



FRA
Thematic Study on Child Trafficking

[Malta]

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Executive Summary

General anti-child trafficking framework

- [1]. Malta has signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and ratified the ILO Convention Nr. 182 on the worst Forms of Child Labour and the Convention on Action Against Trafficking in Human Beings as indicated below. However Malta has not as yet signed the Convention on the protection of children against sexual exploitation and sexual abuse.
- [2]. Trafficking of persons in Malta is regulated primarily by the Criminal Code¹ and secondarily by the White Slave Traffic (suppression) Ordinance². The Criminal Code defines ‘trafficking of persons’ 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.” The purposes indicated at law are trafficking for exploiting persons in the production of goods or provision of services, for prostitution and sexual exploitation or for the removal of body organs.
- [3]. Trafficking of minors is not dealt with separately in a specific manner, but is dealt with simultaneously with trafficking of persons of age. The only difference that the Criminal Code provides is that for trafficking of minors there is an increase in the punishment of imprisonment that may be given and in the case of minors no particular means need to be used. The punishment stipulated at law is imprisonment between two to nine years, however if means specified at law are used on a victim who is a minor than the punishment is increased by one degree. The means specified at law are the use of (a) violence or threats, including abduction; (b) deceit or fraud; (c) misuse of authority, influence or pressure; and (d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person.

¹ Chapter 9 of the Laws of Malta available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_1/chapt9.pdf

² Chapter 43 of the Laws of Malta available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_3/chapt63.pdf

- [4]. Generally minors are according to the Civil Code³ persons below the age of eighteen years of age, and in this respect the offence established under the Criminal Code follow the same age limit. However, an offence very much connected to trafficking of minors is also created under the White Slave Traffic (Suppression) Ordinance⁴. In this respect however the offence protects persons who are under the age of twenty one years of age. Contrary to the offences established under the Criminal Code, the offence established under the White Slave Traffic (Suppression) Ordinance deals only with inducing or facilitating a person departure from Malta or arrival in Malta for purposes of prostitution. In this case anyone found guilty of such offence may receive imprisonment from two to five years, with or without solitary confinement. However the punishment is increased to imprisonment for a term from three to ten years, with or without solitary confinement if the offence is committed (a) to the prejudice of a person who has not completed the age of twelve years; or (b) by means of violence or threats, or by deceit; or (c) by an ascendant by consanguinity or affinity, by the adoptive father or mother, by the husband or wife or tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under the age of twenty-one years; or (d) habitually or for gain.

Prevention of child trafficking

- [5]. Measures for prevention of child trafficking seem to focus on the legal provisions and also on the support services offered by the state agency named Appogg.⁵ Support services focus mainly on the availability of a helpline 179, of counselling and shelters in case of need.

Appointment of legal guardian

- [6]. Children victims of trafficking are given the protection of minors who are seen to be in need of ‘care and protection’ under the provisions of the

³ Civil Code, Chapter 16 of the Laws of Malta available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_2/chapt16.pdf

⁴ Chapter 43 of the Laws of Malta available at:
http://www.docs.justice.gov.mt/lom/legislation/english/leg/vol_3/chapt63.pdf

⁵ Appogg is the maltese word for support. The body is part of the Foundation for Social Welfare services within the Ministry for Social Policy and is responsible for supporting those in need of counselling and social workers including victims of domestic violence, victims of trafficking and victims of abuse.

Children and young Person (Care Orders)⁶ Act. In this manner that child is taken to be under the care and custody of the Minister, who obtains all rights of care and custody as are generally exercised by parents⁷.

Coordination and cooperation

- [7]. There are no formal procedures for coordination and cooperation between stakeholders in this area.

Care and protection

- [8]. Council Directive 2004/81/EC, on the residence permit issued to third country nationals who are victims of trafficking of human beings or who have been subject of an action to facilitate illegal immigration and who cooperate with the competent authorities, was transposed into national law by Legal Notice 175 of 2007⁸. These regulations make reference to the particular situation of minors and provides for their care and assistance, offering them access to the system of reflection period and also residence permit where they cooperate with the authorities in the fight against trafficking. The law establishes a period of two months as a reflection period, while it provides a residence permit for a term of six months, which is however renewable based upon necessity.
- [9]. The only form of specific social inclusion that is mentioned by law is that minors will be placed within the mainstream educational system as they

⁶ Article 4 of the Children and Young Persons (Care Orders), Chapter 285 of the Laws of Malta which provides: “**4.** (1) If, on representations made to him in writing by the Director of the Department responsible for social welfare and after giving the parents and the guardian, if any, of the child or young person an opportunity to express their views, and after hearing any other person he may deem likely to assist him, the Minister is satisfied that that child or young person is in need of care, protection or control, it shall be the duty of the Minister by an order in writing under his hand to take such child or young person into his care.”

