



**Convention on the Elimination
of All Forms of Discrimination
against Women**

Distr.: General
18 May 2005

Original: English

**Committee on the Elimination of Discrimination
against Women**
Thirty-first session

Summary record of the 663rd meeting

Held at Headquarters, New York, on Monday, 19 July 2004, at 3 p.m.

Chairperson: Ms. Shin (Vice-Chairperson)

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In the absence of the Chairperson, Ms. Shin, Vice-Chairperson, took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 18 of the Convention (continued)

Combined initial, second and third periodic reports of Malta (continued) (CEDAW/C/MLT/1-3)

1. *At the invitation of the Chairperson, the members of the delegation of Malta took places at the Committee table.*

2. **The Chairperson** invited the delegation to respond to questions raised at an earlier meeting.

3. **Ms. Bugeja** (Malta) explained that the Convention had not been incorporated into domestic legislation because the domestic laws were fully compliant with the provisions of the Convention. However, it was entirely possible that the Maltese courts might turn to the Convention as a source of interpretation. Malta had made every effort to publicize the Convention, and copies of the text had been distributed to Government officials, schools, women's organizations and other national institutions. Gender units had been set up in government departments and parastatal organizations, with a view to promoting gender equality. The Convention had not been translated into Maltese because English was an official language and the majority of the population was bilingual. The Optional Protocol had not yet been signed because the Government was awaiting advice from the Attorney General's office as to whether there were any legal impediments to doing so. The Protocol would become operative as provided by article 16, paragraph 2, without having to be incorporated into domestic law.

4. The right of individual petition had been granted by a Governmental declaration on 1 May 1987, prior to the enactment of the European Convention Act. The initial, second and third periodic reports of Malta had been submitted in December 2002. They had been prepared by a consultant engaged by the then Ministry for Social Policy, in consultation with the relevant departments, entities and individuals. The reports had not been formally adopted by the Government and had not been submitted to Parliament. The Government had not deemed it necessary to present the reports to Parliament because Maltese domestic legislation had

already been rigorously screened by the European Union and the necessary amendments ensuring gender equality had been adopted. It was the Government's firm belief that no discriminatory legislation remained. The reports would be made available to non-governmental organizations, if so requested. The Government of Malta would take the necessary steps to address the Committee's comments and would follow the new guidelines established for reports submitted after 31 December 2002. In the meantime, the National Commission for the Promotion of Equality between Men and Women (NCPE) would disseminate the Convention as widely as possible.

5. Regarding reservations, Malta had entered a reservation to article 11 to allow for legislation to protect the health and safety of women or the human foetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations. The reservation to article 16 was made so that the provisions of paragraph 1 (e) could not be interpreted as an obligation to legalize abortion. Regarding the reservation to article 13, although the Social Security Act had originally recognized the husband as the head of household, following a 1996 amendment, it was the Director of Social Security who had the right to designate the official head of household. A final amendment had been made to the Social Security Act in 2003 to remove any remaining discriminatory provisions. With respect to the withdrawal of the reservation to article 15, the Ministry for the Family and Social Solidarity was seeking legal advice regarding that possibility.

6. In response to the query about non-governmental organizations (NGOs), a number of international women's organizations had a branch in Malta, including the National Council of Women. NGOs could apply for State funding by submitting a request for funds and a business plan to the NGO Unit of the Department of Family Welfare. A Committee appointed by the Ministry for the Family and Social Solidarity evaluated the requests annually and made recommendations to the Minister on the allocation of funds. The National Commission for the Promotion of Equality between Men and Women (NCPE) had been set up in January 2004 and was composed of seven members with backgrounds in law, education, gender issues and so on. In the last budget, the former Commission for the Advancement of Women had received 2.7 per cent of the Government funds allocated to the Ministry for the Family and Social Solidarity.

