whereas statistics are already disaggregated, these are presently being further assessed in order to determine whether further improvements can be made.</i></p>
<p>9. GRETA considers that the Maltese authorities should conduct and support research on THB-related issues as an important source of information for future policy measures. Areas where research is needed, in order to shed more light on the extent of the problem of THB, include trafficking for the purpose of sexual and labour exploitation, both to and within Malta, child trafficking, and trafficking among irregular migrants and asylum seekers.</p>	<p><i>The National Action Plan on Combating Trafficking in Persons provides for the conducting of research in this sphere:</i></p> <p><i>“Completion of a study relating to the needs of victims of human trafficking based on available data and secondary sources.”</i></p> <p><i>Although the study was not completed by the 3<sup>rd</sup> quarter of 2012, as originally envisaged by the Action Plan, such study will be undertaken. Indeed, Government has recruited the services of an international expert, one of whose tasks is the completion of such study.</i></p>
<p>10. GRETA considers that the Maltese authorities should explore further possibilities for international co-operation to investigate and prosecute trafficking cases, as well as to develop international co-operation to protect and assist victims of trafficking, in particular with the countries of origin of victims of trafficking.</p>	<p><i>The Maltese authorities are in agreement with this recommendation. As a matter of fact, during the present year such bilateral cooperation in respect of human trafficking cases has been pursued with Polish and Russian authorities.</i></p>

<p>11. GRETA considers that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and be focused on the needs identified. Increased emphasis should be placed on awareness raising and education aimed at eradicating gender-based violence and the stigmatisation of victims of trafficking.</p>	<p><i>The Maltese authorities are in agreement with this recommendation. The National Commission against Domestic Violence is one of the instruments whereby issues of gender-based violence are addressed.</i></p> <p><i>With regard to victims of human trafficking, including victims of sexual exploitation who may be subject to stigmatisation, these are provided with shelter as well as other forms of support, including psychological support.</i></p> <p><i>Finally, the Awareness Campaign to be launched pursuant to the National Action Plan on Combating Trafficking in Persons will present victims as persons in need of assistance and support, making it clear that the offender is the trafficker who exploits them. It should be noted that information relating to Human Trafficking has been published on the websites of the Ministry for Home Affairs and Aġenzija Appoġġ in September 2012.</i></p>
<p>12. GRETA considers that the Maltese authorities should make further efforts to:</p> <ul style="list-style-type: none"> <li>- detect cases of THB in the context of border control, including through the provision of regular training to immigration officers and staff employed in diplomatic and consular offices;</li> <li>- introduce a checklist to identify potential THB-related risks during the visa application system;</li> <li>- provide information to foreign nationals planning to travel to Malta, in a language that they can understand, in order to alert them about the risks of THB for sexual and labour exploitation, inform them of their rights and where to turn to for advice and assistance.</li> </ul>	<p><i>It should be noted that following the visit of the GRETA delegation to Malta two experts from IOM (Rome) delivered training sessions on 17-20<sup>th</sup> July focusing exclusively on victim identification and support. These sessions were delivered to personnel from several authorities, including Aġenzija Appoġġ (Malta's social welfare agency), the Agency for the Welfare of Asylum Seekers (AWAS), the Employment and Training Corporation (ETC) and the Police among others. Moreover, Caritas and JRS officials also participated in the sessions.</i></p> <p><i>This training led to development of Human Trafficking indicators for Malta, in relation to which further consultations are ongoing.</i></p> <p><i>The list of indicators in question includes indicators relevant to cases where the act of exploitation has not yet been committed, and that would therefore be useful at the visa application or border control stages.</i></p>
<p>13. GRETA urges the Maltese authorities to involve child specialists in the development and assessment of anti-trafficking policies, including in the preparation of the manual of procedures and guidelines to identify victims of trafficking, which should include a special referral mechanism for unaccompanied children.</p>	<p><i>It should be noted that in the present context it would be difficult to draw up national guidelines focusing exclusively on child trafficking, in view of the fact that no cases have been encountered.</i></p>



