

The Situation of Human Rights Defenders in Malta:
Good Practices and Protection Gaps



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Executive Summary

In line with its mandate to assist OSCE participating States to implement their commitments, the Office for Democratic Institutions and Human Rights (ODIHR) has long been engaged in promoting the protection of human rights defenders (HRDs). This is done through regular monitoring and reporting on the situation of HRDs across the OSCE region, provision of expert advice and legislative reviews, raising the awareness of OSCE participating States about their obligations to protect HRDs, and facilitating dialogue between participating States and civil society on issues related to HRDs' work. In line with these aims, ODIHR developed the "Assessment Cycle on the Situation of Human Rights Defenders" (now in the Second Cycle). Each Cycle involves assessment visits to selected OSCE participating States. The purpose of the visits is to examine the situation of HRDs vis-à-vis international human rights standards, as elaborated in the ODIHR [Guidelines on the Protection of Human Rights Defenders](#), and to provide recommendations for further improvement.

This report provides a summary of ODIHR's findings from the visit to Malta in March 2023, in which ODIHR held dozens of meetings with State and civil society stakeholders, supported by desk research. In this context, ODIHR collected information about the good practices and gaps in the protection of the physical integrity, liberty, security and dignity of HRDs, and other aspects of a safe and enabling environment for human rights work. Besides offering assistance to Malta, ODIHR seeks to use the findings more broadly to assist participating States across the OSCE region on measures they could take to advance the situation of HRDs.

In its assessment related to Malta, ODIHR heard that the work of HRDs, including journalists, was often negatively portrayed or dismissed, and noted concerning instances of disparaging rhetoric and smearing remarks used by political actors, including politicians and other persons of authority in relation to HRDs. HRDs working on good governance and anti-corruption, HRDs working with refugees and migrants, the environment, and sexual, health and reproductive rights, as well as investigative journalists, were particularly targeted by such discourse. HRDs working with and belonging to the LGBTI community appeared to enjoy an exemplary level of support from the authorities.

ODIHR was concerned that various HRDs reported being targets of verbal attacks, threats and intimidation. ODIHR observed that the authorities have taken some steps towards accountability and improving the protection of HRDs, including journalists. These concerned both investigations and prosecutions of individual cases in which HRDs were targeted, as well as the introduction of new risk assessment protocols, and the designation of contact points for journalists and civil society organizations (CSOs) within the police. ODIHR was concerned about cases of online threats, which, according to some HRDs, might not have been taken seriously enough, and by a lack of consultations with HRDs in developing new protection structures.

Spurious lawsuits, typically in the form of defamation and libel suits, reportedly continued against HRDs, in particular journalists. These seem to aim to exhaust them financially and morally to silence them or discourage their work. While ODIHR would not claim that all defamation lawsuits against HRDs are baseless per se, the information collected during the assessment indicated that legislation in Malta was prone to being used to bring these types of strategic litigation against public participation (SLAPP) suits.

In relation to freedom of expression and media freedom, ODIHR noted that most HRDs expected comprehensive legislative reform following the publication of the report from the Public Inquiry into the assassination of the renowned journalist Daphne Caruana Galizia. Such reform had still not been implemented during ODIHR's reporting period. As for access to information of public interest, various interlocutors conveyed their dissatisfaction with the lack of proactive provision of information by government authorities, and, even more, with the often long and costly legal path to obtain information denied to them. The whistle-blower protection framework remained largely underused, with people unwilling to report corruption and seek protection, with fear of retaliation reportedly being one reason.

While there still appeared to be scope for certain improvements, for example in the legal framework, ODIHR found that during the assessment period HRDs were usually able to exercise their freedom of peaceful assembly within the sight and sound of their intended target audience, with police facilitating peaceful assembly in line with human rights standards.

Freedom of association also appeared to be largely respected, with some NGOs benefiting from tax deductions and secondment schemes whereby public service employees could temporarily work for NGOs, sharing skills and knowledge and creating synergies while being paid by the public sector. Some representatives of smaller NGOs reported that compliance with administrative requirements was burdensome for them.

Whereas ODIHR learned of various forms of participation of HRDs in decision-making processes, it noted HRDs' concerns that not all processes were open, inclusive and meaningful; that they did not always have sufficient time to prepare input; and that input was, in their view, often disregarded.

ODIHR did not observe any specific concerns about freedom of movement of HRDs, but noted that the space for NGOs conducting refugee and migrant search and rescue operations at sea appeared to be closed.

Based on its findings from the assessment, ODIHR makes a series of recommendations to various institutions, proposing steps to overcome gaps in the protection of HRDs and to further improve their overall situation across the country.

Introduction

1. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) conducted an assessment visit to Malta, focusing on the situation of human rights defenders (HRDs),¹ from 11 to 25 March 2023, meeting with the authorities at various levels and a broad spectrum of HRDs working in the country. The objective of the visit, and of research conducted by ODIHR before and after the visit, was to provide an independent and impartial assessment of the situation of HRDs in the country. In particular, ODIHR sought to identify and analyze both good practices as well as challenges in the protection of HRDs in the context of the legal and political obligations of the state, as set out in OSCE commitments and other international human rights standards and elaborated in the 2014 *ODIHR Guidelines on the Protection of Human Rights Defenders (the Guidelines)*.² In this way, ODIHR seeks both to provide assistance to the authorities of Malta and to use the findings of the assessment to assist OSCE participating States more broadly on measures that can be taken to improve the protection of HRDs.
2. ODIHR thanks the authorities of Malta for facilitating the visit. ODIHR is also grateful to HRDs, including journalists, representatives of civil society organizations (CSOs), individual activists and the Parliamentary Ombudsman, as well as to representatives of the authorities, independent agencies and intergovernmental organizations in the country for meeting with the ODIHR delegation and contributing to this assessment. ODIHR looks forward to discussing the findings and recommendations of the report, as well as more recent developments, at a multi-stakeholder in-person event to be organized in Malta.

Methodology

3. In line with its mandate to monitor the implementation of human dimension commitments and assist OSCE participating States in this respect,³ ODIHR visited Malta in 2023, continuing its second assessment cycle focusing on the situation of HRDs.⁴ Throughout the cycle, ODIHR aimed to ensure geographical balance and coverage of different contexts across the OSCE region, while offering assistance to participating States in the area of protecting HRDs. This allows ODIHR to make a long-term contribution to the improvement of the situation of HRDs, both within the individual participating State, and across the OSCE region, through the identification of challenges and good practices, the formulation of recommendations to particular stakeholders, and by conducting follow-up activities in co-operation with the selected participating States.

¹ The term “human rights defender” is defined according to the *UN Declaration on Human Rights Defenders*, in which the UN General Assembly recognized the right of all people to act, “individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms”, through peaceful means and without discrimination. See General Assembly Res. 53/144, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (Declaration on Human Rights Defenders), UN Doc. A/RES/53/144 (9 December 1998), available at: <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

Journalists who promote and report on human rights, corruption or mismanagement or on the work of whistleblowers are human rights defenders, regardless of their accreditation status and the media through which they work (print, radio, television or the Internet).

² The ODIHR Guidelines on the Protection of Human Rights Defenders, available at: <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>.

³ Helsinki Document: The Challenges of Change, Helsinki 1992; Budapest 1994; Document of the Seventh Meeting of the Ministerial Council, Oslo 1998; Document of the Eleventh Meeting of the Ministerial Council, Maastricht 2003.

⁴ The countries covered in the first cycle were the Czech Republic, Georgia, Italy, Mongolia and Montenegro. The findings of assessment visits and recommendations to 57 OSCE participating States were summarized in the report *The Situation of Human Rights Defenders in Selected OSCE Participating States – The Final Report of the First Assessment Cycle*, OSCE/ODIHR, 28 July 2021, available at: <https://www.osce.org/odihr/493867>. Besides Malta, the second assessment cycle includes Bosnia and Herzegovina, Romania and Estonia.