7. NCPE collaborated with all departments and ministries to draw up and implement equality policies. It ensured that Government officials possessed the necessary knowledge to incorporate a gender perspective in their work and that women's concerns were integrated in all legislation and policies, in accordance with the Convention. NCPE was consulted in the drafting of any new laws and was the legal entity responsible for monitoring compliance with the Act to Promote Equality for Men and Women. Gender equality was monitored through annual reports submitted by the gender units established in Government departments and public entities. The National Commission had made every effort to sensitize Maltese society to the provisions of the Act to Promote Equality for Men and Women. It had contacted advertising agencies, banking institutions and the media to ensure that they respected gender equality and also monitored the publication of advertisements to identify gender-stereotyped statements and other discriminatory practices.

8. NCPE had received 26 gender discrimination complaints during the first six months of 2004. When responding to complaints in the public service sector, it consulted primarily with the Management and Personnel Office within the Office of the Prime Minister. Issues concerning employees in the private sector were discussed with the Department of Industrial and Employment Relations. Although NCPE was part of the Ministry for the Family and Social Solidarity, it possessed full discretion in its decisions and actions. It presented an annual report on its activities to the Minister, but did not receive instructions from her. Since its creation in 2004, the National Commission had been following its own two-year Strategic Policy Directive 2004-2006. A number of measures that could help redress the current situation had been identified and included reinforcing gender mainstreaming in all policies and at all levels of government and private enterprise; ensuring adequate gender representation at all levels of political parties, trade unions and other social partners; increasing gender awareness in university courses, scientific research and medical services; and eliminating stereotypes through educational and media campaigns.

9. Regarding the enforcement of the Maltese Constitution, recourse against infringements of its provisions could be made to the First Hall of the Civil Court and to the Constitutional Court. Fundamental rights and freedoms, including protection from discrimination on the grounds of sex, were enforceable before the Maltese courts, in accordance with article 46

of the Constitution. Although no mention had been made of the Ombudsman in the report, NCPE worked closely with his office and would continue to stress the importance of the Convention.

10. The Domestic Violence Bill was currently being drafted by the Attorney General and would subsequently be submitted to the Cabinet and to Parliament. The draft covered such aspects as protection of the victim, the arrest and arraignment in court of the perpetrator, treatment of the perpetrator, and intervention by the State in proceeding with actions on behalf of victims in case of subsequent acts of violence. A specific law on domestic violence was considered necessary because the provisions of the Criminal Code were too broad.

11. Regarding support for teenage mothers, a number of centres specializing in teenage pregnancy were still in existence. It was unclear whether or not the availability of such centres encouraged teenage girls to have an early sex life; teenage pregnancies did not appear to have increased. One of the centres' aims was to ensure that pregnant teenagers proceeded with their education and improved their employment opportunities. Various support services were also offered to expectant fathers.

12. As part of the implementation of the Plans for Gender Mainstreaming, a series of workshops on gender-awareness training and gender-impact assessment had been undertaken for Government officials at senior and middle management levels, subsequent to which recommendations had been drawn up and passed on to top officials. The gender-impact assessment training had also involved the devising of pilot projects by different ministries. The Government had reiterated its commitment to gender equality and to integrating the gender perspective in all levels and areas of public administration in 1999, which was to have been achieved by making public officials at all levels and in all Government departments and entities accountable for the implementation of gender mainstreaming in 2000. Gender mainstreaming targets had so far been introduced in specific ministries.

13. Turning to article 4 of the Covenant, she said that she agreed with the statement that it was necessary to go beyond formal legislation in order to arrive at de facto equality between men and women. As for whether the Government of Malta intended to adopt any temporary special measures, particularly in employment and to increase political representation, she presumed that the Government would take all

necessary measures to ensure that the legislation was fully implemented in order to arrive at de facto equality between men and women. With regard to the exact wording of the Constitution regarding temporary special measures, she pointed out that its article 45 (11) stated: “Nothing in the provisions of this article shall apply to any law or anything done under the authority of a law, or to any procedure or arrangement, insofar as such law, thing done, procedure or arrangement provides for the taking of special measures aimed at accelerating de facto equality between men and women, and insofar only as such measures, taking into account the social fabric of Malta, are shown to be reasonably justifiable in a democratic society.”

