

Submission to the 4th UPR on Malta



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About

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

aditus foundation was founded on the principles of the universality, interdependence and indivisibility of all fundamental human rights, and we strive to promote their understanding and application. Our main activities include the identification of priority areas, formulating advocacy strategies and working towards improvement in legal and administrative standards. This includes offering pro bono legal information and advice.

aditus has affiliations and memberships with the International Detention Coalition, the Platform for International Cooperation on Undocumented Migrants, the European Council on Refugees and Exiles and the European Network on Statelessness. We are also members of the Malta Refugee Council, the Europe-wide Coalition Against SLAPPs in Europe, and the Voice for Choice - Pro-Choice Coalition.

The aims of **Humanists Malta** are:

1. To promote Humanism in Malta by encouraging a greater knowledge of Humanism among its members and the wider community.
2. To elaborate, and express publicly, humanist positions on issues of concern.
3. To provide a forum for the intelligent exchange of ideas for those seeking fulfilment in an ethical secular life.
4. To propose such legislation as is likely to facilitate the achievement of its aims.
5. To help develop, through open discussion, the moral basis of a secular society and encourage ethical practices within our own membership and the wider community.
6. To engage with national and international humanist organisations, thereby providing its members with information and access to a wider world of humanist interest and cooperation.

7. To help develop educational programmes and online content focusing on secular ethics, science, history and critical thinking for members, their children, and the public at large as alternatives to supernatural interpretations of the human condition.
8. To collaborate with other voluntary organisations in Malta, in Europe and elsewhere which have an interest in developing and achieving similar objectives.
9. To take action within Malta, and within the world at large, to improve the conditions of humanity and denounce bigotry, intolerance, and the persecution of ideas.
10. To organise talks and other events for humanists and the wider community.
11. To engage in any other activities which are consistent with the principles of Humanism.

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Synopsis

1. The submission below presents aditus foundation's comments in view of the 4th cycle of Malta's UPR. The submission is organised thematically and refers to the recommendations made to Malta during the UPR's 3rd cycle. For ease of reference, we have included the individual recommendation numbers established during the previous cycle under each thematic heading.
2. The years between 2019 and 2023 presented significant challenges with regard to the rule of law and to stability in Malta. Towards the end of 2019, Malta was shaken by a series of shocking arrests and revelations made in relation to the brutal assassination of Daphne Caruana Galizia, and to the broader context of corrupt and illicit behaviour in which her murder occurred. Civil society took to the streets in unprecedented scenes of protest calling for accountability of the political classes. Whilst the protests did result in the resignation of the Prime Minister, his chief of staff and several ministers, severe institutional problems remain.
3. The public Inquiry¹ into the assassination of Daphne Caruana Galizia clearly stated that the Maltese government had created a culture of impunity that led to Daphne's murder and contained a number of recommendations. However it was widely felt that the Government failed to implement them in good faith². The legislative changes in order to strengthen the rule of law as recommended by the Venice Commission continue tentatively, with a marked lack of participation and dialogue with the public and civil society. In general, since 2018 civil society space is considered to have been narrowed, with an increasingly hostile environment for journalists and activists who campaign for justice³.
4. The independence of key stakeholders such as the Attorney General, the Chief Justice and the Commissioner of Police, in particular their method of appointment, remains problematic. The lack of independence of quasi-judicial tribunals, such as the Immigration Appeals Board and the International

¹ Daphne Caruana Galizia Foundation, [Courtesy translation of public inquiry report published](#), 2021.

² Council of Europe, [Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists](#), 2023.

³ European Commission, [2023 Rule of Law Report – Malta Country Chapter](#), 2023.

Protection Appeals Tribunal, has caught the attention of the Venice Commission, the European Commission and the European Court of Human Rights.⁴

5. Since the previous UPR Malta has still not established a national human rights institution in accordance with the Paris Principles and has still not adopted a consolidated law on equality and anti-discrimination.
6. Challenges were also seen in the dysfunctional asylum and reception systems, with serious delays, mass illegal detention and few integration possibilities. aditus refers to a separate submission relating to migration submitted to the 4th UPR by the Malta Refugee Council, of which aditus is a member, for more detailed information.

⁴ Ibid.; Judgment of the European Court of Human Rights of 20 December 2022, S.H. v. MALTA, 37241/21; European Commission, [2022 Rule of Law Report – Malta Country Chapter](#), 2022; European Commission For Democracy Through Law (Venice Commission), [Malta Opinion On Proposed Legislative Changes](#), 2020.