4. The period analyzed in the report is from January 2020 to May 2023. Earlier cases of attacks and intimidation targeting HRDs and other developments are covered in the assessment provided those cases were still being processed during the reporting period and provided those developments have a considerable impact on the current situation of HRDs. ODIHR is ready to discuss any other relevant developments outside the reporting period at the multi-stakeholder follow-up event.
5. ODIHR has sought to identify significant good practices and protection gaps and needs, rather than providing an exhaustive list of developments concerning HRDs in the country.
6. As a core part of the assessment, ODIHR held 61 meetings with representatives of authorities (15),⁵ independent agencies (four),⁶ intergovernmental organizations (two),⁷ and civil society (40). ODIHR met with CSOs, journalists and human rights activists working on a wide range of issues across the country. In total, ODIHR met with 134 individuals (62 women and 72 men). Fifty-nine individuals (24 women and 35 men) represented civil society. ODIHR's visit provided the opportunity to learn from the diverse experiences and knowledge of HRDs working on a range of human dimension issues, and from civil society representatives of different genders, ages and with various disabilities.
7. Throughout this report, the interview data from civil society representatives and organizations is anonymized. ODIHR obtained informed consent to refer to individual cases that are illustrative of identified trends. These were either brought to ODIHR's attention during the visit or reported in the local or international media, by civil society groups and/or by intergovernmental organizations.
8. For the purpose of trend analysis and verification, ODIHR also considered documents issued during the assessment period, such as observations, conclusions and reports by intergovernmental organizations, publications by non-governmental organizations (NGOs), media reports and news items.
9. ODIHR's findings and recommendations are presented in this *country-specific report*, shared with the authorities of Malta, the Parliamentary Ombudsman, and the National Commission for the Promotion of Equality, and will serve as a reference for joint follow-up action.⁸ The report is expected to guide ODIHR in offering tailored assistance to the authorities and HRDs in Malta.
10. On completion of the cycle, ODIHR will issue a *Final assessment report of the second assessment cycle focusing on the situation of HRDs*, which will give an overview and analysis of the findings of all country visits during the assessment cycle and make recommendations to all 57 OSCE participating States.

⁵ ODIHR met representatives of the Ministry for Foreign and European Affairs and Trade; Ministry for Environment, Energy and Enterprise; Ministry for Inclusion, Voluntary Organisations and Consumer Affairs; Ministry for Home Affairs, Security, Reforms and Equality; Ministry for Justice; Ministry for Social Policy and Children's Rights; Social Affairs Committee and Foreign and European Affairs Committee of the Parliament of Malta; Attorney General; Malta Police Force; Agency for the Welfare of Asylum Seekers; Legal Aid Malta; Agenzija Sapport; Court Services Agency; Human Rights Directorate; Commissioner for Voluntary Organisations; Malta Council for Voluntary Organisations; Permanent Commission against Corruption; Commission for the Rights of Persons with Disabilities; Commissioner for Gender Based Violence and Domestic Violence.

⁶ ODIHR held meetings with the Information and Data Protection Commissioner; National Commission for the Promotion of Equality; Broadcasting Authority; and the Parliamentary Ombudsman.

⁷ ODIHR met with representatives of IOM Malta and UNHCR Malta.

⁸ ODIHR appreciates the consent of Malta to publish this report, as an example of good practice.

International framework and the *ODIHR Guidelines on the Protection of Human Rights Defenders*

11. OSCE participating States confirmed “the right of the individual to know and act upon his [her] rights”.⁹ They also affirmed “the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms.”¹⁰ Participating States recognized the important and positive role of HRDs (“organizations and persons”) in assisting states to ensure full respect for human rights and fundamental freedoms, democracy and the rule of law,¹¹ and emphasized the need for ensuring their protection.¹²
12. OSCE human dimension commitments reaffirm the particular importance of participating States’ realization of their obligations under international and regional human rights treaties.¹³ Malta is a party to almost all core international human rights conventions and accepted most individual complaints and inquiry procedures.¹⁴
13. The *ODIHR Guidelines* are based on the universally recognized human rights standards and OSCE commitments that participating States have undertaken. They focus on the responsibility of states to respect, protect and fulfill the rights of HRDs,¹⁵ without seeking to create ‘special’ rights for them.¹⁶

National legal, policy and institutional framework

14. The Constitution of Malta recognizes civil and political rights¹⁷ rendering them justiciable before the courts of Malta. The European Convention for the Protection of Human Rights and Fundamental Freedoms is incorporated in the European Convention Act.¹⁸ Both provide that where domestic law is found to be inconsistent with international human rights law to which Malta is a party, the domestic law provision shall be void to the extent of the inconsistency. However, a court judgment declaring such inconsistency is considered binding only between the parties to the case. It does not automatically render the inconsistent law ineffective and it is unclear how often laws are changed as a result of such judgments.¹⁹

⁹ Helsinki Final Act 1975 (Questions Relating to Security in Europe: 1(a) Declaration on Principles Guiding Relations between Participating States – Principle VII).

¹⁰ Copenhagen Document, 1990.

¹¹ *Op. cit.* notes 9 and 10; see also Budapest Document 1994 and Astana Declaration 2010.

¹² [Budapest Document 1994](#) (Budapest Declaration, “Towards a Genuine Partnership in a New Era”, 6 December 1994).

¹³ They call on all participating States to act in conformity with international instruments and respect, protect and fulfil the human rights of all within their jurisdiction, without discrimination. See Concluding Document of the Madrid Meeting (Second Follow-up Meeting to the Helsinki Conference), Madrid 1983; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990; Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow 1991.

¹⁴ With the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Malta has ratified all core human rights treaties of the UN. Among the individual complaints mechanisms it has not accepted, are those to the International Covenant on Economic, Social and Cultural Rights (CESCR) and the Convention of the Rights of the Child (CRC). The full list of UN core human rights instruments Malta has ratified and the complaints and inquiry procedures it has accepted is available at:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=108&Lang=EN.

¹⁵ These obligations require states to refrain from any acts that violate the rights of human rights defenders; to protect them from abuses by third parties, including business enterprises and other non-state actors; and to take proactive measures to facilitate the full realization of the rights of human rights defenders, including their right to defend human rights.

¹⁶ *Op. cit.* note 2.

¹⁷ [Constitution of Malta](#), Chapter IV.

¹⁸ [European Convention Act, 1987, Chapter 319](#), Laws of Malta.

¹⁹ Article 242 of the Code of Organization and Civil Procedure provides for the transmission of the judgment to the House of Representatives and the possibility for the Prime Minister to take action to remove the inconsistency within six months (see the Code of Organization and Civil Procedure, [Chapter 12](#), Laws of Malta, Yet, no official data appears to be available on

15. Some ordinary legislation reflects State obligations emanating from other international human rights conventions. These include, for example, the Equal Opportunities (Persons with Disability) Act,²⁰ the Gender-Based Violence and Domestic Violence Act,²¹ the Equality for Men and Women Act,²² and some provisions of the Criminal Code.²³ Other laws, such as the Media and Defamation Act,²⁴ the International Protection Act,²⁵ the Data Protection Act²⁶ and the Freedom of Information Act²⁷ establish processes and procedures for the enforcement of specific human rights or prescribe the limits within which they may be exercised.
16. Maltese legislation does not formally recognize HRDs with a status in law. However, some legislative measures refer to people who may fall under the definition of HRD, e.g., staff of NGOs or journalists. As described in further detail in the section on *other aspects of a safe and enabling environment for human rights work* below, in a few instances legislation provides for the participation of HRDs without naming them as such.²⁸
17. Policy initiatives in the areas of human rights, such as promoting gender equality or combating racism, are taken either by the Human Rights Directorate²⁹ or by the particular Ministries. The aim of the Directorate is “reaching national objectives in the areas of civil liberties, equality and non-discrimination, as well as the integration of migrants.”³⁰ Its work has focused in particular on legislative and policy initiatives related to equality. Other Ministries also prepare policies that impact the enjoyment and protection of human rights.³¹ There is no overarching human rights or HRD policy in Malta.
18. Whereas Malta does not have a designated National Human Rights Institution (NHRI) in accordance with the UN Paris Principles³², the Parliamentary Ombudsman³³ and the equality bodies³⁴ play a limited role in monitoring the effective implementation and protection of human rights. A bill was presented to parliament in July 2019 to establish a Human Rights and Equality Commission, but the bill lapsed with the 2022 general election and no new bills on this matter were proposed in the period under review.³⁵

how often inconsistent laws were in fact changed through this procedure. See Cordina John Paul, Newsbook, 20 April 2023, [Government gives no figures on response to courts finding laws unconstitutional](#).

²⁰ [Equal Opportunities \(Persons with Disability\) Act](#), 2000, Chapter 413, Laws of Malta.

²¹ [Gender-Based Violence and Domestic Violence Act](#), 2018, Chapter 581, Laws of Malta.

²² [Equality for Men and Women Act](#), 2003, Chapter 456, Laws of Malta.

²³ For example, offences such as incitement to hatred and trafficking of persons; [Criminal Code](#), Chapter 9, Laws of Malta.

²⁴ [Media and Defamation Act](#), 2018, Chapter 579, Laws of Malta.

²⁵ [International Protection Act](#), 2001, Chapter 420, Laws of Malta.

²⁶ [Data Protection Act](#), 2018, Chapter 586, Laws of Malta.

²⁷ [Freedom of Information Act](#), 2009, Chapter 496, Laws of Malta.

²⁸ Such as the Equal Opportunities (Persons with Disability) Act and the Environment Protection Act.