⁷ Article 8 of the Children and Young Persons (Care Orders), Chapter 285 of the Laws of Malta which provides: “The Minister shall, with respect to any child or young person committed to his care by an order made under article 3 or taken into his care by an order made under article 4(1), under article 5 or under article 6(1), have the same powers and duties with regard to his care and custody as the parents or guardian of such child or young person would, but for the order, have, and the Minister may, subject to any regulations made in pursuance of article 13, restrict the liberty of such child or young person to such extent as the Minister may consider appropriate.”

⁸ Legal Notice 175 of 2007 available at: <http://www.doi.gov.mt/EN/legalnotices/2007/07/LN%20175.pdf>

have access to vocational training and education, together with access to health and medical services⁹.

Best interests determination and durable solutions, including social inclusion/return

- 35 Children victims of trafficking are not excluded from applying for asylum or refugee status under the Refugees Act. However there does not seem to be any special procedures established for consideration of these applications.

Prosecution

- [10]. Prosecution for trafficking offences is carried out *ex officio* by the Police. There is no information to indicate that proceedings have been initiated against persons charged with trafficking of minors. Moreover for a victim of crime to be able to claim compensation under the Criminal Injuries Compensation Regulations¹⁰, that victim must be a citizen of Malta or one of the EU Member States. In terms of Article 698 of the Criminal Code, a compensation fund is established from state funds.

Miscellaneous

- [11]. The issue of trafficking in human beings or even in children does not seem to have raised public debate.

Good practice

- [12]. No good practices are identified.

⁹ Proviso to Article 5(3) of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 Legal Notice 175 of 2007

¹⁰ Legal Notice 190 of 2007 available at:
<http://www.doi.gov.mt/EN/legalnotices/2007/default1.asp>

A. General anti-child trafficking framework

- [13]. Malta has signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the UN Convention against Transnational Organised Crime (Palermo Protocol to prevent, suppress and punish trafficking in persons), and ratified the ILO Convention Nr. 182 on the worst Forms of Child Labour and the Convention on Action Against Trafficking in Human Beings as indicated below. However Malta has not as yet signed the Convention on the protection of children against sexual exploitation and sexual abuse.

	Signed	Ratified	Entry Into Force
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)	7 th Sep. 2000		
ILO Convention Nr. 182 on the worst Forms of Child Labour (1999)		15 th June 2001	15 th June 2002
CoE Convention on Action Against Trafficking in Human beings (2005)	16 th May 2005	30 th Jan. 2008	1 st May 2008
Coe Convention on the protection of children against sexual exploitation and sexual abuse (2007)	Not signed	-	-

- [14]. According to the Ratification of Treaties Act¹¹ a treaty to which Malta becomes a party and which affects or concerns its status under international law or its security, sovereignty, independence, unity or territorial integrity or its relationship with any multinational organisation, agency, association or similar body, requires a specific resolution of the House of Representatives for it to be ratified. Before such a treaty is ratified, it cannot be considered to be part of national law and moreover such a treaty does not become enforceable as part of the national law until

¹¹ Chapter 304 of the Laws of Malta available at: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt304.pdf

Parliaments enacts a law to provide so. In this respect, while it is dubious whether the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography could be said to be enforceable or has even entered into force in Malta, it is certain that the Convention on the protection of children against sexual exploitation and sexual abuse still requires a political decision by the government to sign such a convention and to ratify it at a later stage.