	<p><i>Notwithstanding this, some of the indicators drafted during the training sessions of July 2012 are relevant to potential child victims. Moreover, the Maltese authorities will continue monitoring the situation on the ground with due attention to potential child trafficking.</i></p> <p><i>The Maltese authorities will also be closely following developments within the context of the implementation of the EU Strategy towards the Eradication of Human Trafficking, which provides for the development of guidelines on child protection systems among other initiatives.</i></p> <p><i>Finally, the SOPs that are presently being discussed take into account the identification of potential child victims, giving due priority to the safeguarding of the best interests of the child.</i></p>
<p>14. GRETA urges the Maltese authorities to improve the identification of victims of trafficking by ensuring:</p> <ul style="list-style-type: none"> <li>- multi-agency involvement in victim detection and identification, with clearly defined responsibilities and procedures of all frontline actors who may come into contact with victims of trafficking (including law enforcement officials, labour inspectors, social workers, medical staff and NGOs);</li> <li>- operational indicators, guidance and toolkits to frontline staff for the identification of victims of trafficking for sexual and non-sexual forms of exploitation, and training on how to use those identification tools in order to ensure that they adopt a proactive approach to detecting potential victims of trafficking;</li> <li>- improved identification of victims of trafficking among irregular migrants and asylum seekers, including through training of immigration police officers and AWAS staff, and enhanced co-operation with UNHCR.</li> </ul>	<p><i>A formal National Referral 'Map', laying down the relevant Mechanism, has been formally approved by the Monitoring Committee during its meeting of 19th June 2012. It should be noted that the 'Map' in question had been drafted with the participation of all the stakeholders concerned, including NGOs.</i></p> <p><i>This Mechanism is being further defined by means of SOPs, which are presently being discussed. Consultation with all relevant stakeholders, including NGOs, is presently being held. The SOPs make reference to potential child victims of human trafficking, making relevant special provisions for their care, particularly with a view to ensure that the best interests of the child is given due priority.</i></p> <p><i>Human Trafficking indicators, which would assist in the identification of victims of human trafficking have been developed in the context of an IOM (Rome)-driven training sessions held on 17-20th July. Consultations are being held in relation to these indicators.</i></p> <p><i>Training focusing exclusively on victim identification and support was delivered on 17-20th July 2012. Participants included Police Officers and AWAS personnel among others.</i></p>

<p>15. Further, GRETA considers that the Maltese authorities should:</p> <ul style="list-style-type: none"> <li>- ensure that clear instructions are given to all relevant officials involved in the identification of victims of trafficking so that the identification procedure is carried out in a proactive manner and regardless of the willingness of potential victims to co-operate with the authorities in the criminal investigations;</li> <li>- address the need for interpretation services regarding the languages of the main countries of origin of victims of trafficking identified in Malta.</li> </ul>	<p><i>The Maltese authorities are in agreement with these recommendations. It should be noted that the identification procedure in respect of victims of trafficking is carried out irrespective of whether the victim is to cooperate with the authorities in criminal investigations. Moreover, assistance and support is accorded to potential victims irrespective of whether they would cooperate with the authorities in criminal investigations. The only benefits that are dependent on cooperation with the authorities in the investigative process are those accruing from the "Permission to reside for victims of trafficking or illegal immigration who cooperate with the Maltese authorities Regulations" (SL 217.07).</i></p> <p><i>With regard to interpretation services, the Maltese authorities will uphold present efforts to meet present needs.</i></p>
<p>16. GRETA urges the Maltese authorities to ensure that all persons who have been subjected to THB as defined in Article 4 of the Convention are granted access to the assistance and protection they are entitled to under the Convention.</p>	<p><i>As per reply above.</i></p>
<p>17. Further, GRETA urges the Maltese authorities to step up their efforts to provide assistance to victims of trafficking, from their identification through to their recovery, and in particular to:</p> <ul style="list-style-type: none"> <li>- ensure that safe and suitable temporary accommodation is provided to all victims of trafficking, adapted to their special needs, gender and age;</li> <li>- ensure that the system for providing assistance to child victims of trafficking is specifically tailored to their needs;</li> <li>- provide training to all professionals responsible for the provision of assistance and protection to victims of trafficking;</li> <li>- ensure that victims of trafficking are provided with information on the services and assistance measures available, including the provision of legal advice or assistance, and how to access them. In this context, written information materials on the rights of potential and identified victims should be drawn up in an appropriate range of languages;</li> </ul>	<p><i>The Maltese authorities are already making the required efforts in these fields, and will continue doing so. Reference may be made to the response provided in relation to preceding recommendations.</i></p> <p><i>In this regard it should also be noted that on 17-20<sup>th</sup> July training by IOM (Rome) experts on victim identification and support was provided to all relevant stakeholders, including with a view to address these points.</i></p>