²⁹ Established within the Ministry for Home Affairs, Security, Reforms and Equality (nomenclature as at March 2023). After the reporting period the Directorate was transferred to another Ministry. At present, it forms part of the Office of the Prime Minister – Ministry for European Funds, Equality, Reforms and Social Dialogue.

³⁰ See: <https://humanrights.gov.mt/en/Pages/About-Us.aspx>.

³¹ For example, the [National Strategic Policy for Active Ageing](#), Malta 2021 – 2027, Consultation Document, launched by the Ministry for Senior Citizens and Active Ageing.

³² Principles relating to the [Status of National Institutions](#) (The Paris Principles), adopted by General Assembly Resolution 48/134 of 20 December 1993.

³³ See: <https://ombudsman.org.mt/>.

³⁴ Commission for the Rights of Persons with Disability and National Commission for the Promotion of Equality.

³⁵ [Human Rights and Equality Commission Bill](#), Bill 97 of 2019. See also European Network of National Human Rights Institutions (ENNHRI), [State of the rule of law in the European Union](#), May 2023, p. 439. The Office of the Parliamentary Ombudsman has long advocated for the establishment of an NHRI in Malta and also affirmed its readiness to assume this role should its mandate be extended through legislation. See the [timeline of advocacy for an NHRI](#) by the Parliamentary Ombudsman.

19. The Parliamentary Ombudsman primarily seeks to foster good governance. It has issued statements and published reports on related issues, for example on “The State’s Duty to Inform,”³⁶ which are relevant for HRDs. In reviewing complaints on lack of good administration, the Ombudsman has at times also determined issues that relate directly or indirectly to human rights, including issues relating to the safe and enabling environment conducive to human rights work.³⁷
20. The National Commission for the Promotion of Equality is a designated equality body in terms of the European Union equality *acquis* and in this regard executes its function to monitor state action vis-à-vis non-discrimination.³⁸ The Commission for the Rights of Persons with Disability also functions as a designated equality body in terms of the European Union’s equality *acquis* and has a role in monitoring the implementation of the UN Convention on the Rights of Persons with Disability.³⁹

I. Physical integrity, liberty and security, and dignity of HRDs

I.1. HRDs in the public discourse / threats, attacks and other targeting of HRDs

21. In the course of its assessment visit, interviewees told ODIHR that the work of HRDs was often dismissed as partisan political activity. ODIHR also noted attempts at tarnishing HRDs’ reputation, prejudicing their personal employment and income, labelling them as enemies, traitors or political opponents. According to the civil society interlocutors that ODIHR interviewed, the targets were predominantly HRDs working on good governance and anti-corruption, but may have included others who were critical of government policy, commonly HRDs working with refugees and migrants, on the environment, and sexual health and reproductive rights, as well as investigative journalists.
22. According to accounts ODIHR received during the visit, hostile rhetoric towards HRDs was often used by political actors, including politicians, and other persons of authority in retaliation for human rights work. Such instances were also frequently reported in the media and public debate. For example, comments made by a Member of Parliament (MP) accused activists of “working in the interest of the enemy.” In response, an NGO representative denounced “the narrative being pushed by the government accusing the civil society group of ‘betraying’ the country.”⁴⁰ Government MPs on occasion also delivered scathing speeches in parliament in which they insinuated that NGOs exerted pressure and intimidated members of the judiciary through their activism.⁴¹ An environmental NGO condemned “the attacks levelled against the organization by two Government Ministers and a member of the European Parliament” following its complaint filed with the police “requesting the withdrawal of hunting licenses that were issued illegally by the Ministry for Gozo.”⁴²
23. Interviewed HRDs reported to ODIHR that, at times, participation in public debate also led to harassment, threats and disparaging messages they received on social media, and other online platforms. Occasionally, active participation reportedly led to disparaging news items being broadcast by political

³⁶ Parliamentary Ombudsman, [The State’s Duty to Inform Essential to the Right to Good Governance](#), December 2015.

³⁷ Parliamentary Ombudsman, Annual Reports, see all at: <https://ombudsman.org.mt/category/annual-reports/>.

³⁸ National Commission for the Promotion of Equality, <https://ncpe.gov.mt/>.

³⁹ Commission for the Rights of Persons with Disability, <https://www.crpdp.org.mt/>.

⁴⁰ Agius Monique, Newsbook, 18 April 2020, “[PM’s Press Conference Was an Attack on Democracy](#)”, Repubblika.

⁴¹ Azzopardi Karl, Malta Today, 25 January 2022, “[Bedingfield Accuses Police of Persecuting Muscat in House Speech](#)”, and Diacono Tim, Lovin Malta, 24 October 2023, Watch: [Repubblika Head Challenges Prime Minister to a Debate](#), One TV.

⁴² BirdLife Malta, 23 April 2020, “[Attacks and Intimidation Won’t Work](#)”.

party-owned news media.⁴³ Such targeting for publicly voicing opinions and activism exacerbated the risk of attracting further hatred and attacks on the honour and reputation of civil society activists, which also interfered with their private and family life. ODIHR heard that some HRDs feared voicing their opinion in public or participating in public activities because of fear of retaliation at work, of loss of access to public funds or being prejudiced in public procurement processes, and because of fear of becoming engulfed in charged, polarized and conflictual political contexts.⁴⁴

24. The assessment and interviews ODIHR conducted raised concerns about the targeting of HRDs working on good governance and anti-corruption in particular, including investigative journalists. Accounts shared with ODIHR highlighted, for example, attacks by trolls and threats on social media, attempts to damage reputations by spoofing and smear, threatening phone calls, and verbal attacks on family members. With threats affecting their mental health and well-being, HRDs reported that they had felt unsafe and exposed to danger as a result of such targeting.
25. Such concerns were also documented, during the period under review, in the report of the Public Inquiry into the Assassination of Daphne Caruana Galizia (Public Inquiry),⁴⁵ published in 2021, and by regional human rights institutions such as the Council of Europe (CoE) Commissioner for Human Rights. The Public Inquiry documented how the assassinated journalist was exposed to hatred, ridicule, harassment and campaigns of hostility and dehumanization aimed at intimidating and silencing her.⁴⁶ The Public Inquiry found that such practices were also used against other journalists who were investigating corruption and other abuse of power.⁴⁷ The CoE Commissioner noted that “[r]ather than being recognised as a pillar of democracy, journalism is still discredited, and journalists continue to face harassment and obstacles in their work. Investigative journalists, in particular, are dismissed as ‘hate figures’ and are regularly targeted by retaliatory hate speech, threats and lawsuits.”⁴⁸ Out of the nine alerts raised by the CoE’s Platform for the Safety of Journalists for the period under review, one concerned the negative portrayal of a blogger and the use of his image on a political billboard in the 2022 general elections, resembling the use of Daphne Caruana Galizia’s portrait during the election campaign of 2013.⁴⁹
26. Information collected from interviews also strongly indicated a dismissive and intimidating attitude of authorities towards HRDs working in the field of migration. The work of HRDs in this field was denounced by state actors occupying high positions within government, with rhetoric depicting HRDs as political opponents, persons not working in the national interest, and of being a “smokescreen for criminals.”⁵⁰ Political rhetoric frequently labelled search and rescue NGOs as facilitators of human

⁴³ See, for example, Brincat Edwina, Times of Malta, 16 May 2023, [One News Story Fell Short of ‘Standards of Responsible Journalism’](#).

⁴⁴ See for example also, Newsbook, 7 January 2019, [Occupy Justice Founder Steps](#).

⁴⁵ [Report of the Public Inquiry](#), Daphne Caruana Galizia, Presented to Hon. Prime Minister Dr. Robert Abela on 29 July 2021 (courtesy translation).

⁴⁶ *Ibid.*, pages 253-258.

⁴⁷ *Ibid.*, page 363.

⁴⁸ Council of Europe, Commissioner for Human Rights, [Malta Country Report](#), 15 February 2022, CommDH(2022)1, page 7, paragraph 8.

⁴⁹ Safety of Journalists Platform, 9 March 2022, Alert No. 88/2022, [Blogger Manuel Delia Targeted in Electoral Campaign](#).