- [15]. Under National law, Trafficking of persons in Malta is regulated through: The Criminal Code¹², The White Slave Traffic (Suppression) Ordinance¹³ and The Permission to reside for victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations¹⁴.
- [16]. Despite this however, the national law does not seem to treat trafficking of minors as a category on its own requiring any particular or special measures and consequently the mentioned laws regulate trafficking of minors simultaneously and a similar manner as trafficking of persons. The only difference in regulation is seen in the punishments established by the above mentioned laws. In fact, the general trend in the national law is to provide a harsher punishment for offences committed in respect of minors. This is usually reflected by an increase to the punishment that would otherwise be applicable if that same offence would be directed against an adult. Where such offence is committed against an adult the law prescribes the punishment of a term of imprisonment not exceeding 2 years with or without solitary confinement. This is increased to imprisonment between two to ten years in the case that the offence is committed (a) by an ascendant by consanguinity or affinity, by the adoptive father or mother, by the husband or the wife, or by a brother or sister; or (b) by means of abuse of authority, of trust or of domestic relations; or (c) habitually or for gain. Where such offence is committed against a minor, then the punishment just indicated is increased by one degree.
- [17]. Trafficking of persons including trafficking of minors is defined under Maltese law 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

¹² Chapter 9 of the Laws of Malta available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_1/chapt9.pdf

¹³ Chapter 43 of the Laws of Malta available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_3/chapt63.pdf

¹⁴ Subsidiary Legislation 217.07 of the Laws of Malta available at:
<http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/217/07.pdf> However this law will be dealt with under the heading “Care and Protection”.

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.”¹⁵

- [18]. Articles 248A, 248B and 248C of the Criminal Code regulate three instances of trafficking. Article 248A¹⁶ provides for the offence of trafficking of a person of age for the purpose of exploiting that person in the production of goods or provision of services. This offence deals only with the ‘exploitation’ of persons and the term ‘exploitation’ is here defined as including “*requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.*” Where such an offence is committed against an adult, the punishment provided is that of imprisonment for a term from two to nine years.
- [19]. The second instance of trafficking is regulated by Article 248B¹⁷ and concerns the trafficking of a person of age for his/her exploitation in prostitution or in pornographic performances or in the production of pornographic material. The punishment provided for this instance is the same as that mentioned for the case of trafficking for ‘exploitation’ in the provision of services or production of goods.
- [20]. While the third instance of trafficking is provided in Article 248C¹⁸ and provides for trafficking of persons of age for the purpose of exploiting

¹⁵ Article 248E of the Criminal Code, Chapter 9 of the Laws of Malta

¹⁶ Article 248A, Criminal Code, Chapter 9 of the Laws of Malta provides: “248A. (1) Whosoever, by any means mentioned in subarticle (2), trafficks a person of age for the purpose of exploiting that person in the production of goods or provision of services shall, on conviction, be liable to the punishment of imprisonment for a term from two to nine years.

For the purposes of this subarticle exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in subarticle (1) are the following:

(a) violence or threats, including abduction; (b) deceit or fraud; (c) misuse of authority, influence or pressure; (d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person.

¹⁷ Article 248B, Criminal Code, Chapter 9 of the Laws of Malta provides: Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material shall, on conviction, be liable to the punishment laid down in article 248A(1).

¹⁸ Article 248C, Criminal Code, Chapter 9 of the Laws of Malta provides: “Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in the removal of any organ of the body shall on conviction be liable to the punishment of imprisonment for a term from four to twelve years.”

that person in the removal of any organ of the body. In this case the punishment provided for is harsher and upon conviction the perpetrator may be imprisoned for a term from four to twelve years.

- [21]. The issue of trafficking of minors is then only mentioned in Article 248 D¹⁹. This article provides both for an increase in punishment and also establishes that trafficking related to minors does not require the means mentioned for trafficking of adults. In this respect therefore, the punishment for trafficking of minors is increased by one degree²⁰ only when the use of “(a) *violence or threats, including abduction; (b) deceit or fraud; (c) misuse of authority, influence or pressure; (d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person.*” Accompany the offence. In the case where trafficking relates to minors but is carried out without the means mentioned, then the offence of trafficking is deemed to be constituted and the perpetrator will receive the same punishment equal to that provided for the trafficking of adults. Consequently, while the constitution of the offence of trafficking of adults requires the use of the mentioned means for the perpetrator to be declared guilty of such offence, when this is related to minors the use of such means are not an essential component of the offence..