14. Turning to article 5, she said that, while violence was indisputedly not committed solely against females, the statements by the Committee were not supported by the contents of section 5.19 of the combined reports, entitled “Violence against women”, or of section 16.19, which had the same title. Attributing lack of awareness or sensitivity of the gender specificity of violence to the delay in finalizing the domestic violence legislation was completely uncalled for since it was definitely not the case.

15. As for the classification of rape in the Maltese Criminal Code under crimes against the good order of the family and whether that was anachronistic and should be remedied immediately since rape was a crime against the person, she said that it should be noted that rape was in fact classified as a criminal offence under “crimes against the peace and honour of families and against morals”. Classifying it as a criminal offence against morals was not considered anachronistic, and in any event, whether classified as a crime against the person or as a crime against morals did not materially affect the gravity of the crime or the related punishment.

16. The Domestic Violence Unit was part of the national agency offering social support services, which received 850,000 Maltese liri (approximately \$2.5 million) from the Government, representing 32 per cent of the budget allocated to the Ministry for the Family and Social Solidarity. The agency also employed a large number of qualified social workers to work in various areas, one of which was domestic violence. That unit also worked very closely with the police. Support in the form of counselling therapy and legal advice was offered to all clients using the unit’s services. Financial aid available under the Social Security Act was also accessed for clients in need. Other support systems were available from church

organizations which worked very closely with the agency. As for the question concerning the lack of financial recognition of homemaking and voluntary work and how non-entitlement to a pension could reflect equality, she said that the situation was an issue which NCPE had highlighted and would be working to rectify.

17. Referring to the subject of education, she pointed out that the new National Minimum Curriculum, which had been introduced in December 1999, was based on the principle of gender equality, and so took into consideration Convention principles. Teachers were being trained, but the impact on students had not so far been assessed. With respect to an assessment of the Gender Issues Committee at the University of Malta, the minutes of the Committee’s monthly meetings referred to the identification of sources of unequal opportunities or treatment. Action was taken on specific grievances, and the Committee worked with the university ombudsman regarding specific steps. It sought to promote a policy of mainstreaming gender balance at all strata of policymaking and decision taking.

18. The Gender Issues Committee was concerned with promoting a policy of equal opportunity, including specific help to women in overcoming problems, by seeking to facilitate conditions for women and men with special family commitments and by organizing seminars and workshops to raise awareness, especially when national related legislation was being debated. It received and monitored complaints from university staff and students regarding sex discriminatory practices and worked with special advisers on sexual harassment, recommending appropriate policies and procedures. It promoted research and teaching that reflected the knowledge, experience and aspirations of both men and women, compiled annual lists of these dealing with gender issues and policies by all the University’s faculties and institutes, which were published on web pages and in newspapers, compiled annual lists of new courses by various departments specifically dealing with gender-related issues, and disseminated papers, articles and debates on mainstreaming and gender issues.

19. The Gender Issues Committee established networks with individuals and organizations with similar objectives in Malta and internationally, and acted as a focal point for the University on gender issues. It worked together with the National Statistics Office in analysing new gender statistics with the aim of highlighting imbalances in positions held by men

and women so that improvements were seen to be justified. It monitored employment conditions at the University, scholarship awards, selection and promotion criteria, interviewing policies, and female representation on committees, boards, as well as the University Senate and Council. Lastly, that Committee had a consultative role regarding policies for national government organizations and NGOs, and a mentor scheme enabling students to have access to guidance regarding course development and careers and raised the awareness of female academics and administrative staff, exerting pressure to have female representatives on all boards and national delegations.

20. The Gender and Development Diploma was offered by the Workers' Participation Development Centre of the University of Malta and sponsored by the Government for public officials wishing to follow the course, which had begun in 1995 and was not obligatory. Through the diploma, participants had obtained substantial knowledge of gender issues, which had proved to be an effective resource, particularly in the case of public officials who were focal points on gender equality.