⁵⁰ Balzan Jorgen, Newsbook, 3 July 2023, [Migration: Abela Accuses NGOs of Being Smokescreen for Criminals](#), 2020; see also Times of Malta, 17 April, [Prime Minister Slams NGO, Opposition MP for Filing Criminal Complaint](#).

trafficking,⁵¹ as being those who work with traffickers,⁵² and negatively portrayed them as being pull factors for migrants.⁵³

27. In its assessment, ODIHR also identified incidents, including attacks and threats, against HRDs and their family members,⁵⁴ sometimes with sexual connotations towards women HRDs.⁵⁵ Women HRDs were reportedly particularly exposed to sexist hate speech, harassment and threats, including online, and recounted to ODIHR being yelled at, physically confronted, spat on, and called disparaging names by members of the public. Interviewees did not always report incidents to authorities, but voiced concern for their safety and that of family members due to their work in an intimidating environment.
28. More positively, ODIHR noted the political support provided to HRDs working for equality of LGBTI people. In this field, public rhetoric positively supported LGBTI equality in diverse areas of combating discrimination, hate speech and hate crime, and improving the situation, for example, with regards to education, healthcare and support to civil society promoting equality. Many events organized by NGOs working to ensure the rights of LGBTI people were attended by politicians.
29. Overall, based on the information obtained from HRDs throughout the assessment, ODIHR is concerned that the negative portrayal of HRDs in public, coupled with various forms of targeting, may put them at increased risk of verbal and even physical attacks and discourage them from carrying out their human rights work. Therefore, the Maltese authorities should refrain from any rhetoric that may put HRDs at risk, clearly disavow any such statements by political and other actors, and publicly acknowledge the important role that HRDs, including journalists, perform in society.⁵⁶

I.2. Accountability for abuses / protection policies, programmes and mechanisms

30. Based on information ODIHR obtained during its assessment from a broad range of state and non-state stakeholders, the Office noted that the authorities have taken some steps towards accountability and improving the protection of HRDs, including journalists, since the release of the report of the Public Inquiry on the murder of Daphne Caruana Galizia.⁵⁷ Interviews, however, made clear that serious concerns remained about a lack of implementation of the inquiry's recommendations, including those related to media reforms and the protection of journalists.⁵⁸
31. Concerning accountability for threats and harassment of HRDs, ODIHR received information on investigations of hate speech, including online hate speech, and heard of prosecutions that had taken

⁵¹ Carabott Sarah, Times of Malta, 10 April 2020, [Sea Rescue NGOs 'Facilitating Human Trafficking' – Government](#).

⁵² Cordina John Paul, Newsbook, 21 July 2022, [AFM Cannot Be Part of Traffickers' and NGOs' Common Agenda – Camilleri](#).

⁵³ Ellul Daniel, Times of Malta, 5 January 2023, [NGO Rescue Boats 'Pull Factor' for Migrants: Minister](#).

⁵⁴ See also Cilia Jonathan, Lovin Malta, 26 April 2023, [Robert Aquilina Files for Protection Order for His Family](#).

⁵⁵ For example, an assault on Dr. Isabel Stabile while she was holding a placard on the pavement of a main road, Malta Independent, 10 May 2022, [Pro-choice activist assaulted on the roadside – NGO](#).

⁵⁶ For similar recommendations of the CoE Commissioner for Human Rights, see for example *op. cit.*, note 48, page 12, paragraph 35.

⁵⁷ While the Public Inquiry had no evidence that the state had any role in the murder of the journalist, it concluded that the state should bear responsibility for the assassination by creating a climate of impunity and that it had failed to fulfil the positive obligation to take preventive operational measures to protect her life. See Public Inquiry, *op. cit.*, note 45, pages 398 and 426-427.

⁵⁸ By the end of the period under review, concerns also remained about a lack of significant results in bringing all those responsible for the killing of Daphne Caruana Galizia to justice, see, [Council of Europe Commissioner for Human Rights, letter to the Prime Minister of Malta](#).

place upon complaints by HRDs.⁵⁹ However, some civil society interviewees also noted that they refrained from reporting threats to the police or expressed doubts, in particular, about whether online threats on social media were always taken seriously.

32. ODIHR positively noted information provided by Maltese authorities about the adoption of police standard operating procedures, the introduction of new risk assessment protocols and the designation of contact points for journalists and CSOs in the police's Central Intelligence and Analysis department as a step towards establishing mechanisms for identification of persons at risk and providing for their safety. ODIHR noted that the remit of this department was limited to identifying and triggering a response only to imminent and real risks of threats to life, and that HRDs were reportedly not consulted in setting up new protection structures, nor in the development of their protocols. HRDs interviewed were either unaware of the department and its work, or when aware, considered the risk assessment process to be limited in scope, weak and incapable of being effective, or of offering timely and adequate assistance. HRDs felt left without protection to prevent threats and abuse from becoming imminent threats to life. The risk assessment process was confidential, and did not allow for the participation or monitoring of the process by HRDs' representatives. Any collaboration the police establish with civil society on this matter needs to be broad and inclusive.
33. In its assessment, ODIHR also noted concerns from interlocutors about Government Bill 17 of 2022⁶⁰, which proposed the setting up of a, "Committee for the Recommendation of Measures for the Protection of Journalists, other Media Actors and Persons in Public Life". The initiative for the establishment of such a committee followed from the findings of the Public Inquiry. A legal analysis by the OSCE Representative on Freedom of the Media's (RFoM) of the government's draft,⁶¹ which predated Bill 17, welcomed this initiative as a "high level committee that may essentially play a general co-ordination role,"⁶² but recommended the "designation and establishment of concrete units and the definition of clear protocols" to deal with particular events and to provide "effective protection and immediate responses". RFoM also recommended the introduction of "proper engagement and co-ordination mechanisms with civil society and media organizations regarding the operation of early-warning and rapid-response mechanisms (hotlines, online platforms or 24-hour emergency contact points) to ensure that journalists and other media actors have immediate access to and are aware of protective measures when they are threatened." Bill 17 did not incorporate the recommendations made by RFoM. ODIHR further noted concerns that the Committee, as proposed, did not sufficiently guarantee a genuinely independent risk assessment.
34. According to information provided to ODIHR within the period under review, several recommendations made by the CoE Commissioner for Human Rights also remained unimplemented. The Commissioner urged Malta to swiftly put in place "far-reaching reforms needed to strengthen the protection of journalists in accordance with the CoE's Committee of Ministers Recommendation (2016)4 (...)," to provide "a co-ordinated response to threats and harassment against journalists," to organize "enhanced awareness-raising among the police and dialogue between law enforcement and media professionals (...)" and to follow up and investigate allegations of abuse and crime emerging from journalistic

⁵⁹ See, for example, The Malta Independent, 6 July 2023, [Man Jailed for Two Years for Sending Threatening Letters to Government Critics](#).

⁶⁰ An Act to provide for the establishment of the Committee for the Recommendation of Measures for the Protection of Journalist, other Media Actors and Persons in Public Life, [Bill 17](#) of 2022.

⁶¹ Office of the OSCE Representative on Freedom of the Media, "[Legal Analysis on the Draft Laws of Malta to Implement Various Measures for the Protection of the Media and of Journalists](#)", February 2022.

⁶² *Ibid.*, page 25 throughout this paragraph.

investigations. The Commissioner also identified a need to tackle sexist harassment against female journalists.⁶³

I.3. Protection from administrative or judicial harassment

35. From its assessment and interviews, ODIHR learned that administrative or judicial harassment remained a key challenge for HRDs, in particular journalists, with the potential of producing a major chilling effect on their work. Most notably, this took the form of strategic lawsuits against public participation (SLAPPs) in particular through defamation or libel proceedings.
36. A report published in 2022 by the Coalition against SLAPPs in Europe found that of the 29 countries under review, Malta had by far the highest number of SLAPP cases per capita between 2010 and 2021.⁶⁴ Daphne Caruana Galizia herself faced 47 libel cases at the time of her assassination in 2017, including five criminal defamation cases. Some of those lawsuits were even continued against her heirs after her death. Following her assassination, Malta introduced legal reforms, including the decriminalization of defamation, but problems remained.⁶⁵
37. Several interviews ODIHR conducted indicated that HRDs and independent journalists, media houses, and editors continued to be targeted both by SLAPPs and by legal letters threatening SLAPPs, instituted in Malta and abroad. Such legal letters – signed by Maltese lawyers or foreign lawyers, for example, from the United States or the United Kingdom – threatened journalists, editors and media houses with suits should they continue their journalistic investigations or publish their findings from those investigations. In some reported instances, they took down already published articles due to fears that they or their media outlet would be unable to afford the financial and legal burden of challenging such claims in judicial proceedings.⁶⁶ In other instances, journalists and editors were sued abroad, for example in Bulgaria, where defending against such claims exacted additional legal and financial support.⁶⁷
38. Journalists and editors repeatedly called for a legislative framework that could safeguard them from the crippling effects of such suits⁶⁸ and for their participation in related media reforms.⁶⁹ While no reform to protect HRDs, including journalists, from SLAPPs had been adopted by the end of the period under review, government proposals under discussion were criticized by interlocutors ODIHR interviewed for failing to meet the requirements of a comprehensive legal reform to effectively address the chilling effect of SLAPPs.⁷⁰

⁶³ *Op. cit.*, note 48, page 12, paragraphs 34 and 35.