¹⁹ Article 248D, Criminal Code, Chapter 9 of the Laws of Malta: Whosoever trafficks a minor for any of the purposes mentioned in articles 248A to 248C, both inclusive, shall, on conviction be liable to the same punishment laid down in those articles, as the case may be, even if none of the means mentioned in article 248A(2) has been used:

Provided that where any of the means mentioned in article 248A(2) has been used in the commission of the offence under this article the punishment for the offence shall be increased by one degree.

²⁰ Article 31, Criminal Code Chapter 9 of the Laws of Malta provides: “31 (1) The ascent or descent from one degree of punishment to another shall be as follows: (a) subject to any special provision contained in this Code, from the punishment of imprisonment for life the descent shall be in accordance with the scale of punishments of imprisonment as specified in paragraph (b); (b) subject to any special provision contained in this Code, the following shall be the scale of punishments of imprisonment: (i) from eight years to thirty years, (ii) from seven to twenty years, (iii) from six to twelve years, (iv) from five to nine years, (v) from four to six years, (vi) from three to five years, (vii) from two to four years, (viii) from eighteen months to three years, (ix) from thirteen months to two years, (x) from nine to eighteen months, (xi) from seven months to one year, (xii) from five to nine months, (xiii) from two to six months, (xiv) from one to three months; (c) the descent from the fourteenth degree shall be to imprisonment for a term not exceeding twenty days, or to detention or to a fine (*ammenda*); (d) in the ascent from one degree to another, the order shall be inverted, commencing from the fourteenth degree;

- [22]. It is worth noting that under national law a minor is that person below the age of 18²¹ and there is nothing in the provisions of the Criminal Code to indicate that a different age will be applied to cases of trafficking as regulated by this Code. However when considering the provisions of the White Slave Traffic (Suppression) Ordinance²² the offence therein established speaks of persons under the age of twenty one years.
- [23]. While the offence established under the White Slave Traffic (Suppression) Ordinance is not necessarily tantamount to trafficking of persons as is defined in international documents, however this offence is very much related to trafficking of persons for prostitution. Article 3²³ of the White Slave Traffic Ordinance establishes as an offence:
- the inducement of a person under the age of 21 years to leave Malta or to come to Malta for the purposes of prostitution elsewhere
- the encouragement or facilitation of such person's departure from Malta or arrival in Malta for the same purpose
- provided that either (a) or (b) is carried out in order to gratify the lust of any other person.
- [24]. Moreover the punishment therein established is that of a term of imprisonment from two to five years, with or without solitary confinement. However the punishment is increased to imprisonment for a term from three to ten years, with or without solitary confinement if the offence is committed (a) to the prejudice of a person who has not completed the age of twelve years; or (b) by means of violence or threats, or by deceit; or (c) by an ascendant by consanguinity or affinity, by the

²¹ Civil Code, Chapter 16 of the Laws of Malta available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_2/chapt16.pdf

²² Chapter 63 of the Laws of Malta available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_3/chapt63.pdf

²³ Article 3, White Slave Traffic (Suppression) Ordinance, Chapter 63 of the Laws of Malta: 3. (1) Whoever, in order to gratify the lust of any other person, induces a person under the age of twenty-one years to leave Malta or to come to Malta for purposes of prostitution elsewhere, or encourages or facilitates his departure from Malta or arrival in Malta for the same purpose, shall be liable, on conviction, to imprisonment for a term from two to five years, with or without solitary confinement:

Provided that the punishment shall be imprisonment for a term from three to ten years, with or without solitary confinement, if the offence is committed – (a) to the prejudice of a person who has not completed the age of twelve years; or (b) by means of violence or threats, or by deceit; or (c) by an ascendant by consanguinity or affinity, by the adoptive father or mother, by the husband or wife or tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under the age of twenty-one years; or (d) habitually or for gain.

adoptive father or mother, by the husband or wife or tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under the age of twenty-one years; or (d) habitually or for gain.