<p>- facilitate the reintegration into society of victims of trafficking who are lawfully resident in the country and help them to avoid re-trafficking by giving them access to education, vocational training and the labour market.</p>	
<p>18. In addition, GRETA considers that the Maltese authorities should conclude protocols of co-operation with NGOs in order to provide assistance to victims, complementing the services provided by the APPOĠĠ Agency. The application of such protocols should be regularly monitored and assessed.</p>	<p><i>As indicated above, SOPs that would also involve the NGOs concerned are presently being discussed.</i></p>
<p>19. GRETA also invites the Maltese authorities to invest in the human and financial resources of the APPOĠĠ Agency so that it can effectively carry out the task of providing support and assistance to adult and child victims of trafficking.</p>	<p><i>Efforts will continue being sustained in order to ensure that sufficient resources are available.</i></p>
<p>20. GRETA urges the Maltese authorities to:</p> <ul style="list-style-type: none"> <li>- ensure that all victims and potential victims of trafficking are systematically informed of the possibility to use a recovery and reflection period and its implications, and are effectively granted such a period;</li> <li>- remove the need to co-operate with the authorities as a pre-condition for being granted a recovery and reflection period;</li> <li>- establish the minimum duration of the recovery and reflection period at 30 days, during which time it is not possible to remove the victim or potential victim of trafficking from the country's territory;</li> <li>- ensure that victims and potential victims of trafficking have access to all the assistance measures provided for in Article 12 (1) and (2) of the Convention during the recovery and reflection period;</li> <li>- ensure that no termination of the recovery and reflection period is carried out on the ground that victims or potential victims have "actively, voluntarily and on their own initiative renewed contact with the perpetrators" without due regard to the persons' individual situation, which involves and examination of his/her case;</li> <li>- ensure that law enforcement officials are aware of the need to grant and respect the recovery and reflection period.</li> </ul>	<p><i>It should be noted that:</i></p> <ul style="list-style-type: none"> <li>- <i>potential victims of human trafficking are already being informed of the possibility to avail themselves of the recovery and reflection period. This will be confirmed by the SOPs presently being discussed.</i></li> <li>- <i>the "Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese authorities Regulations" (SL 217.07) transpose into Maltese legislation EU Council Directive 2004/81/EC. The Maltese transposition seeks to ensure that the objectives of the Directive are attained.</i></li> <li>- <i>the Maltese authorities consider the present provisions to be adequate, as in each individual case the Principal Immigration Officer may grant a recovery and reflection period of up to two months.</i></li> <li>- <i>as indicated in preceding replies, potential victims of human trafficking are accorded such assistance independently of whether use is made of the "Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese authorities Regulations" (SL 217.07). Such assistance would also be granted to victims who avail themselves of the recovery and reflection period.</i></li> </ul>

	<p><i>- It should be noted that the Directive which is transposed by Maltese legislation provides that the recovery and reflection period would be terminated if the presumed victim has actively sought, of his or her own initiative, contact with the trafficker. Evidently, in each case, the competent authorities would take into account the relevant circumstances.</i></p> <p><i>-the provisions of the relevant Legal Notice have been brought to the attention of Police Officers concerned during the training sessions that were held in 2012.</i></p>
<p>21. GRETA also invites the Maltese authorities to address the reasons why victims of trafficking refuse the recovery and reflection period.</p>	<p><i>A study of the local human trafficking scenario will be undertaken, which may provide information as to why victims may have refused the recovery and reflection period.</i></p> <p><i>Action would subsequently be taken as necessary.</i></p>
<p>22. GRETA urges the Maltese authorities to ensure that victims of trafficking can take full advantage of the right to be granted a temporary residence permit.</p>	<p><i>The Maltese authorities provide the required information to potential victims in order to ensure that full advantage is taken of such right.</i></p>
<p>23. Further, GRETA invites the Maltese authorities to consider granting a temporary residence permit not only to victims of trafficking who co-operate with the authorities but also on the basis of the vulnerable situation of victims of trafficking.</p>	<p><i>In case of vulnerability the Department of Citizenship and Expatriate Affairs may grant a temporary residence permit on a case by case basis. This would follow from a recommendation by the Police Authorities.</i></p>
<p>24. GRETA urges the Maltese authorities to provide information to victims of trafficking about their right to compensation and ways to access it, and to ensure that victims have effective access to legal aid in this respect.</p>	<p><i>The Maltese authorities will continue providing information to potential victims of human trafficking, including their right to compensation where applicable.</i></p>
<p>25. Further, GRETA considers that the Maltese authorities should amend the Criminal Injuries Compensation Regulations (S.L. 9.12) so that all victims of trafficking have access to State compensation, without needing to have sustained grievous bodily harm as a result of THB.</p>	<p><i>It should be noted, by way of information, that compensation may also be awarded to victims of rape or carnal knowledge with violence and in cases where minors are forced into prostitution.</i></p> <p><i>GRETA's recommendation is being considered.</i></p>
<p>26. GRETA urges the Maltese authorities to develop the institutional and procedural framework for the repatriation and return of victims of trafficking, with due regard for their rights, safety and dignity, which implies protection from re-victimisation and re-trafficking and, in the case of children, full respect for the principle of the best interest of the child. Particular attention should be paid to ensuring financial means for the travel of victims of trafficking.</p>	<p><i>The issues raised by GRETA are already being taken into consideration before effecting the return of any victim of human trafficking.</i></p> <p><i>An institutional and procedural framework is being developed within the context of the aforementioned SOPs.</i></p>