⁶⁴ Coalition against SLAPPs in Europe (CASE), Shutting Out Criticism: How SLAPPs Threaten European Democracy, [A Report by Case](#), March 2022, Page 23, Figure 6.

⁶⁵ Media and Defamation Act 2018. See also Public Inquiry, *op. cit.* note 45, pages 380-381, 395-397 and 442-443.

⁶⁶ Index on Censorship, Breaking the Silence, [A New Report on the Legal Measures that Will Give Journalists back Their Voices](#), July 2020.

⁶⁷ Times of Malta, 22 February 2020, [Satabank Owner Sues Manuel Delia in Bulgaria](#).

⁶⁸ See, for example, Editorial, Times of Malta, 23 June 2020, [Journalists need SLAPP Protection](#); and Editorial, The Malta Independent, 22 February 2020, [SLAPP Lawsuits – Preventive Action Still Needed](#).

⁶⁹ Elizabeth De Gaetano, The Shift, 23 September 2022, [Prime minister urged to publish proposals for press freedom reform](#).

⁷⁰ See Daphne Caruana Galizia Foundation, Public Inquiry into Daphne Caruana Galizia's Assassination – Our expectations of the reform process and outcome, 16 February 2023, [20230216 LETTERHEAD Public Inq implementation - position statement](#) and CoE Commissioner for Human Rights, [Letter to the Speaker of Parliament](#).

39. While defamation was decriminalized in 2018, in its assessment ODIHR was made aware of attempts to use other criminal law provisions for bringing charges in cases of satire and comedy.⁷¹ Article 339(1)(e) of the Criminal Code continued to broadly penalize insult and threats. ODIHR positively noted that high-level government officials warned against the use of such charges against satirical expression⁷² and the parliament amended the law introducing an exception to that article for artistic, satirical and comic expression.⁷³ Concerns remained, however, about the potential for abusive complaints under this provision as another form of criminal defamation against HRDs. In cases where charges are warranted, other more precise and well-defined provisions that better meet international standards in exceptionally restricting freedom of expression appear to be available in the Maltese Criminal Code.⁷⁴
40. ODIHR does also not claim that all civil defamation lawsuits are baseless per se, but the information obtained in its assessment shows that in the reporting period defamation legislation in Malta remained prone to being used to bring SLAPP suits, which can be a serious challenge for HRDs in their work. SLAPPs essentially aim to exhaust HRDs financially and morally, especially journalists, and prevent them from carrying out their important work. Malta should prevent such abuse of judicial proceedings, through adequate legislation, which was subject to broad consultation.

II. Other aspects of a safe and enabling environment conducive to human rights work

II.1. Freedom of expression and freedom of the media

41. Freedom of expression is protected by article 41 of the Constitution, and in the European Convention Act.⁷⁵ Limitations on the exercise of that freedom are regulated mainly through the Media and Defamation Act,⁷⁶ the Criminal Code,⁷⁷ and the Electronic Communications (Regulation) Act.⁷⁸ As noted before, the Media and Defamation Act provides for the civil action of libel, while the Criminal Code and the Electronic Communications (Regulation) Act provide for a series of criminal offences such as harassment, threats, causing others to fear, and insult.
42. As set out in previous sections of this report, several interlocutors ODIHR interviewed provided examples of how the negative portrayal of HRDs, including independent journalists, as well as threats, harassment, attacks and SLAPPs discouraged their work and had chilling effects on the exercise of the right to freedom of opinion and expression. Similarly, several interviewees highlighted how harassment of independent and investigative journalists resulted in self-censorship and undermined media freedom.
43. In documenting how a climate of impunity, a lack of rule of law, a hostile environment and a failure to recognize the value of investigative journalism contributed to the assassination of Daphne Caruana Galizia, the Public Inquiry found several shortcomings in the protection of freedom of expression and

⁷¹ For background see Magri Giulia, Times of Malta, 9 January 2023, “[Police Charge Bis-Serjeta Satirist with Threatening River of Love in Online Post](#)”; and Camilleri Michaela Pia, Newsbook, 13 June 2023, “[Second Comedian to Be Taken to Court for Insulting River of Love Pastor](#)”.

⁷² Balzan Jorgen, Newsbook, 16 June 2023, “[Minister Warns against Weaponising Law against Satire as Manche Files Another Criminal Report](#)”.

⁷³ Arena Jessica, Times of Malta, 27 June 2023, “[Artists Given Greater Freedom to Use Insults, Threats, as Part of Their Work](#).” The amendment text itself is available at: <https://legislation.mt/eli/act/2023/29/eng>.

⁷⁴ For example, incitement to hatred, harassment, causing others to fear violence, condoning or trivializing genocide, etc.

⁷⁵ *Op. cit.*, note 18, First Schedule, Article 10.

⁷⁶ *Op. cit.*, note 24.

⁷⁷ *Op. cit.*, note 23.

⁷⁸ Electronic Communications (Regulation) Act, 1997, [Chapter 399](#), Laws of Malta.

freedom of the media.⁷⁹ Consequently, the Public Inquiry recommended not only measures to strengthen the protection of journalists but also comprehensive legislative and policy changes with regard to media freedom and the rule of law.

44. Multiple accounts that ODIHR received expressed concern that, two years after the Public Inquiry report was published, no such legislative reform reflecting its recommendations had been implemented. While various proposed bills⁸⁰ were defeated or suspended, according to several interviewees, the process of reform had lacked broad and meaningful consultation as recommended, for example, by the OSCE RFoM.⁸¹ Several interviewees expressed concern that the government-appointed Committee of Experts on Media⁸² worked largely in private⁸³ and public consultations were only authorized following considerable criticism of the government's first set of proposals.⁸⁴ By the end of the period under review, concerns about legislative proposals and the lack of a wide and transparent public consultation remained.⁸⁵
45. In other developments, according to information provided to ODIHR, HRDs initiated some court cases in which the State was found to have violated their right to freedom of expression, notably in cases when banners put up by the family of Caruana Galizia were removed by the planning authority,⁸⁶ and when government employees continuously cleared candles and flowers from a protest site set up by civil society seeking justice for the assassinated journalist.⁸⁷ During the campaign calling for justice for the death of a youth at a construction site, a campaigner putting up a banner was "accosted by police, frisked and taken to a station for questioning."⁸⁸ The incident raised concerns, considering the judgments delivered by Malta's constitutional courts which found a violation of the right to freedom of expression in similar cases.

Access to information of public interest

46. HRDs, including journalists, reported to ODIHR facing major challenges in accessing information held by public authorities. Reportedly, information was not provided proactively and questions raised by

⁷⁹ *Op. cit.*, note 45, pages 399 and 414.

⁸⁰ These included bills proposed by the opposition, see Constitution of Malta and Various Laws (Amendment) Bill, [Bill 259](#) of 2022, this legislative proposal addressed recommendations of the Public Inquiry on both the strengthening of the rule of law as well those for a media reform; as well as bills introduced by the government, see Constitution of Malta (Amendment Bill), [Bill 18 of 2022](#); Protection of the Media and Journalists (Various Laws)(Amendment) Bill, [Bill 19 of 2022](#).

⁸¹ See, Office of the OSCE Representative on Freedom of the Media, "[Legal analysis on the Draft Law of Malta to Implement Various Measures for the Protection of the Media and of Journalists](#)", February 2022; and "[Legal analysis on the Draft Law of Malta to Implement Various Measures for the Protection of the Media and of Journalists](#)", October 2021.. See also Cordina John Paul, Newsbook, 22 September 2022, "[Press Reforms Must be Opened to Public Consultation, Journalists Insist](#)".

⁸² Which was tasked with preparing proposals for comprehensive media reform, see Government of Malta, Information Note, 11 January 2022, [Establishment of a Committee of Experts on Media](#).

⁸³ Lindsay David, The Shift, 27 September 2022, "[Media Reform: Minister Claims Wide Public Consultation that Never Happened](#)"; see also Balzan Jurgen, Newsbook, 7 October 2022, "[Media Freedom Organisations Concerned by Malta's Media Reform](#)".

⁸⁴ Malta Independent, 13 October 2022, "[PM: 'No Objection' for Experts' Committee to Hold Consultations on Media Reforms; Freezes Bills](#)".

⁸⁵ See, CoE Commissioner for Human Rights, [Letters to the Prime Minister and the Speaker of Parliament](#), 3 October 2023,. For the contributions of HRDs towards media law reform see, for example, Daphne Caruana Galizia Foundation, 16 February 2023, "[Public Inquiry into Daphne Caruana Galizia's Assassination, Our Expectations of the Reform Process and Outcome](#)"; see also Article 19, 27 July 2022, "[Malta: Comprehensive Reforms Still Needed to Protect Journalists](#)".