- [25]. In the case of the Ordinance, it specifically provides that upon conviction there shall be the forfeiture of every authority and right granted to the offender over the person or property of the person to whose prejudice the offence is committed, and, in the case of the tutor, he is removed from the tutorship and incurs a perpetual disability from holding the office of tutor. Although this type of provision is not found in the provisions of the Criminal Code dealing with trafficking of persons, yet one is to assume that any person being a tutor who is found guilty of such an offence will be removed from such authority in virtue of Article 163 of the Civil Code. This article provides that persons who have been sentenced to the punishment of imprisonment for a term exceeding one year, or to any punishment for an offence affecting the good order of families, or for fraud; and persons who are of a notoriously bad character, or manifestly untrustworthy or negligent;” are unable to act as tutors.
- [26]. In the previous three years there has not been any prosecution of trafficking of minors and cases of trafficking of persons of age have amounted to four. However, only one of these cases has received a final judgment,²⁴ while the other proceedings are still pending. Two such proceedings were brought against persons who were police officers. Moreover, a Maltese person extradited to Italy for charges of smuggling Turkish Immigrants was released by the Italian Courts²⁵, while on the 8th July 2008 Abdul Salem Mohamed Ab Selwa was charged with trafficking²⁶. Therefore to date one is unable to assess whether there will be any divergences between the concept under international law and that under national law. Moreover, it is not possible to assess differences in application between the courts of first instance and the court of appeal.
- [27]. The Commissioner for Children Act²⁷ establishes the office of a Commissioner for Children, whose tasks include ensuring that the rights of children are properly taken into account by government departments, local authorities and other public and voluntary organisations when decisions on policies affecting children are taken and also to promote the protection of children from physical or mental harm and neglect, including sexual abuse or exploitation²⁸. However, there is no available data to indicate that the office of the Commissioner for Children

²⁴ Police v. Patrick Sciberras, Court of Criminal Appeal, 19th January 2006

²⁵ <http://www.maltatoday.com.mt/2008/04/16/n6.html>

²⁶ <http://www.maltatoday.com.mt/2008/07/09/n4.html>

²⁷ Chapter 462 of the Laws of Malta which is available at:

²⁸ http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_14/Chapt462.PDF

Article 10 of the Commission for Children Act

undertakes work or carries out projects in relation to child trafficking. Moreover, there have been no specific national campaigns in this respect by national organisations.

- [28]. In this respect, one must also add that there is no formally established mechanism for cooperation and referral, except for the Support Helpline and support services that may be provided to child victims of trafficking by the state established agency named Appogg²⁹. This is the national social welfare agency for children and families in need and offers a number of services directed towards children. There does not seem to be any service which is specific to children victims of child trafficking, however these are provided with the mainstream services offered by the agency.
- [29]. Note must also be made that the law does not seem to provide any exemption for children in respect to the offence of loitering³⁰ for purposes of prostitution and consequently any such child would at law still be liable to prosecution. However, one must also consider in this instance that the Criminal Code establishes the offence of inducing a minor to prostitution, whereby the offence address the perpetrator and views the child as the victim by whom no offence is seen to have been committed³¹.
- [30]. One must also point out that there is no information related to the existence of data collection mechanisms that involve different relevant actors. Neither is there information on the budget of relevant ministries or other actors directed at anti-trafficking measures and research on child trafficking. In this respect, neither is there a training strategy for all professional actors in the field of trafficking of persons.
- [31]. Neither one of the established commissions under Maltese Law is specifically given the obligation of monitoring the situation of trafficking of persons or of acting as a national referral mechanism. Even though informally one would expect Appogg, being the national support institute for a number of situations including trafficking, to at least act as a referral mechanism. Moreover, one would expect the office of the Commissioner of Children who is by law³² bound to promote the protection of children

²⁹ <http://www.appogg.gov.mt/>

³⁰ Article 7(2) of the White Slave Traffic (Suppression) Ordinance which provides:
(2) 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.

³¹ Articles 197, 204, 204A and 204B of the Criminal Code available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_1/chapt9.pdf
Chapter 462 of the Laws of Malta, Commissioner for Children Act, Article 9(g)
http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_14/Chapt462.PDF

from physical or mental harm and neglect, including sexual abuse or exploitation to monitor and also act as a referral mechanism in this aspect. However, there is no information to indicate that this is happening.