21. Turning to article 6, she said that although the White Slave Traffic (Suppression) Ordinance was a law dating back to 1930, it had been amended to a significant extent on numerous occasions and had therefore been brought into line with more current situations and requirements. In the past five or six years, the police had been dealing with reports of foreign women practising prostitution in Malta. Recently, the reports involved allegations of trafficking of women from the Russian Federation and Ukraine. There had been convictions, and some cases were still sub judice.

22. Apart from the Ordinance, there were other provisions in the Criminal Code relating to the trafficking in persons. Section 248 B of the Criminal Code stated: "Whosoever, by any means mentioned in article 248 A (2), traffics in a person 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 of imprisonment for a term from two to nine years." Section 248 A (2) of the Code stated: "The means referred to in sub-article (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."

23. There were various reported cases of prostitution, but each one had to be verified. According to the police, since January 2003 four major cases involving foreign women had been reported, investigated and prosecuted. In those cases, 17 males and 2 females had been arraigned in court. With regard to support for victims, the Police Act provided that the Attorney General, on the request of the police, might include in the Witness Protection Programme any person who was either a victim of crime or an accomplice in any serious crime and who decided to pass on information to the police and give evidence against the principal perpetrator. The crime victim might also enjoy certain benefits under that programme for the protection of his life and property. Under the law, a victim providing evidence *viva voce* during the trial was screened from the accused and from any television filming. Crime victims could be present during court proceedings.

24. Under Maltese law, it was loitering for the purpose of prostitution that constituted a criminal offence and not the act of prostitution. The Health Promotion Department in the Ministry of Health dealt with matters relating to sexual health. The subject of prostitution and sex work was raised and discussed in schools. Voluntary counselling services were offered to women who were caught loitering and arraigned in court. The police were also involved in providing protection to those women who no longer wished to remain in the prostitution business, particularly in regard to protecting them from those who gained from their services.

25. Turning to article 7, she said that at the most recent European Parliament elections there had been two female candidates out of a total of eight standing on behalf of the Nationalist Party. One had come close to being elected. The present Prime Minister's commitment actively to encourage the participation of women could be seen in the Cabinet that he had appointed in March 2004, where the three female Members of Parliament elected on behalf of his party had been given ministerial posts, two as cabinet ministers and one as a junior minister. The Malta Labour Party and the Alternattiva Demokratika both had a quota system, but ultimately the right to vote was a right enjoyed by every citizen, who was entitled to exercise it freely. Women and men had had equal rights since 1947 to vote in and contest national general elections and, since their establishment in 1993, local council elections. In the current Parliament, 9.2 per cent of members were women; 17.6 per cent of local councillors were women; and 43.6 per cent of the top

10 grades of government service were filled by women, although there were no women in the top two grades.

26. As for article 8, she said that all females who had passed the examination for the foreign service and were willing to be part of it were employed. The new permanent secretary in the Ministry for Foreign Affairs was a female career public officer. Turning to article 9, she said that the requirement for a woman to apply for a new passport following marriage was not discriminatory. Only women who changed their surname by adopting their husband's upon marriage were required to obtain a new passport. Women opting to retain their maiden name upon marriage were not required to apply for a new passport. A woman who had married in Malta did not need to produce a marriage certificate when applying for a passport.

27. There were instances where a Maltese woman was entitled to adopt the citizenship of her husband upon marriage. Some countries did not allow dual citizenship, and in such cases, if the woman opted to renounce her Maltese citizenship and hold her husband's she would not be entitled to hold a Maltese passport. A married woman was required to furnish her husband's passport number to enable the passport office to investigate whether she was entitled to a Maltese passport. A married woman holding a Maltese passport issued after 1 January 1998 was not required, if her personal details remained the same, to give her husband's details on the application form for a new passport.