⁸⁶ Peter Caruana Galizia et v. Planning Authority, [Application no. 79/2018/LSQ](#), First Hall of the Civil Court (Constitutional Jurisdiction), 16 July 2019.

⁸⁷ Emanuel Delia v. Honourable Minister of Justice et, [Application no. 93/18JZM](#), First Hall of the Civil Court (Constitutional Jurisdiction), 30 January 2020.

⁸⁸ Cordina John Paul, Newsbook, 24 April 2023, "[Police Frisk and Question Activist Who Puts up Jean Paul Sofia Banner](#)".

journalists investigating abuse of public office, corruption and other governance-related issues were often not acknowledged or replied to. At the same time, as reported to ODIHR, and also noted by the CoE Commissioner for Human Rights, formal freedom of information requests that civil society and journalists presented under the Freedom of Information Act⁸⁹ got ignored, turned down, faced delays, or other diversionary tactics.⁹⁰

47. The Information and Data Protection Commissioner (IDPC) publicly expressed concern about some aspects of the Freedom of Information Act, calling for it to be revised.⁹¹ Interlocutors informed ODIHR that the government commissioned advice from a law firm on a legal reform in 2021, but no public consultation was held, and no legislative proposals were made. A request seeking access to the law firm's report was itself denied by the authorities.⁹²
48. Maltese journalists and civil society have long raised problems with access to information.⁹³ When considering the right to access to information, the Public Inquiry criticized and warned against "the culture of confidentiality and secrecy shielded by the excuse of privacy or that of commercial prejudice, and which has little relevance to democracy and the administration of the public good, where the latter must always be transparent and accountable."⁹⁴ The OSCE RFoM's legal review of the government proposed media laws also advised strengthening the right to access to information at the constitutional level.⁹⁵
49. Some examples in the period under review that were brought to ODIHR's attention stood out. These included rejections of information requests made to the Malta Film Commission by several journalists, for example when seeking information on how public funds were spent on the 2022 Malta Film Awards,⁹⁶ and 40 rejections of requests presented by The Shift seeking copies of service contracts concluded between public authorities and the owner of a media company.⁹⁷
50. Consistent with ODIHR interviews, media freedom NGOs described the experience of The Shift as "illustrative of a far wider problem regarding access to information in Malta. Public bodies regularly deny FOI requests from media on arbitrary grounds. Responses are often delayed until the last possible minute and often followed by requests for extensions. When FOI requests are accepted, information is often incomplete. (...) Evidence also suggests that FOI requests from certain media outlets, or on certain topics, are handled in a discriminatory manner by certain administrative bodies."⁹⁸
51. In its interviews ODIHR also heard other examples of rejected information requests with HRDs having to resort to the IDPC for the decision. When the Commissioner issued orders in favor of providing the

⁸⁹ *Op. cit.*, note 27.

⁹⁰ *Op. cit.*, note 48, page 11, para 29.

⁹¹ Times of Malta, 25 May 2021, "[Data Protection Chief: Freedom of Information Law 'Needs to Be Revised'](#)".

⁹² Muscat Caroline, The Shift, 29 January 2023, "[In an Ironic Twist, Government Turns Down FOI Request for Its Own FOI Report](#)".

⁹³ See, for example, Borg Jacob, Times of Malta, 11 June 2016, "[Government Says 'No' to Most Times of Malta Requests for Information](#)"; and Grech Denise, Times of Malta, 15 October 2018, "['Frequent' Rejection of Freedom of Information Requests Flagged to UN](#)".

⁹⁴ *Op. cit.*, note 45, page 432.

⁹⁵ *Op. cit.*, note 61.

⁹⁶ Magri Giulia, Times of Malta, 13 March 2022, "[Film Commission Rejects FOI Request on Malta Film Awards Cost](#)";; Bonnici Julian, Lovin Malta, "[Freedom of Information Goes Silent on Breakdown of €1.3 Million Malta Film Awards](#)";; and Montebello Sean, The Shift, 4 August 2023, "[Malta Film Commission 'in the Process of Publishing' Lavish Film Festival Costs](#)".

⁹⁷ Muscat Caroline, 12 June 2022, "[The Shift Wins First Four FOI Appeals by Government to Hide Payments to Saviour Balzan](#)".

⁹⁸ Media Freedom Rapid Response, ECPMF, 7 February 2022, "[Malta: Media Battle for Access to Public Information](#)".

requested information, public entities often appealed them, going to the Information and Data Protection Tribunal, and in the next instance to the Court of Appeal.⁹⁹ Thereby, journalists and human rights activists who were denied the information of public interest faced a lengthy and costly administrative and legal route. Often, only after these three stages have been exhausted would the public authority provide the requested information.

52. ODIHR is concerned that a lack of transparency and routinely sending HRDs into administrative and judicial procedures have multiple negative consequences. They defy the right of access to information by making information of public interest difficult and costly to obtain, thereby weakening freedom of expression and media freedom altogether. The lack of information or its obsolescence – in cases of HRDs who persevere through all instances of appeal – also jeopardize the right to participate in public affairs, seriously limiting an informed public debate. They undermine the role of HRDs, especially journalists, and betray the standard of public transparency and accountability that is central to democratic good governance. To redress the imbalance against effective access to information of public interest, urgent policy changes are needed, followed by a substantial legal change, in consultation with relevant stakeholders.

Protection of whistle-blowers

53. HRDs that ODIHR interviewed reported that the whistle-blower protection framework in Malta was not yielding the desired results. An example they gave to illustrate this was that, although the Protection of the Whistleblower Act¹⁰⁰ was enacted in 2013, and despite numerous alleged corruption scandals reported in the media, there was only one known case of a person receiving protection as a whistleblower. The European Commission's 2023 Rule of Law Report indicated that the Permanent Commission against Corruption (PCAC) had received no cases of whistleblowing in 2022, and in 2021 had forwarded two whistleblowers' reports to the police.¹⁰¹
54. Whereas some interviewed HRDs recognized the progress in the quality of the legal framework with the transposition of the EU Whistleblower Protection Directive¹⁰² into the Protection of the Whistleblower Act, they highlighted to ODIHR some key remaining concerns. Notably, they still considered the law to be ineffective, setting cumbersome legal structures and offering insufficient protection. HRDs thought that the wide-spread perception of impunity in corruption cases, as well as risks of retaliation, further exacerbated the problem.¹⁰³ The authorities ODIHR met were also concerned about retaliation risks and thought broader awareness raising and education about combating corruption would be beneficial.

⁹⁹ See for example, Daphne Caruana Galizia Foundation, 13 September 2023, "[Malta Film Commission Sues to Deny us Access to Information](#)"; and Lindsay David, The Shift, 23 August 2023, "[Government's Lawsuits against The Shift Make Malta Europe's Most 'SLAPPED'](#)".

¹⁰⁰ Protection of the Whistleblower Act, [Chapter 527](#), Laws of Malta.

¹⁰¹ The report on Malta is available at: https://commission.europa.eu/document/download/7b6397e7-0ef0-464d-b0cb-7e91f7fe2a35_en?filename=42_1_52624_coun_chap_malta_en.pdf.

¹⁰² See, [Directive \(EU\) 2019/1937](#) of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

¹⁰³ See also, Whistleblowing International Network, 18 November 2022, "[Protecting Whistleblowers in Malta](#)".

II.2. Freedom of peaceful assembly

55. The right to freedom of peaceful assembly is recognized in article 42 of the Constitution and mainly governed by the Public Meetings Ordinance.¹⁰⁴ The Ordinance foresees a number of notification requirements for holding public meetings, for example that notification is given no later than 48 hours before the meeting. In practice, HRDs who ODIHR interviewed did not find the procedures for organizing a peaceful assembly cumbersome; and some also reported having conducted or participated in spontaneous assemblies.
56. According to interviews, HRDs in Malta were active at organizing peaceful assemblies on a broad range of topics, including in support of other HRDs, and some of these attracted a considerable number of participants. They had not faced significant legal or administrative challenges in the exercise of their freedom to assemble peacefully and mostly, with few exceptions, found the policing unobtrusive and facilitative of their right in the reporting period.
57. Civil society representatives who were organizing peaceful assemblies that attracted counter-demonstrators, as well as those who themselves protested against the messages of other peaceful assemblies, informed ODIHR that they were generally satisfied with the police facilitation and did not report security-related concerns. One interviewed organizer who reported security-related concerns said that the police appeared to take these concerns seriously and addressed them.
58. As noted in the section on freedom of expression, civil society had to challenge restrictions on the use of public space in some legal cases, however. Civil society also criticized the retention of crowd barriers surrounding the parliament, that had originally been placed there following protests in December 2019. The barriers were initially justified as a temporary solution to ensure that both MPs and the building itself were protected,¹⁰⁵ but the barriers remained there at the end of the reporting period. Space surrounding national parliaments is typically a venue for a variety of peaceful assemblies and physically restricting it with metal barriers for an extended duration may inhibit the exercise of this right.