B. Prevention of child trafficking

[32]. Measures for prevention of child trafficking within Malta seem to focus on the introduction of the above mentioned laws. Anti-trafficking awareness campaigns or campaigns that focus particularly with children who are victims of trafficking have not been carried out. However, in March 2008, the supportline 179 which is run by the Agency named Appogg³³ was extended to serve victims of trafficking. Moreover, the same Agency has also sought to raise awareness through the publication of a leaflet which while explaining what trafficking in persons involves also provides information on the support that may be sought³⁴.

[33]. Campaigns aimed at awareness raising were not of the type involving direct participation of children or relevant NGO's and there is no information to indicate that the effects of these campaigns were evaluated in any manner. As such there are no officially recognised minority groups and in fact there are no Roma travellers in Malta. The only possible local community that can be called to participate are migrants, however there is no indication that their representative, often NGOs, have been given any role in national preventive efforts. Activities carried out by such NGOs are usually commenced and run by the NGOs themselves.

C. Appointment of legal guardian

[34]. The appointment of a Legal Guardian in the same manner as that of appointment of a tutor for the care of a minor in the course of civil life does not seem to be available for children victims of trafficking. However, as indicated above, children victims of trafficking are given the protection of minors who are seen to be in need of 'care and protection' under the provisions of the Children and young Person (Care Orders)³⁵ Act.

³³ A State agency that falls under the remit of the Foundation for Social Welfare Services

³⁴ http://www.appogg.gov.mt/pdf/downloads/leaflet_human_trafficking.pdf

³⁵ Article 4 of the Children and Young Persons (Care Orders), Chapter 285 of the Laws of Malta which provides: "4. (1) If, on representations made to him in writing by the Director of the Department responsible for social welfare and after giving the parents and the guardian, if any, of the child or young person an

[35]. In terms of this Act, the Minister responsible for social welfare may issue a care order in regard to any minor who is a victim of trafficking. In this manner that child is taken to be under the care and custody of the Minister, who obtains all rights of care and custody as are generally exercised by parents³⁶.

[36]. Every person is granted the right to legal representation which however may be exercised without requiring a guardian or tutor only if that person has obtained the age of majority, which is that of 18 years³⁷. There is no information to indicate that there is an established policy on age assessment or specialised training for legal guardians. Moreover each legal guardian may seek to be granted appropriate time for preparation of cases but there does not seem to be any information that indicates that this is automatically granted in practice.

D. Coordination and cooperation

[37]. While the laws above mentioned do not in any manner provide formal procedures for coordination and cooperation between stakeholders in this area; neither is there information nor statistics that are available to indicate, if there is informal coordination and cooperation, how this is carried out.

E. Care and protection

[38]. Another issue related to trafficking of minors is specifically dealt with in Legal Notice 175 of 2007³⁸. This Legal Notice was the measure by which

opportunity to express their views, and after hearing any other person he may deem likely to assist him, the Minister is satisfied that that child or young person is in need of care, protection or control, it shall be the duty of the Minister by an order in writing under his hand to take such child or young person into his care.”

³⁶ Article 8 of the Children and Young Persons (Care Orders), Chapter 285 of the Laws of Malta which provides: “The Minister shall, with respect to any child or young person committed to his care by an order made under article 3 or taken into his care by an order made under article 4(1), under article 5 or under article 6(1), have the same powers and duties with regard to his care and custody as the parents or guardian of such child or young person would, but for the order, have, and the Minister may, subject to any regulations made in pursuance of article 13, restrict the liberty of such child or young person to such extent as the Minister may consider appropriate.”

³⁷ Article 188, Civil Code, Chapter 16 of the Laws of Malta
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_2/chapt16.pdf

³⁸ Legal Notice 175 of 2007 available at:
<http://www.doi.gov.mt/EN/legalnotices/2007/07/LN%20175.pdf>

Council Directive 2004/81/EC, on the residence permit issued to third country nationals who are victims of trafficking of human beings or who have been subject of an action to facilitate illegal immigration and who cooperate with the competent authorities, was transposed into national law. These regulations make reference to the particular situation of minors and provides for their care and assistance. Considered together with the application of the Children and Young Persons (Care Orders) Act which is also applicable to victims of trafficking, such minors will receive protection in the same manner as if he were a ‘maltese’ child requiring such protection. Care and Assistance depend on the individual needs of the minor however the minor is to receive such protection that ensures his well being. This often includes placement within a shelter (institution) and the provision of health and maintenance assistance. Moreover, this may also include the appointment of a tutor who will assume ‘parental’ responsibility.

