## Questionnaire on Role of Organised Criminal Groups with regard to Contemporary Forms of Slavery

**Feedback of the Government of Malta**

**1. a) Is there evidence of organised criminal groups engaging in contemporary forms of slaveryin your country?**

With regards to sexual exploitation, there have been people coming from different organised groups who have trafficked women into prostitution in Malta. There have been persons who were arraigned in court with crimes related to human trafficking, keeping up brothels and living off the earnings of prostitution.

With regards to domestic servitude, we have no information regarding organised criminal groups who operate in Malta in order to recruit persons for domestic servitude purposes. The cases of domestic servitude relate to individuals rather than groups.

With regards to forced labour, we have had instances of criminal groups and/or organisations who facilitated the engagement of a number of labourers particularly in the cleaning industry and the construction industry.

During investigations involving certain Mobile Organised Crime groups, the Major Crime Unit has received information by members of these groups specialising in residential burglaries, that these individuals are overseen by individuals, who would even search them after committing the thefts. While it is unclear in which way, these individuals are actually paid, it appears very clearly that these individuals work under some form of intimidation. **Whether this amounts to slavery would need to be further analysed** as these individuals are very reluctant to divulge information, and most of the information, on how these gangs operate have been derived from one individual.

We have no evidence of children working in slavery to date.

**b)** When it comes to sexual exploitation, the most prominent organised criminals hail either from the Eastern European Bloc or from South American countries. People within these groups transfer people for prostitution purposes. These women in prostitution operate in massage parlours and/or provide escort services. Offenders operate both in the transfer of victims and/or act as their pimps.

On the other hand, there is evidence that in most cases of forced labour, exploited persons hail from Asian countries particularly the Philippines. Recruiting agencies serve as organised criminal groups in order to recruit their nationals in exploitation overseas.

**c)** Most criminals operate internationally; however, there are members of the organised criminal groups who work domestically.

**2.** a) Sexual exploitation, members of the OCGs act as pimps, collect money from prostitutes, transport women to and from escort services, and supervise these women in prostitution.

While organised crime groups specialised in theft and pickpocketing appear to be very active in procuring false documentation to ease the movement of its members it is very unclear what level of intimidation is exerted on these individuals. While a level of exploitation is apparent, there is no specific information that suggests slavery.

**b)** N/A

**c)** Yes, there is evidence particularly about Labour Exploitation of individuals who are victims of deception and subsequently trafficked in order to provide services in the construction industry, catering establishments and cleaning industries, all of which working under legitimate businesses. However, this being said, we have no evidence that OCGs run legitimate businesses themselves. Their role is that of providing workers to these industries.

**d)** N/A

**e)** Not necessarily. However, victims may fear reporting the crime to the police because of threats and violence that they/their families may be exposed to as an effect of their reporting.

**3. Legislative Frameworks**

***a.*** Article 83A of the Criminal Code, Chapter 9 of the Laws of Malta, makes it an offence for any person to promote, constitute, organise or finance an organisation with a view to commit a criminal offence with a punishment of imprisonment for a term of four years or more. Any person who actively takes part in the organisation’s criminal activity, including providing information or material means or recruiting new members, shall be liable to a term of imprisonment from four to nine years.

Membership in a criminal organisation entails a punishment of imprisonment from two to seven years and where the organisation is often or more persons, the punishment is increased from one to two degrees.

Persons who are found guilty of the above offences and who are representatives of a body corporate and the offence was committed for the benefit, in part or in whole of that body corporate, are liable also to fines ranging from €34,940.60 to €1,164,686.70.

The criminal action in terms of article 83A may be prosecuted in Malta notwithstanding that the organisation of persons is based or pursues its criminal activities outside Malta.

**Convictions in terms of Article 83A of the Criminal Code since 2015**

Since 2015 there have been 5 convictions in total ranging from 40 months to 7 years imprisonment. The highest fine given was that of 10,000 euros whereas court fees ranged from €973.33 to €8144.40.