Administration of Justice, fair trial and Rule of Law

Titles: 110.40, 110.43 – 44, 111.20

Appointment of key stakeholders

7. In spite of recommendations by the Venice Commission and the European Union to de-politicise the appointments process of key stakeholders there has been no action to address the need for the involvement of the judiciary in the appointment of the Chief Justice. This is of crucial importance due to the multiple roles Article 96 of the Constitution requiring the direct appointment of the Chief Justice in accordance with a 2/3 majority in Parliament remains unchanged. The same can be said of the appointment of the Attorney General, Malta's chief prosecutor, whose appointment is also predominately under the power of the Prime Minister.
8. Furthermore, a number of independent of specialised judicial and quasi-tribunals continue to operate, many of which members are lawyers or lay persons appointed and removed **directly** by the Minister or Prime Minister⁵. The [Venice Commission](#), as did aditus foundation in its [feedback](#) to DG Justice, raised concerns as to the lack of independence of such tribunals. It is held that such tribunals do not enjoy the same level of independence as that of the ordinary judiciary and that the lack of further access to the Courts for individuals is problematic. Although aware that Milestone 6.3 and 6.4 of Malta's **Recovery and Resilience Plan** focus a review of the system, the deadline of the implementation is in 2026. In the meantime, the boards are deciding on crucial issues relating to detention, refoulement and asylum, data protection and freedom of information amongst others, which have clear implications on fundamental rights.
9. With regards to the appointment of judges and magistrates, although the appointment system has improved it should be noted that the Venice Commission, together with aditus foundation, has called on the government to

⁵ It should be noted that the Maltese legal system is largely built around these Tribunals, others include: Immigration Appeals Board, the International Protection Appeals Tribunal, Environment and Planning Review Tribunal, the Consumer Claims Tribunal, the Competition and Consumer Appeals Tribunal, the Industrial Tribunal, the Information and Data Protection Appeals Tribunal, the Mental Health Review Tribunal, the Patent Tribunal, the Police Licences Appeals Tribunal, the Panels of Administrative Review Tribunals and the Prison Appeals Tribunal.

strengthen the appointment system by making shortlisted candidates public before appointment by the President.

10. Depoliticise and strengthen the appointment system for the judiciary, the quasi-judicial tribunals and for the Chief Justice.

Length of judicial procedures

11. In relation to the length of judicial processes, although there have been some legislative changes to attempt to address the issue, the efficiency of the justice system has further deteriorated. The [2023 EU Justice Scoreboard](#) found that Maltese judicial processes have worsened with the estimated time to resolve cases being some of the longest with the EU and that the clearance rate for cases has diminished. Malta also has one of the lowest number of judges per capita and the lowest rate of female judges in the super courts in the European Union.
12. Although Malta has allocated substantial funds to the digitalisation of the justice system, it is still falling behind in areas such as use of digital technology by courts and prosecution service with regards to electronic case allocation systems, online filing, and availability of electronic tools for courts and prosecution services to communicate with court users, lawyers and other bodies.
- 13. Adopt a long-term plan aiming to reduce the duration of judicial procedures, including by appointing additional judges/magistrates and allocating adequate resources to the Courts of Law.**

Legal Aid

14. The two-test benchmark in order to be granted legal aid for civil and administrative cases is based on financial resources and merit:
1. The income threshold remained that of minimum wage, which stands at approximately €10,200 per annum and that assets held are less than €13,000. The asset threshold is extremely low considering that the average price house price in Malta is that of €250,000⁶. There is need to increase the minimum wage threshold to broaden the eligibility to a larger number of people who

⁶ Caritas found that 18.4% of persons who were at-risk-of-poverty or social exclusion were homeowners, whilst 9.2% were owners paying a mortgage, Caritas Malta, [A Minimum Essential Budget for a Decent Living](#), 2020.

might earn more than the minimum wage but still cannot afford the costs of a private lawyer.

2. Legal aid is only provided if there is *probabilis causa litigandi*. Although there are a few exceptions, in the majority cases this means that an individual is not eligible for legal aid that covers pre-litigation advice. Legal aid should not be linked with any specific court, tribunal or be restricted to any single procedure. Once the benefit is granted, it should be exercised at any Court, at any tribunal wherever the benefit is admitted and for every procedure, including those that are extra-judicial. In the same vein, the assistance should cover mediation and arbitration proceedings; any procedures that may be filed in court; presentation of official letters, judicial letters, interpellator letters; third part in lawsuit; procedures *parte civile*; procedures concerning sentenced persons; proceedings before quasi-judicial tribunals; out-of-court settlement proceedings; legal advice which does not necessarily lead to judicial proceedings; and any action provided by law, including *actio popularis*.
15. Legal aid in migration matters is only granted at appeal stages that challenge asylum decision in front of the International Protection Appeals Tribunals, age assessment and detention decisions, and during the first mandatory detention review in front of the Immigration Appeals Tribunal. A person is not entitled to legal aid should they wish to further challenge their detention after the first mandatory review.
16. **Ensure effective access to legal aid to persons needing it, including by increasing the income threshold to the mean average wage.**
17. **Expand the nature of legal aid services to also include legal information and advice.**