- [39]. According to this Legal Notice a person who cooperates with authorities in relation to offences of trafficking in human beings is allowed a reflection period of not more than two months³⁹.
- [40]. Article 4 of the Regulations⁴⁰ provides for the care of children or young persons who are victims of trafficking by giving such minors the assistance provided in the Children and Young Persons (Care Orders) Act⁴¹.

³⁹ **Article 3** Legal Notice 175 of 2007

⁴⁰ Article 4 of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 Legal Notice 175 of 2007 provides: “A third country national who is a victim of trafficking of human beings being or is the subject of an action to facilitate illegal immigration in terms of the provisions of these regulations, and who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be assisted in terms of the Children and Young Persons (Care Orders) Act as if he were a child or young person under such Act.”

⁴¹ Chapter 285 of the Laws of Malta available at:
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt285.pdf

- [41]. Moreover, under these Regulations the Principal Immigration Officer⁴² may provide the third country national with a temporary residence permit provided however it is clear that (a) the permission to remain in Malta may present an opportunity for the investigations or judicial proceedings; (b) the third country national intends to co-operate with the Principal Immigration Officer; and (c) the third country national has severed all relations with the persons suspected of committing the offences of trafficking of persons. The issue of such a residence permit is within the discretion of the Principal Immigration Officer and these regulations do not automatically give minors such a permit. However in exercising this discretion the Principal Immigration Officer is obliged to take due account of the minor's best interests and ensure that the procedure is appropriate to his age and maturity. The best interests of the minor are also to be taken into consideration by the Principal Immigration Officer in renewing such residence permit.
- [42]. The Regulations also establish that minors victims of trafficking are to receive the necessary medical care and other assistance even if they do not have sufficient resources. Moreover, minors are also granted access to vocational training and education⁴³.

⁴² Article 5 of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 Legal Notice 175 of 2007 which provides: “5. (1) Without prejudice to any restrictions arising from public policy or public security, the Principal Immigration Officer may, at the end of the reflection period, or earlier if he is of the view that the third country national already fulfils the conditions stipulated in paragraphs (a) to (c), recommend to the Director the issuing of a residence permit for the third country national concerned when it is clear that: (a) the permission to remain in Malta of the third country national may present an opportunity for the investigations or judicial proceedings; (b) the third country national intends to co-operate with the Principal Immigration Officer; (c) the third country national has severed all relations with the persons suspected of committing the offences of trafficking of persons or facilitating illegal immigration: Provided that, when the third country national concerned is a minor, the Principal Immigration Officer shall take due account of his best interests and ensure that the procedure is appropriate to his age and maturity.

(2) The residence period referred to in subregulation (1) shall be valid for a period of six months which shall be renewable if the conditions mentioned in the said subregulation continue to subsist and, in particular, taking into account the best interests of the child in cases where the third country national is a minor.

⁴³ Proviso to Article 5(3) of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 Legal Notice 175 of 2007 which provides: (3) The provisions of regulation 3(5) shall apply to the third country national concerned, when he does not have the necessary resources, after the issue of the residence permit and for the duration of such permit:

Provided that the third country national shall be provided with the necessary medical care or other assistance, when he does not have sufficient resources, and

- [43]. It is not possible to identify any formal principles established by law or the relevant authorities which may provide guidance to the Police, the Principal Immigration Officer or the Minister for Social Welfare or other persons working in the field, which determine the exercise of the discretion enjoyed by such persons in respect of minors who are victims of trafficking.
- [44]. It seems that while the law as commented above demands that such persons act in the best interests of the child, yet the determination of what is in the best interests of the child is left within the person exercising such discretion or authority over him.
- [45]. Moreover, there does not seem to be any regulation that deals with the social inclusion or return of such victims. In this regard, the only form of specific social inclusion that is mentioned by law is that minors will be placed within the mainstream educational system as they have access to vocational training and education⁴⁴.
- [46]. Children victims of trafficking fall under the care of the Minister for social welfare. In this respect the Minister obtains all those rights as would vest in the parents and the Minister is obliged to act in the best interests of the child. The law specifically states that the Minister discharges his duty with respect to such child by accommodating and maintaining him in a residential home, hostel or similar institution provided by the Minister for the reception of children or young persons in his care; or (b) by boarding him out with a fit person, whether a relative or not, or with a private institution willing to undertake the care of him.”⁴⁵
- [47]. In these cases children victims of trafficking, such as migrant children are predominantly placed under church managed homes. Moreover such children also have access to medical and health care services⁴⁶. However, there is no official statistical data to indicate the number of children who have benefited from these services or the number of children who have been given a residence permit under the Regulations.

has special needs such as in the case of pregnant women, disabled persons, victims of sexual or other forms of violence, and minors.