28. Turning to article 10, she said that primary and secondary education was compulsory in Malta. Education at post-secondary and tertiary levels was considered as post-compulsory education. In 2003, more than 9,000 people had attended adult evening courses, and the great majority of them were women. Such courses covered a wide range of subjects from basic literacy to those of an academic nature, ranging from crafts and music to vocational studies. They did not have a vocational guidance component. The success rate of females at the tertiary level was being maintained: there was a higher percentage of females than males successfully completing tertiary-level studies. In 2003, 57 per cent of all University of Malta graduates were females. Females were also doing better than males at the secondary level.

29. All university students in Malta received government stipends during their studies, so the issue of scholarships and grants did not arise. Co-education in public schools was limited to primary and post-

compulsory education. Most private schools were gender-based and few offered co-education. Independent schools were mostly co-educational. The gender issue was included in teacher training. As for whether the Government was doing anything to encourage male students to take female-dominated courses, she said that that was done basically through guidance and counselling at the secondary level. In general, there did not seem to be a lack of participation by women in sport. In all schools, males and females were given the same opportunities to practise sport, in accordance with the principle of gender equality.

30. Turning to article 11, she said that most measures that sought to achieve a balance between work and life were applicable to both women and men. Such measures were already encouraging a better male/female ratio in the workplace. The public service had championed those measures, and the results were currently being discussed with the private sector. It was Maltese Government policy to train all public-service officers and human resource managers with the aim of accelerating *de facto* equality. Any remaining discrepancies in wages were due to differences in the average gross annual salaries of men and women that arose from the different occupational categories in which they were employed. Thus the gender gap in income, rather than wages, tended to result by default rather than from direct discrimination. The issue of the wage differential was being addressed through seminars held among the groups representing key stakeholders, such as unions, employers' associations and industrial and employment organizations. The NCPE was also going to undertake a gender pay review study as part of a European Social Fund project to be carried out in the period 2004-2006.

31. The Conditions of Employment Regulation Act and the Industrial Relations Act had been repealed in December 2002 and replaced by the Employment and Industrial Relations Act, which regulated the conditions of work of private and parastatal (non-civil service) employees. That Act did not define any particular role for the Ombudsman, whose duties were laid down under the Ombudsman Act of 1995. The tourism sector was staffed chiefly by Maltese workers. The number of migrant workers in that sector was minimal. With accession to the European Union, citizens of other European Union States who worked in Malta would enjoy the same benefits and conditions as Maltese workers. The Department of Industrial and Employment Relations ensured the applicability of the Employment and Industrial Relations Act to all workers in Malta irrespective of their nationality as

long as they were working according to the established procedures.

32. In reply to the question regarding the apparent monopoly of males at the managerial level, she said that attendance by female students in courses required for such positions was relatively recent given the long hours associated with them and the long-standing practice whereby the woman assumed primary responsibility for family care. With the introduction of family-friendly measures and the increasing number of female graduates, the situation ought to improve in coming years. The Government encouraged women to apply for leading positions. The national machinery collaborated with employment and recruitment bodies towards achieving that goal and also supported training in that field. The Employment and Training Corporation offered specific courses for women wishing to return to the labour market and also offered a variety of courses which facilitated the employment of persons who had been away from the labour market.

33. The training programmes were constantly being reviewed to reflect labour market needs and included, for example, an increasing number of information-technology modules. Subsidiary labour legislation ensured the right to non-discrimination as regards conditions of employment. The number of measures introduced to facilitate a work-life balance had been fewer in the private sector compared with the public sector. One of the goals of the national machinery, therefore, was to ensure progress in that area. The public sector was thus being used as a role model for the private sector.

34. The Ministry for Education, Youth and Employment did not currently provide any childcare facilities but the issue was being tackled as part of the national action plan for employment currently being drawn up. A number of reports had been submitted on the issue, and the Government was currently finalizing regulations for childcare facilities. While both State and most private kindergartens accepted children from the age of three, it was the Government's policy to offer services from birth to five years and to make that part of lifelong education. School hours were normally from 8 a.m. at the earliest to 3 p.m. at the latest. Government, church and independent schools regulated such hours according to their particular needs and with due respect to the National Minimum Curriculum.