Unconstitutional Laws

18. According to Maltese jurisprudence when the Constitutional Court deems a law to be unconstitutional or breaching the European Convention of Human Rights it has held that this does not apply *erga omnes* and it relies on Parliament to amend, revoke or modify the law in order to bring it in line with the Constitution. The Constitutional Court is obliged to send any such judgement in Parliament, however there is no obligation on Parliament to amend, revoke or modify the law

within a stipulated time-frame. The lack of consistency or follow-up on the side of Parliament to follow up on Constitutional Court rulings has been raised as an issue by the Venice Commission and the European Commission⁷. It is not clear how many such cases have been tabled in Parliament and what action, if any, has been taken by Parliament⁸.

- 19. Enact legislation requiring Parliament to act on decisions of the Constitutional Court finding a legal provision unconstitutional or in breach of fundamental human rights.**

National Human Rights Institution

Titles: 110.2 – 110.09, 110.11- 110-15, 110.10, 111.15

20. A process which started in 2015, the Equality Bill and Human Rights and Equality Commission Bill were tabled in Parliament during the previous legislature in 2019, however both Bills stalled after the Second Reading at Committee Stage in 2020. The elections in March 2022 spelled the end of the process for these two Bills and to date no new drafts have been submitted to Parliament or presented to civil society. The proposed composition and structure of the Human Rights and Equality Commission in the proposed 2019 Bill was considered by NGOs to be problematic and contrary to the UN Paris Principles.
21. It is imperative that an Equality Act, without any opt outs on anti-discrimination legislation based on religious belief, is passed. This should be passed, together with an act that set ups a Human Rights and Equality Commission (or similar NHRI) which contains strong provisions relating to independent and effective decision-making, and an independent and effective remedy to challenge such decisions.
- 22. Adopt comprehensive anti-discrimination legislation protecting all persons in all spheres of life.**
- 23. Establish a national human rights institution in accordance with the Paris Principles.**

⁷European Commission, [2023 Rule of Law Report – Malta Country Chapter](#), 2023.

⁸ Parliamentary Question 7824, [Strument li jkollu l-forza ta 'liġi f'Malta jew xi dispożizzjoni tiegħu li jmorru kontra l-Kostituzzjoni](#), 2023.

Discrimination Against Women, Access to Sexual and Reproductive rights

Titles: 111.8, 111.1, 111.7, 110.82-84, 112.4-6

Sexual and Reproductive Rights Strategy

24. The Maltese National Sexual Health Strategy dates back to 2010 and has not been updated since. In this regard, an updated and modern sexual education and awareness programme needs to be developed and implemented nationwide. Access to contraceptives is not provided on the national health service and therefore financial and practical restrictions on contraception and contraception services need to be eliminated. All brands and methods of contraception, including LARCs, should be made practically accessible to all.
25. **Adopt a comprehensive national sexual health policy and strategy that envisages making available all methods of contraception to all.**

Access to sexual and reproduction rights, including family planning

26. While there might not be a clearly formulated fundamental human right to abortion, it has repeatedly been read into other rights including the right to life, health, freedom from inhuman and degrading treatment, freedom from gender-based discrimination, privacy and family life. Malta recently introduced amendments to the Criminal Code which allow for the termination of pregnancy by one doctor when there is an immediate risk to life of the pregnant person or with the added consent of three doctors when the pregnant person's health is at grave risk.
27. These amendments were considered to constitute a step backwards in the protection of the health of pregnant persons as the provisions were deemed to be

unworkable, vague and even dangerous⁹ [\[1\]](#). In this regard, we continue to urge Malta to review its legislation and to fully decriminalise abortion and to have abortion regulated as a matter of health policy.

28. Furthermore, we urge to remove from the punitive provisions in the Criminal Code for women who undergo abortion. In addition, we urge the provision of access to safe and legal abortion through public health services and licensed private providers at least to preserve a woman's physical and mental health, in cases of rape and incest, and in cases of severe fatal foetal impairment.

29. Introduce legislation granting access to abortion services.

Justice

30. Delays in the court system, specifically in relation to criminal cases of domestic violence, came to the forefront in 2022, due to high profile cases relating to murder victims of domestic violence and/or femicide. It transpired that there were 1,429 domestic violence cases pending before the Maltese Courts. [GREVIO](#) found that the Maltese courts have inadequate understanding of the change in paradigm in proving rape, of the role and importance of emergency barring orders and protection orders.