⁴⁴ Proviso to Article 5(3) of the Permission to Reside for Victims of Trafficking

or

Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 Legal Notice 175 of 2007

⁴⁵ Article 10 of the Children and Young Persons (Care Orders), Chapter 285 of the Laws of Malta

⁴⁶ Proviso to Article 5(3) of the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, 2007 Legal Notice 175 of 2007

- [48]. There is no provision of law providing for the detention of children who are victims of trafficking, but as stated above such children will be put under a care order and consequently are placed within children's homes. Moreover, where detention is applied to a child for an alleged commission of an offence or as detention for a committed crime, children are placed at special centres separate from adults.
- [49]. No information available indicates the availability of a family tracing programme for family reunification after assessing the child's best interests.
- [50]. As indicated in paragraph 32 above, victims may make use of the helpline 179 as operated by Appogg. However there is no helpline which is reserved as 116 specifically designed for the reporting of missing or sexually exploited children. On the other hand, reports of situations of exploitation of trafficked children may also be made on the anonymous phonenumber of the national police.

F. Best interests determination and durable solutions, including social inclusion/return

- [51]. While it is only the Regulations dealing with the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities that provide specific attention to dealing with children who are victims of trafficking, yet it is not excluded that such children seek asylum protection or even refugee status under the Refugees Act⁴⁷. If this occurs minor applicants seem to receive the same treatment and their application seems to follow the same procedure. In fact the Refugees Act does not provide particular consideration or establish different criteria in respect of applications for asylum or refugee status made by minors. Article 12 of the Refugees Act only provides for children who are found to be in need of care are to be allowed to apply for asylum and will be assisted under the procedures established in the Children and Young Persons (Care Orders) Act.

⁴⁷ Chapter 420 of the Laws of Malta available at:
http://www2.justice.gov.mt/lom/analytical_index.asp

G. Prosecution

- [52]. Prosecution for trafficking offences is carried out *ex officio* by the Police. There is no information to indicate that proceedings have been initiated against persons charged with trafficking of minors. In fact it seems that proceedings in this respect were only instituted for trafficking of persons of age and as indicated above are still pending.
- [53]. The Criminal Injuries Compensation Regulations⁴⁸ provide for the application for compensation by a victim of crime. However a person seeking compensation for injuries arising out of criminal activities must have sustained such injuries on the 1st January 2006 or thereafter and must be a citizen of Malta or one of the Member States. Moreover the maximum amount of compensation that may be liquidated is that of € 23,293.73c. Despite this, the criminal action does not bar any possible civil action for damages against the perpetrator.

H. Miscellaneous

- [54]. The issue of trafficking in persons or even in children does not seem to have raised public debate. Except for the protection of children who enter Malta as irregular migrants, there has in fact not been any projects in respect of child trafficking.

I. Good practices

- [55]. Since legal provisions relating to trafficking of children are still relatively new within national legislation and no case-law is available, it is not possible to identify good practices.

⁴⁸ Legal Notice 190 of 2007 available at:
<http://www.doi.gov.mt/EN/legalnotices/2007/default1.asp>

Annex 1 - Tables and Statistics

	2000	2001	2002	2003	2004	2005	2006	2007
No information is available to indicate the statistics herein requested.								
Number of children being granted temporary stay on grounds of trafficking								
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)								
Number of trafficked children receiving education/training, in particular secondary education and vocational training								
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)								
Number of final convictions based on child trafficking cases, per year								

Total of amount of compensation paid to trafficked children, per year								
Average of amounts of compensation paid to trafficked children, per year								
Range of amount of compensation paid to trafficked children, per year								

Any other tables or statistics relevant for child trafficking