35. It was difficult to give an accurate picture of the number of women working in the black economy since no statistics were kept on that sector. However, one

area where the practice appeared to be widespread was that of home help, and it was normally at the request of the employee so as to avoid paying social security contributions and value-added tax on services provided. Reference had been made to women in the public sector who, prior to 1981, had been constrained to resign their employment upon marriage, and it had been asked whether the prior period was taken into consideration upon re-employment and whether any compensation was given. The reply was no in both cases. Subsidiary legislation guaranteed part-time workers protection of equality and non-discrimination, and therefore implemented Convention provisions inasmuch as European Union directives reflected the Convention.

36. As to how women coped with holding full-time or part-time jobs and carrying out family responsibilities, she said that spouses who held more than one job often opted for jobs with atypical working hours, such as the tourism industry or shift work, in order to be able to combine them. In some cases, employers offered the possibility of arranging working hours to meet personal (often family) needs, although that was an informal arrangement and not an established system. Statistics were not available on the number of women who worked less than 20 hours. The plan of action to increase the representation of women in senior positions in the public service was still operative, and every effort was being made to ensure its success. A case in point was the appointment of the first female Permanent Secretary, the second highest position in the civil service.

37. With regard to efforts to eliminate deep-rooted stereotypes regarding female family roles, she said that, apart from the amendments to legislation that now ensured equal standing for women and men in terms of their family roles and responsibilities, the NCPE used all possible resources, particularly the media, to encourage a change in mentality that would eradicate such stereotyped concepts once and for all. The education system also supported such a change. Two cases of sexual harassment had been reported to the police since the Employment and Industrial Relations Act had come into force in 2002. The nature of complaints received by the NCPE, many of which were employment-related and dealt with issues of sexual harassment, indicated that many women were aware of the possibility of access to justice. A national media campaign was being planned to inform the general public of its rights and responsibilities and equality legislation, including provisions against sexual harassment.

38. Turning to article 12, she said that although the primary health-care service was free of charge to all, irrespective of means, pharmaceutical products were not. Free pharmaceuticals were given for the duration of a hospital stay in the public health-care system, irrespective of means; to people suffering from certain specified chronic disorders, irrespective of means; and to all who met certain means test. Nevertheless, the Health Division did not provide all pharmaceuticals, but adhered to an essential drug list, which did not include a number of medical drugs, such as contraceptives. As to whether the insertion of intrauterine contraceptive devices on the basis of the moral or religious convictions of the person supplying it represented an obstacle to a woman's free choice, she said that once again a delicate balance had to be sought between the rights of the client and those of the person supplying the service. That was not always easy to achieve, particularly since medical literature itself was not in agreement on the use of intrauterine contraceptive devices. It was therefore very difficult for one standard to be applied in all cases.

39. All schools had to follow the National Minimum Curriculum, which meant that education on personal and social development, including human sexuality, must be part and parcel of a school's curriculum. A school which did not provide instruction in that regard was going against the national curriculum, and action would be taken against it. Personal and social development was a subject which had been further developed since the inception of the National Minimum Curriculum. It was offered in all public, church and private schools, and covered topics such as relationships; career development; sex education; substance misuse, including drugs, alcohol and tobacco; and other issues which the students themselves raised. The teachers of the subject were all trained in guidance and counselling, and conducted the lessons in a discussion format with a maximum of 15 students at any one time.

40. Sex education was discussed in a very broad way and not given as part of religious instruction, although nothing precluded teachers of religion from discussing the Church's position on the matter. All valid topics were discussed openly and freely and such topics as artificial contraception were discussed, as well as basic biological functions. The information given was factual and to the point. The policy was to answer all questions raised. The Health Promotion Department collaborated very closely with the Personal and Social Development Department, and also had the remit of providing instruction on sexual health. Specialized health

promoters visited schools on a regular basis to raise such issues for discussion.