II.3. Freedom of association / access to funding and resources

59. Freedom of association is recognized in article 42 of the Constitution. A group of persons may associate and advocate their cause without needing to formally register with a State established authority. However, non-registered groups do not enjoy the privileges accorded to voluntary organizations by the Voluntary Organisations Act.¹⁰⁶ The Act (Art. 3) recognizes that “voluntary organizations are independent and autonomous of the Government and such organizations shall have their status respected by the Government at all times.”
60. In its assessment ODIHR noted that registered voluntary organizations were, in accordance with the Act, legally allowed to make public collections, receive financial support from and contract with government, benefit from exemptions set out in law and policies supporting voluntary action. Registered voluntary organizations were obliged to submit an annual report, including financial accounts, to the office of the Commissioner for Voluntary Organisations. Most of ODIHR’s civil

¹⁰⁴ Public Meetings Ordinance, [Chapter 68](#).

¹⁰⁵ Times of Malta, 7 July 2022, “[Parliament Barriers to Stay until ‘Permanent Solution’ Is Found, Speaker Says](#)”; see also Calleja Laura, Malta Today, 4 December 2019, “[Architects Say Barriers Outside Parliament Only Widen the Gap Between Politicians and People](#)”.

¹⁰⁶ Voluntary Organisations Act, 2007, [Chapter 492](#), Laws of Malta.

society interlocutors were largely satisfied with the related administrative processes. But as the same requirements applied to all organizations, regardless of their size, some stated that the procedures placed a relatively heavier burden on smaller organizations.

61. Other forms of associations, such as foundations, were regulated by the Second Schedule to the Civil Code.¹⁰⁷ The recognition of international or foreign organizations was regulated in a manner that recognizes their registration under the laws by which they are established or registered overseas. The Code also established the office of Registrar for Legal Persons, in charge of the registration process and monitoring of compliance by legal persons.
62. While there appeared to be no formal obstacle, interviewees reported to ODIHR that access to funding was at times challenging for HRDs as funding programmes were often project-based, required the NGOs to contribute financially, and the administrative obligations that came with funding were reportedly burdensome.
63. From its interviews with several interlocutors, ODIHR positively noted in particular the support to LGBTI NGOs through public funds.¹⁰⁸ As mentioned before, there appeared to be a good working relationship between NGOs in this field and government entities, which was reflected also in the allocation of public funds to NGOs enabling the latter to provide services to the LGBTI community.¹⁰⁹ Under the multiannual LGBTI equality strategies and action plans, HRDs were also financially supported through public funds for the organization of Malta Pride and EuroPride Valletta 2023.¹¹⁰ Following the legislative and policy reform in this field, Malta was chosen by the European Pride Organisers Association (EPOA) to host EuroPride 2023.¹¹¹
64. Some interviewees from within the media sector also positively noted to ODIHR the government grants provided to the sector during the COVID-19 pandemic and other grants given to address financial troubles. However, ODIHR also noted concerns about a lack of transparency and lack of objective criteria by which such grants were made.¹¹²
65. Furthermore, ODIHR positively noted the experience that some interviewed HRDs had with the secondment scheme, whereby public service employees could work for NGOs for a limited time with their salaries paid by the state. This was seen as potentially beneficial in sharing knowledge and transferring skills, creating synergies and increasing effectiveness and efficiency.

II.4. Right to participate in public affairs

66. In its assessment, ODIHR heard from various ministries and public authorities about initiatives for consultation with civil society and other stakeholders in the development of policies and legislation. A number of Directives issued to government entities established framework procedures for public

¹⁰⁷ Civil Code (Second Schedule), [Register of Beneficial Owners – Foundations, Regulations](#).

¹⁰⁸ See for example, TVM, 17 May 2023, "[Plan of action consisting of 94 measures will address equality for LGBTIQ+](#)"; and Rebecca Buttigieg, Times of Malta, 17 September 2022, "[Marching with Pride](#)".

¹⁰⁹ Malta Independent, 13 September 2023, "[Social Policy Ministry Signs €270,000 Agreement to Support MGRM](#)".

¹¹⁰ Government of Malta, Parliamentary Secretariat for Reforms and Equality, Human Rights Directorate, [LGBTIQ+ Equality Strategy & Action Plan](#), page 13.

¹¹¹ Malta Daily, 17 May 2021, "[Malta Signs Grant Agreement for Europride 2023 after Ranking First in Europe for LGBTI Rights](#)".

¹¹² De Gaetano, Elizabeth, The Shift, 9 June 2022, "[Help or Leverage? Government's Opacity with Media Funding Raises Questions](#)".

consultations.¹¹³ While the government set up an online platform dedicated to public consultations, each government entity had the discretion to launch a public consultation.¹¹⁴ A number of laws, such as the Environment Protection Act¹¹⁵ and the Equal Opportunities (Persons with Disability) Act¹¹⁶ also contained specific obligations related to public consultations and the participation of civil society in public affairs.

67. While the Environment Protection Act required that regulations and subsidiary plans under the Act be submitted for public consultations for a period of at least four and six weeks, respectively,¹¹⁷ ODIHR was informed by the competent Ministry that this period was sometimes extended for more complex matters or in connection with the elaboration of policies such as the sustainable development strategy. Under the Environment Protection Act, the government was also specifically required to provide individuals and organizations an opportunity to have representatives involved in the development of the National Strategy for the Environment and environmental NGOs were represented on the Environment and Resources Authority.¹¹⁸
68. Another example, shared with ODIHR was the inclusion of representatives of voluntary organizations on the Council/Commission for the Rights of Persons with Disability under the Equal Opportunities (Persons with Disability) Act.¹¹⁹ The Commission also ran a consultative committee for persons with intellectual disabilities and a forum on disability rights of young people. The Malta Business Disability Forum, a platform for discussion and improving dialogue between persons with a disability and business organizations, included a member representing civil society. In accordance with the Act, any association with a legitimate interest in ensuring compliance with the law also had the right to institute proceedings for redress before the nationally-established UN Convention on the Rights of Persons with Disabilities Redress Panel or the competent Court.¹²⁰
69. Among examples shared with ODIHR of including civil society in consultative processes, the Malta Council for Economic and Social Development Act set up an advisory body (MCESD) to the Government for consultation and social dialogue involving social partners and, where necessary, civil society organizations.¹²¹ While the MCESD had a standing Civil Society Committee that included members from various NGOs, the scope for it to contribute appeared to be limited compared to that of the social partners represented on MCESD.¹²²
70. Concerning the development of national policies in the field of human rights, ODIHR positively noted the collaboration of the Human Rights Directorate – at the time of the visit operating under the Ministry for Home Affairs, Security, Reforms and Equality – with HRDs in the preparation and implementation of multi-annual national action plans addressing discrimination and inequality of LGBTI people.

¹¹³ Examples of Directives include: The Process for Centralised Online Public Consultations Before, During, After, [Attachment 01](#); and Consultation Exercises with Stakeholders, [Amending Directive no.6-1](#),

¹¹⁴ See, www.konsultazzjoni.gov.mt.

¹¹⁵ Environment Protection Act, 2016, [Chapter 549](#), Laws of Malta.

¹¹⁶ Cap. 549. *Op. cit.*, note 20.

¹¹⁷ Cap. 549. *Op. cit.*, note 115, article 55.

¹¹⁸ *Ibid.*, articles 45(5) and 6(2)(b).

¹¹⁹ *Op. cit.*, note 20, article 24.

¹²⁰ *Ibid.*, article 33A.

¹²¹ Malta Council for Economic and Social Development Act, 2001, [Chapter 431](#), Laws of Malta, article 3.

¹²² See: <https://mcesd.org.mt/the-civil-society-committee/>. The CSC Chair has one seat on the Council and the other 14 members represent workers, employers, commerce, ministries, etc. See also MCESD website at: <https://mcesd.org.mt/about-mcesd/>.