**Police records**

The Police arraigned cases in court with charges of with charges of human trafficking as follows:

2015 – 1 case

2016 – 2 cases

2017 – 2 cases

2018 – 4 cases

2019 – 0 cases

2020 – 2 cases

The following were cases of human trafficking decided by court:

2015 – 1 case sine die

2016 – 1 case decided

2017 – 2 cases decided (in appeal stage)

2018 – 3 cases decided

2019 – 2 cases decided (in appeal stage)

2020 – 0 cases decided

***b.*** The Criminal Code has provisions aggravating the punishment, particularly when the offence relating to contemporary forms of slavery, is committed with the involvement of a criminal organisation within the meaning of article 83A (see above).

These are:

Article 203 – *Defilement of minors* – punishment is, from four to eight years of imprisonment, increased to six to twelve years of imprisonment.

Article 204A – *Instigation with violence of persons under the age to prostitution or to participation in a pornographic performance* – punishment is, from six to twelve years of imprisonment, increased by one degree, with or without solitary confinement.

Article 204B – *Inducing persons underage to prostitution or to participation in a pornographic performance* – punishment is, from five to ten years of imprisonment, increased to six to twelve years of imprisonment.

Article 204C – *Participation in sexual activities with persons under the age of sixteen* – punishment is, from five to ten years of imprisonment, increased from five to ten years of imprisonment is increased by one to two degrees.

Article 204D – *Unlawful sexual activities* – punishment is, from five to ten years, increased by one degree.

Article 208A – *Producing, distributing, disseminating, importing, exporting, offering, selling, supplying, transmitting, procuring for oneself or another indecent material of persons underage* – punishment is, from twelve months to five years, increased to two to eight years, with or without solitary confinement.

Article 208AB – *Advertisement for sexual tourism* – punishment is, from two to five years, increased by one to two degrees, with or without solitary confinement.

***c.*** Article 3(2)(b) of the Security Service Act, Chapter 391 of the Laws of Malta, stipulates that the Malta Security Service, which is the entity in the country empowered to use special investigative techniques, including surveillance and interception of communications, has, *inter alia*, the function to protect the interests of public safety, in particular, the prevention or detection of serious crime. These techniques are also employed in combatting contemporary forms of slavery.

***d.*** Article 12 of the Security Service Act, Chapter 391 designates a serving or a retired judge of the Superior Courts or a retired Attorney General, to be known as ‘Commissioner’ who has the function to investigate into any complaint made about the Security Service as specified in Schedule 1 of the Act.

***e.*** Malta has the following legislative frameworks on money laundering and criminal asset recovery:

* In the process of passing judgement, the Courts of Malta, by virtue of article 23B of the Criminal Code, Chapter 9 of the Laws of Malta, have the additional power to order the forfeiture of the proceeds of the offence in favour of the Government of Malta.
* The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
* The Medical and Kindred Professions, Chapter 31 of the Laws of Malta;
* The Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta;
* Prevention of Money Laundering and Financing of Terrorism Regulations, Subsidiary Legislation 373.01 of the Laws of Malta.
* The Asset Recovery Bureau Regulations, Subsidiary Legislation 9.23 of the Laws of Malta.

Parliament enacted Proceeds of Crime Act; its objects and reasons are the provisions for the recovery of proceeds of crime. The Bill is to set up and restructure the Asset Recovery Bureau also defining the structure of the said Bureau and defining its relationship with and independence from the Government. The Act also provides the basis for the harmonisation of the procedures enacted under various laws in respect of proceeds of crime. Moreover, the Act establishes a section of the Civil Court for the purpose of regulating disputes relative to the confiscation of the proceeds of crime and for civil procedures for the recovery of assets constituting proceeds of crime. Provision is also made for *in rem* proceedings on property consisting of proceeds of crime.