41. With regard to contraception as a means of controlling teenage pregnancies, in light of General Recommendation No. 24, she said that the increase in teenage pregnancies was an international phenomenon, and it was clear from what other countries had done that available contraception alone was not the solution. Malta's policy was that education played a more central role in any prevention strategy. As for the question concerning the diagnosis of depression among women, she said that a gender perspective had been included in the recently introduced half-module on medical sociology to final-year medical students. Turning to article 15 of the Convention, she said it was the function of the Government and its agencies, together with authorities and commissions established by statute, to ensure that legislation was amended in accordance with the needs of society. Within a pluralistic democratic society, it was also the function of civil society to ensure that that was done without undue delay.

42. Referring to the lack of female judges in Malta, she explained that a person could not be qualified to be appointed as a judge unless he or she had practised as an advocate in Malta for an aggregate period of not less than 10 years or had served as a magistrate in Malta or had partly so practised and partly so served. Although there was a relatively large cadre of female lawyers in Malta, the vast majority did not satisfy those criteria. It was no secret that the Government encountered difficulties in finding suitably qualified persons, even males, to serve as judges, the main reason being that a person with the experience required preferred to continue with their private practice, which was generally far more remunerative than the post of a judge. A number of female lawyers had been appointed magistrates in the lower courts, since the requirement was less than that for appointment to the higher courts. A female lawyer had been appointed as the first Maltese judge in the Court of First Instance of the European Union.

43. In reply to the question why, once parental authority was joined, the Director of Social Services still determined who was to be deemed the head of the household, and whether there was a contradiction between the Social Security Act and the Civil Code, she recalled the answer given when considering reservations to the Convention. The Social Security Act did not regulate parental authority. One could not say that there was a distinction between the two

legislations because the Social Security Act regulated entitlement to social security benefits, pensions and allowances under the Act as well as the payment of contributions, while the Civil Code regulated matters of a civil nature. As for data on female ownership of land, she pointed out that it was doubtful whether gender-disaggregated data was available in that regard. If it was, it would definitely be included in the next report. Replying to the question concerning consent between a husband and wife regarding tax return rights, she said that, if the question of consent was understood to relate to declaration of income, then a husband did require his wife's signature on the declaration.

44. Referring to the issue of divorce, she explained that access to divorce was not considered as a fundamental human right and had never been interpreted as such in the major international human rights conventions or treaties. Family legislation was normally considered to fall within the purview of national legislation. When a marriage broke down, the couple might have recourse to separation either through the courts or privately through a notarial deed. Since the report was submitted, the Family Court had been set up to deal with cases of separation when it was not done with the consent of the parties. Either spouse might request maintenance from the other. Failure by a spouse to pay maintenance was a criminal offence and subject to action before the courts against the offending party. In cases where no maintenance was due, the party concerned might apply for social benefits under the Social Security Act. Lastly, with regard to legal obligations of separated spouses towards each other, she drew the Committee's attention to sections 16.14, 16.16 and 16.17 of the combined reports under consideration.

45. **The Chairperson** invited the members of the Committee to raise follow-up questions.

46. **Ms. Schöpp-Schilling** said that of course States parties were entitled to formulate reservations, provided they were not incompatible with the object and purpose of the Convention. The Committee's concern was that reservations tended to undermine the universality of the Convention, and therefore it always encouraged States parties to reconsider their reservations. In that light, she wondered whether the reservation to article 13 might not be reconsidered at the same time as the reservation to article 15. With regard to depression among women, experience had shown that doctors tended to diagnose depression more readily in women than in men because of gender

stereotypes. She wondered whether the high rate of depression and tranquilizer use reported in Malta might be the result of such overdiagnosis, and whether the Gender Management System in the Health Sector addressed such a bias. Lastly, since the text of the Constitution required temporary special measures to be "reasonably justified in a democratic society", she wondered what criteria were applied in making such a determination.