31. Ensure effective protection and remedies for survivors of domestic and other forms of gender-based violence.

⁹ Voice for Choice, [Press Release: Bill 28 has become a law that may kill women](#), 2023; Amnesty International, [Malta: Lives put at risk as parliament waters down bill seeking to partially decriminalize abortion](#), 2023. Council of Europe Commissioner for Human Rights: <https://twitter.com/CommissionerHR/status/1673354959058792448>.

Cooperation with Civil Society

Titles: 110.17, 110.18

32. There are no legal provisions relating to the obligation to consult or to notify the public before or during the drawing up of submissions, policies or laws in Malta. In practice public consultations on draft legislation and policy are carried out by individual ministries on an ad hoc basis, however this is not prescribed by law.
33. Law making via legal notices¹⁰ reduces transparency and scrutiny of the public. This is due to the fact that legal notices that amend subsidiary legislation do not have to pass through the scrutiny of the parliamentary process in the same way that primary legislation does.
34. The years between 2018 to date show a dismal track record in transparency and consultations with the public, specifically NGOs during the legislative process. The government tabled a number of crucial bills to parliament despite widespread criticism from journalists, academics and international press freedom organisations on the lack of public consultation. These include bills to [amend](#) the Constitution in 2020, the [Media Reform Bills](#) in 2022, the [International Protection \(Amendment Act\)](#) with the 2nd reading, committee stage and 3rd reading all carried out on the same day and the [amendment](#) to the ban on abortion in the criminal code.
35. **Adopt legislation granting civil society organisations the right to participate in the law-making process.**

¹⁰ Legal notices are pieces of legislation prepared by Ministries or other public bodies, in cases where the Parliament has delegated powers to make subsidiary legislation within the sphere of authority delegated to them.

Acceptance of international norms

Titles: 111.1, 111.8, 111.7

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

Freedom of religious belief

37. The landscape of religious belief is fast changing in Malta, as is the composition of the population: The National Statistic Office states that as of November 2021, 82.6%, identify themselves as Roman Catholic. The remaining percentages identify themselves as belonging to the Islam and Orthodox religions, whereas 4.47% identify as having no religious affiliation.
38. Yet it is noted that Maltese residents feel impositions or discriminations related to religious belief. According to a European Commission survey 2019, 37% of Maltese residents believed discrimination based on religion or belief was widespread in the country. This perception is also backed up by several examples from Maltese institutions which favour one religion over others.

Religious Privilege And Discrimination

39. There are numerous examples where institutions privilege the Roman Catholic Church in Malta:
1. in 2020, Prime Minister Robert Abela intervened to reinstate a large cross which had been removed following a Planning Authority enforcement order;
 2. the Maltese government recently co-sponsored a draft resolution to give the Vatican a more active role in UN health (including reproductive and sexual rights) issues;
 3. in 2019, Health Minister Chris Fearne ordered the withdrawal of a circular requiring the removal of religious items and images (though not crucifixes) from Mater Dei hospital (the main state hospital in Malta);
 4. blasphemy laws were repealed in 2016, but the government still appears to attempt to stifle criticism of the Roman Catholic church (for example censorship of a carnival float referring to clerical sex abuse at the St Joseph Institute, February 2020);
 5. there are state-sanctioned crucifixes in every hospital room, classroom and public building;
 6. a prayer is recited at the start of every parliamentary sitting;
 7. when taking oaths or giving testimony, anecdotal evidence suggests the assumption is (and social pressure expects) that one is Roman Catholic;

8. the emblem of the Maltese police force is “Domine Dirige Nos” (Lord, Guide Us), apparently excluding non-believers;
9. in state institutions such as prisons and hospitals, the only available pastoral care is religious;
10. civil weddings, including gay weddings, are legal but, unlike Roman Catholic weddings, Humanist weddings (and all other non-Catholic weddings) require a registrar to be present;
11. the Archbishop of Malta, along with only the President and the Prime Minister, are exempt from number plates on their vehicles.

Religious Education

40. Roman Catholic Church schools may discriminate against otherwise qualified teachers, and refuse to enrol pupils, if they are not Roman Catholic.
41. While the introduction of Ethics in state schools is welcome, such schools are still dominated by the prevailing Roman Catholic religion, including with prayers, hymns in assembly, and regular masses. Furthermore, only Catholic religion is taught in state schools, with children having other beliefs offered the option of Ethics.

Sex Education

42. Roman Catholic church schools are largely funded by the state. Under a 1993 Concordat with the Vatican, they are not obliged to provide any sex education. Furthermore the Roman Catholic Church is also funding an educator to promote an anti-abortion agenda.
43. In fact sex education, even in state schools, is patchy and often filtered through teachers' religious positions. Quite possibly as a result, teenage pregnancy rates in Malta are the highest in Southern Europe; Maltese teenagers are some of least likely to use contraceptives and Malta has the highest syphilis rate in Europe.

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