***f.*** The Proceeds of Crime Act which targets organised crime, has provisions providing for the confiscation of proceeds of crime without the requirement of a criminal conviction. The law empowers the Asset Recovery Bureau to file civil proceedings for the confiscation of assets acquired through criminal means. Significantly, the *onus probandi* will shift on the individual to show that the asset was acquired legitimately. The Civil Court (Asset Recovery Section) will determine on a balance of probability and the Asset Recovery Bureau has the possibility to institute court proceedings against an asset when its owner cannot be traced or is abroad.

Appeals from the Civil Court’s (Asset Recovery Section) decision are allowed on points of law or on the basis of an error of fact resulting from the records of the case.

***g.*** Malta’s law on corruption is criminal offence based and can be found in the Criminal Code, Chapter 9 of the Laws of Malta. It comes under the general Title III ‘Of Crimes Against the Administration of Justice and other Public Administrations’ and more specifically under sub-title IV ‘Of Abuse of Public Authority’.

With the enactment of the Permanent Commission Against Corruption Act, Chapter 326 of the Laws of Malta, the above-mentioned Criminal Code provisions became the law of corruption per se as they are today. According to article 6 of the said Act, the following shall be corrupt practices:

1. the acts or omissions which constitute the offences under sections 112 to 118, 120, 121, 124 -126, and 138 of the Criminal Code;

1. the acts or omissions which constitute an attempt to commit any of the aforesaid offences or which constitute complicity in any of those offences under sections 41 and 42 of the Criminal Code; and
2. conspiracy to commit any acts or omissions which constitute any of the aforesaid offences. A conspiracy shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between two or more persons.

These are general laws and could be invoked even in relation to contemporary form of slavery.

***h.*** The main legislative mechanisms in place to protect witnesses in criminal proceedings involving organised criminal groups are found in the following legislation:

The Police Act, Chapter 164 of the Laws of Malta – protection under a witness protection programme and witness protection agreement with other countries, including evidence by contemporaneous video conferencing.

The Criminal Code, Chapter 9 of the Laws of Malta – protection order against the accused including the right to make legal submissions and be present at court proceedings and engage legal assistance.

The Protection of the Whistleblower Act, Chapter 527 of the Laws of Malta – protecting employees in both the private and public sector to disclose information regarding improper […] and to protect employees who make said disclosures from detrimental action.

**4. Victims’/survivors’ access to justice and to remedies**

***a.*** The Victims of Crime Act, Chapter 539 of the Laws of Malta, specifies that victims are entitled at least to a subsistence-level standard of living. In accordance with their needs, trafficking victims have the right to access specialist support services, free of charge. Family members of the victim are also entitled to access victim support services in accordance with their needs and the degree of harm suffered as a result of the crime. Safe and adequate shelter or other forms of accommodation is offered to trafficking victims who often face imminent risk of repeat victimisation, intimidation and/or retaliation.

Subsidiary Legislation 217.07 titled ‘Permission to reside for Victims of Trafficking or Illegal Immigration who cooperate with the Maltese Authorities Regulations’, issued under the Immigration Act, Chapter 217 of the Laws of Malta, grants permission for victims of trafficking who cooperate with the Maltese authorities to reside in Malta. These regulations apply to third-country nationals who are, or have been, victims of offences related to the trafficking of human beings, even if they have entered Malta unlawfully. The legislation defines ‘cooperation’ as: *“the giving of information by the third country national to the immigration authorities related to his arrival in Malta as a victim of trafficking… in particular, the names of persons of traffickers and their accomplices or details related to points of departure, which information leads to, or contributes significantly to, the tracing or prosecution of the trafficker”*. The Principal Immigration Officer is obliged to grant the person in question a period of reflection not exceeding two months, during which the victim is to make an informed decision on whether to cooperate in criminal proceedings against the perpetrators of the crime.