47. **Ms. Manalo** said that she would appreciate further clarification concerning the participation of non-governmental organizations in preparing the report. According to the reporting State, the combined reports had been "drawn up in consultation with the relevant departments, entities and individuals". She would like to know whether those entities included non-governmental organizations, and, if so, which organizations and in what way they had participated. With regard to the classification of rape as a criminal offence under crimes against the peace and honour of families and against morals, she was surprised that the State party did not consider that classification anachronistic. It suggested that the crime was committed against the institution of the family, whereas the Convention viewed rape as a crime against the human rights of an individual. The distinction was not immaterial.

48. **Mr. Flinterman** noted that Malta adhered strictly to the dualist system in matters of international law except for the European Convention on Human Rights, which was self-executing, with the implication that the provisions of the latter could be directly applied. To an outsider it did seem as though Malta was assigning different weight to different human rights treaties. The Committee was pleased that Malta was considering ratifying the Optional Protocol, but wondered how it was to be transposed into national law. With regard to reservations, the Committee would not dispute the right of a State party to formulate them, but wished to stress that it was also a State party's sovereign right to withdraw them. It was the Committee's constant practice to urge every State party to consider withdrawing its reservations.

49. **Ms. Šimonović** asked, since the Convention had not been translated into Maltese, what percentage of the population did not know English.

50. **Ms. Bugeja** (Malta) said that the possibility of a gender bias in the diagnosis of depression had been taken into account. The question of withdrawal of reservations was currently being considered by the

Attorney General; much more discussion would be required before it could become a reality. With regard to participation by non-governmental organizations in the preparation of the report, the consultant hired to write the report had been instructed to consult with any relevant persons or groups, including experts in various fields and women's organizations, particularly those that she had mentioned earlier.

51. **Mr. Xuereb** (Malta) said that there was a historical reason for the special status of the European Convention on Human Rights. In 1987, when Malta had acceded to the European Convention, the country had just emerged from a difficult period for human rights. The first law passed under the new Government was the European Convention Act enabling the courts to apply the provisions of that Convention directly. The measure was highly exceptional in Malta's system of law, and it had come about because of the strong concern at that time about the need to ensure the protection of human rights. In fact, the European Court of Human Rights had proved to be a strong bulwark against human rights violations because of its petition mechanism. However, Malta preferred not to make further exceptions but to adhere to its normal rules.

52. With regard to special temporary measures, it was the responsibility of the courts to decide which such measures were "reasonable in a democratic society". In the current context, it was to be expected that the courts would apply the standard liberally. Moreover, inasmuch as the country's international obligations, including the European Union *acquis*, were reflected in domestic legislation, the courts would refer to the source of the legislation in order to interpret it. English was one of the two official languages of Malta and was part of the compulsory educational curriculum. Although fluency might vary, it was virtually impossible to find citizens of Malta who did not have a general knowledge of English. With regard to the classification of the crime of rape, the substance was there, but perhaps too little attention had been paid to the form. An enormous overhaul of legislation had been required because of Malta's accession to the European Union, and some points might have been overlooked. The delegation would pass along the Committee's concerns.

53. **The Chairperson** said that the Committee acknowledged the great efforts that Malta had made to improve its legislation and policy. Gender equality in Malta did not have a long history, but she hoped that it had become a key issue. Although the commitments to the European Union had a higher priority for Malta, the

Convention was legally binding on all States parties, and the Committee hoped that its provisions would be incorporated in domestic law in whatever way was appropriate under Malta's own legal system and would be widely disseminated, especially to judiciary and law enforcement personnel.

54. The Committee urged the State party to review its reservations and encouraged it to ratify the Optional Protocol expeditiously. There was a need to remedy the low percentage of women in the labour market, the lack of childcare centres and the stereotypes of women as primary homemakers and caregivers. Women's participation in political, administrative and diplomatic circles could be increased through temporary special measures in accordance with article 4 of the Convention. The Committee would welcome speedy enactment of the domestic violence bill. Lastly, the Committee would prepare and send its concluding comments, which it requested the State party to disseminate widely.

The meeting rose at 4.40 p.m.