<p>27. Further, GRETA encourages the Maltese authorities to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return, as well as their effective reintegration.</p>	<p><i>It should be noted that cooperation in this regard is already actively pursued.</i></p>
<p>28. GRETA urges the Maltese authorities to:</p> <ul style="list-style-type: none"> <li>-introduce as an aggravating circumstance the offence of THB committed against a child, for any type of exploitation;</li> <li>-introduce a specific criminal offence regarding the concealment, damaging or destruction of travel or identity documents in relation to THB.</li> </ul>	<p><i>The law already contemplates such a scenario as an aggravation, in that in the event of child victims the punishments awarded are increased when compared to those applicable to victims who are adults and who are not considered as vulnerable in terms of Article 208AC(2) of the Criminal Code (Cap. 9 of the Laws of Malta)</i></p> <p><i>The recommendation for the introduction of a specific criminal offence of concealment, damaging or destruction of travel or identity documents in relation to THB is being considered.</i></p>
<p>29. GRETA considers that the Maltese authorities should conduct an assessment of the Criminal Code provisions concerning THB and the provisions of the White Slave Traffic (Suppression) Ordinance, with a view to avoiding any overlaps and improving legal clarity and certainty.</p>	<p><i>This is being looked into by the Maltese Authorities.</i></p>
<p>30. GRETA also invites the Maltese authorities to review the adequacy of legislation concerning the confiscation of criminal assets and the reasons for the lack of confiscation orders in THB cases.</p>	<p><i>The Maltese authorities consider that the relevant legal framework relating to confiscation is adequate and therefore is applicable also to THB cases.</i></p>
<p>31. GRETA urges the Maltese authorities to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so.</p>	<p><i>It should be noted that Maltese legislation already provides that victims of human trafficking would not be prosecuted for offences committed under compulsion; provided that it is proven that victims of THB have in fact been compelled to undertake such actions.</i></p> <p><i>It should be noted moreover that Article 33 of the Criminal Code (Cap. 9 of the Laws of Malta) provides that:</i></p> <p><i>“Every person is exempt from criminal responsibility if at the time of the act or omission complained of, such person -</i></p> <ul style="list-style-type: none"> <li><i>(a) was in a state of insanity; or</i></li> <li><i>(b) was constrained thereto by an external force which he could not resist.”</i> </li></ul>
<p>32. Further, GRETA urges the Maltese authorities to improve the identification of victims among irregular migrants in order to ensure that victims of trafficking are not punished for immigration-related offences.</p>	<p><i>Efforts in this regard continue being made. The development of human trafficking indicators would assist in this sphere as well, as does participation by AWAS in human-trafficking training that has been conducted.</i></p>

<p>GRETA recalls that while the identification procedure is ongoing, potential victims of trafficking should benefit from a recovery and reflection period and should not be removed from the Maltese territory.</p>	
<p>33. GRETA urges the Maltese authorities to take measures to ensure that crimes related to THB are investigated and prosecuted promptly and effectively, in order to speed up criminal proceedings.</p>	<p><i>Efforts in this regard are being made and will continue being made. It should be noted that during 2012 two more potential cases of human trafficking are being investigated.</i></p>
<p>34. Further, GRETA considers that the Maltese authorities should facilitate the stay in Malta of victims of trafficking so that they can testify and assist those victims who have returned to their countries of origin before the court proceedings to testify through video-conference or travel back to Malta.</p>	<p><i>Such measures are already being taken.</i></p>
<p>35. Further, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, police investigators and lawyers about THB and the rights of victims of trafficking.</p>	<p><i>As indicated in the replies above, training for stakeholders focusing on victim identification and support has been provided.</i></p> <p><i>Further efforts in this area will continue being made as necessary.</i></p>
<p>36. GRETA considers that the Maltese authorities should make full use of the available measures to protect victims and to prevent intimidation during the investigation and during and after the court proceedings. In this context, the Maltese authorities should take additional measures to ensure that victims of trafficking are adequately informed of their rights and existing remedies, and assisted during the pre-trial and court proceedings.</p>	<p><i>It should be noted that victims of human trafficking are already being informed of their rights by relevant stakeholders, including the Police and Aġenzija Appoġġ.</i></p> <p><i>Assistance is also provided in accordance with relevant legislation.</i></p>