The Victims of Crime Act (Chapter 539) states that trafficked victims who have been awarded protection by the state are entitled to medical treatment in accordance with the national healthcare system, for as long as such treatment is necessary. Subsidiary Legislation 217.07 grants a third country national who is a victim of trafficking, for the duration of his/her residence permit, with “*the necessary medical care and other assistance, when he does not have sufficient resources, and has special needs such as in the case of pregnant women, disabled persons, victims of sexual or other forms of violence, and minors”.*

Article 10 of the Victims of Crime Act also provides legal assistance, through the Legal Aid Office, to victims of crime who wish to avail themselves of this service.

***b.*** In the negative, except for the provisions in Subsidiary Legislation 217.07, referred to above.

***c.*** Recognised victims have the right to access information on compensation for criminal injuries under the Criminal Injuries Compensation Regulations in terms of Subsidiary Legislation 9.12 if the crime giving rise to such injury has been reported to the police or is subject to criminal proceedings. Victims are provided access to free legal assistance with a view to claiming compensation for criminal injuries sustained under Article 27 of the Restorative Justice Act, Chapter 516 of the Laws of Malta or through the Department of Industrial and Employment Relations. A Victim Support Unit also exists within the remit of the Department of Probation Services to assist victims, inter alia, with their cliams.

Any victim who has been served with the notice of first hearing or admitted into the proceedings, or in cases where the prosecution lies with the injured party, may avail himself/herself of the right to legal aid. The victim may request an advocate for legal aid in writing or orally. In criminal proceedings and during the trial, victims may be admitted and may be assisted by a lawyer. They have the right to examine or cross-examine witnesses. The victim may also produce evidence during such proceedings.

***d.*** The Criminal Injuries Compensation Regulations (Subsidiary Legislation 9.12) do provide for compensation to victims or survivors of slavery.

***e.*** According to Article 23B of the Criminal Code*,* Chapter 9 of the Laws of Malta, the forfeiture of proceeds from criminal offences goes in favour to the Government of Malta.

***f.***

*Domestic legislation*

At the domestic level, Malta has effectively identified the lack of autonomy of victims of THB by not punishing them for certain offences for being victims. Although article 33(b) of the *Criminal Code*, Chapter 9 of the Laws of Malta exempts (in a general manner) a person from criminal responsibility if at the time of act or omission complained of, such person was constrained thereto by an external force which he could not resist; article 248E(6) is much more straightforward and specific in the application of the non-punishment principle when it comes to offences falling under THB. The article explicitly states that the offences committed in respect of trafficking of human persons shall not be liable to punishment if the offender was compelled thereto to commit them by another person.

Moreover, consequential amendments relative to this article do also feature in the *Immigration Act*, Chapters 217 of the Laws of Malta. In fact, article 248(7) provides for the inapplicability of removal orders under the *Immigration Act* if the Principal Immigration Officer has reasonable grounds to believe that the person concerned is a victim of THB.

Malta has also legislated *ad hoc* regulations under the *Immigration Act* granting permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese authorities [Subsidiary Legislation 217.07].

As complimentary provisions to the *Criminal Code*, article 15 *et sequitur* of the *Victims of* *Crime Act,* Chapter 539 of the Laws of Malta include a transposition of EU Trafficking 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 and Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

*Inter alia,* these articles make provision for the assistance, support, and protection of victims, including minor victims of trafficking.

**5. Other Questions**

**a)** Most challenges with regards to sexual exploitation, is the reluctance by victims to provide information and subsequently to tender evidence against the offenders. Although victims testify via video conferencing techniques and witness protection is also provided, most victims fear for the lives of their relatives. Most often, their relatives reside in close proximity of other members of the OCGs.

With regards to Labour Exploitation, many victims would not even realise that they are victims of human trafficking. The think that the injustices incurred are related solely to breach of employment regulations.

**b)** Yes, there have been times when Malta requested the assistance of other countries and vice-versa.

**c)** With regards to sexual exploitation, given that most non-essential shops have been closed due to COVID-19 restrictions, and shops operating as a fronts to prostitution such as massage parlours were closed, prostitution was displaced into private dwellings.

**d)** N/A.

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