71. Whereas authorities noted ongoing communication with local NGOs and interviewed HRDs confirmed that co-operation with the government and other public authorities worked relatively well in some human rights areas, HRDs were more critical about the co-operation in other fields. Co-operation in promoting equality of LGBTI people, for example, was seen as an area in which co-operation was easier. While interviewed HRDs also positively noted the recognition of the role of environmental NGOs in planning processes¹²³ and their inclusion in consultation processes related to development and the environment, some also stressed to ODIHR that work still needed to be done towards more meaningful and inclusive participation in this field.¹²⁴ Especially in other areas, such as promoting and protecting the rights of refugees and migrants, co-operation was seen as particularly difficult by HRDs.
72. As mentioned earlier, several interviewees also voiced serious concerns about a lack of transparency and meaningful consultation with regards to the protection of journalists and media law reforms, as well legal reforms related to SLAPPs and the protection of whistle-blowers. Several HRDs mobilized against the passage of such laws without consultation, also, for instance, in relation to regulations for the removal from online publication of court judgments.¹²⁵ Despite these calls, ODIHR noted concerns that no wide public consultations were carried out.
73. According to information provided to ODIHR, other previous comprehensive legislative reform processes for good governance and the rule of law reportedly took place without inclusive, open and public consultation. In its Opinion No. 986/2020, the Venice Commission recalled that “holistic constitutional changes should be adopted as the result of a process of wide consultation in society” and how it “insisted on the international obligation of the Government to ensure that the media and civil society play an active role in public affairs holding the authorities accountable.”¹²⁶ It called for “wide consultations and a structured dialogue with civil society, parliamentary parties, academia, the media and other institutions,” indicating that wide and substantive consultations were a key condition for adopting decisions on issues of major importance for society. The Venice Commission reiterated its call in its Opinion No. 993/2020.¹²⁷ HRDs noted in interviews with ODIHR that despite these calls, there was no such broad civil society involvement in these reforms.¹²⁸
74. Where consultation processes were launched in connection with legal reforms and policy development, several interviewed HRDs reported to ODIHR that these were generally open for too short a period for them to prepare a meaningful response, considering their modest resources. Several interviewees also complained that their input was often disregarded.
75. Thus, while ODIHR identified in its assessment several promising practice examples concerning the inclusion of civil society in consultation mechanisms in various fields, the authorities of Malta should more systematically consider how to guarantee effective and meaningful participation of HRDs and their organizations in the development of laws and policies affecting the environment in which they operate and the protection of human rights more broadly.

¹²³ Environmental NGOs are represented on the Planning Board, and have the right to access administrative and judicial proceedings in their own name. See Environment and Planning Review Tribunal Act, 2016, [Chapter 551](#), Laws of Malta; and Development Planning Act, 2016, [Chapter 552](#), Laws of Malta, Article 63(2)(c).

¹²⁴ See e.g., The Malta Independent, 2 June 2023, “[NGOs File Court Action against Legal Notice Rewarding ODZ Illegality](#)”.

¹²⁵ [Letter to Prime Minister](#), Hon. Dr Robert Abela, 2 December 2021.

¹²⁶ European Commission for Democracy Through Law, Malta, “[Opinion on Proposed Legislative Changes](#)”, 19 June 2020, CDL-AD(2020)006.

¹²⁷ European Commission for Democracy Through Law, Malta, [Opinion on Ten Acts and Bills Implementing Legislative Proposals Subject of Opinion](#), CDL-AD(2020)006, 8-9 October 2020.

¹²⁸ Aditus, May 2020, [Feedback on Malta’s Proposed Legislative Changes further to the Venice Commission Report on Malta](#).

II.5. Freedom of movement and human rights work within and across borders

76. In its assessment, ODIHR did not observe any specific concerns about a lack of HRDs' freedom of movement. ODIHR also appreciated that Malta provided safety to a number of people who arrived from other countries and started or continued carrying out human rights work in Malta. This included a small number of those who arrived from Ukraine and the Russian Federation following the Russian military attack against Ukraine.
77. However, ODIHR heard concerns regarding the situation of NGOs conducting refugee and migrant search and rescue operations at sea as the space for their work appeared to be closed. A notable example of the serious challenges NGOs faced in this sector was that of Mission Lifeline, which had one of their vessels impounded in Malta during a legal battle over the ship registration. The captain was cleared of any wrongdoing, eventually, in January 2020,¹²⁹ but by that time the ship was no longer seaworthy and could not be used for operations.
78. Against the background of very serious concerns related to immigration detention in Malta, HRDs working on migration issues also reported to ODIHR challenges in accessing migrant detention centers consequent to changes in the administrative process. HRDs claimed that these challenges limited their ability to provide services, reduced migrants' access to legal support for their asylum and protection applications, and made monitoring conditions of detention more difficult.¹³⁰
79. The CoE Commissioner for Human Rights expressed similar concerns and called on the Maltese authorities to strengthen independent detention monitoring and guarantee HRDs wide access to places of detention to provide support and assistance regarding asylum procedures or other matters.¹³¹ Moreover, the Commissioner also recommended that the authorities "seek constructive co-operation with NGOs conducting search and rescue operations and facilitate their work, including by allowing them access to ports."¹³² While noting that Maltese authorities informed ODIHR that they see search and rescue as an exclusive state competence, based on its assessment in the period under review, ODIHR suggests that Malta take these recommendations seriously and ensure their implementation.

¹²⁹ Aditus, January 2020, "[We Won, Captain Claus-Peter Reisch is a Free Man!](#)".

¹³⁰ This is consistent with concerns reported elsewhere, see e.g., [Country Reports on Human Rights Practices for 2022](#) Malta, United States Department of State, Bureau of Democracy, Human Rights and Labor, page 3; and *op. cit.*, note 48, page 17, paragraphs 54 and 55. Subsequently, authorities informed ODIHR of certain efforts made to improve communication and access to information in immigration detention. Among these efforts, they referred to the introduction of the Communication with the Outside World Protocol, a Visitors' Policy and a Media Protocol, measures to facilitate outgoing and incoming telephone communication and access to legal aid providers, as well as provision of information booklets in a language that new admissions to detention centers understand.

¹³¹ *Op. cit.*, note 48, page 5.

¹³² *Ibid.*, page 18, paragraph 61.

III. Recommendations

ODIHR offers recommendations to enhance the protection of HRDs and bring measures fully in line with OSCE commitments and other international obligations and standards, as elaborated in *The Guidelines*. ODIHR stands ready to assist the authorities in implementing these recommendations and to foster dialogue between the authorities and civil society about the recommendations and their implementation.

1. On physical integrity, liberty and security, and dignity of human rights defenders

- a) Publicly acknowledge the status and role of HRDs and the legitimacy of their work, through public statements, prompt condemnation and due prosecution of any attacks, threats and other abuse as they occur; refrain from disparaging rhetoric which questions the importance and legitimacy of HRDs' work. (Principally addressed to the officials at the highest level of the state and relevant national authorities, including the Prime Minister, cabinet members and members of Parliament)
- b) Take measures to reverse the stigmatization of HRDs, including by sensitizing political representatives and persons of authority, as well as public institutions and their workforce, on the importance of human rights, the notion of HRDs, the important and legitimate role HRDs play in society, the specific risks they face because of their work, and their protection needs. (To the Government, parliament and public authorities, in co-operation with civil society and international organizations)
- c) Take measures to sensitize the public service media and media owned by political parties, of the importance of human rights, the situation of HRDs, the important and legitimate role HRDs play in society, the specific risks they face as a result of their work, and their protection needs. (To the Broadcasting Authority, the management of the public service media, and political parties owning media outlets and broadcasting stations)
- d) Support ongoing training programmes for public officials, including the judiciary, law enforcement officers, prosecutors, persons holding political office, and other relevant state actors on the state's obligations to respect, protect and fulfill human rights pertaining to HRDs, the important role HRDs play in a democratic society, the specific risks they face as a result of their work, and their protection needs. (To Government, relevant public authorities and agencies)
- e) Offer support to journalists and HRDs at risk in establishing early-warning and rapid-response mechanisms, in line with the CoE Committee of Ministers Recommendation (2016)⁴ on the protection of journalism and safety of journalists and other media actors, which are expanded *mutatis mutandis* to other human rights activists at risk. (To the Government; in consultation with journalists and civil society)
- f) Ensure that existing police-led systems that trigger protective measures provide a co-ordinated assessment of risk and availability of protection measures beyond instances of real and imminent risk to life; ensure that these programmes are tailored for the protection of diverse HRDs and capable of taking into consideration the context of their work; ensure that safety and protection protocols and mechanisms are developed, and those already in place are reviewed, in consultation with and implemented together with HRDs; assign such resources that ensure protection measures can be implemented without delay. (To law enforcement; working closely with civil society and journalists)
- g) Compile and publish data and statistics on incidents such as threats, harassment against HRDs, and the authorities' response to them. (To the Ministry for Home Affairs, Security, Reforms and Equality; Malta Police Force; Attorney General; courts)

- h) Introduce, without delay, an effective and meaningful anti-SLAPP legislative regime and ensure that its legislative and administrative framework is capable of deterring the initiation of SLAPP suits and of providing for their quick determination through the courts once lawsuits are instituted. (To Government and Parliament, in close consultation with civil society)

2. On other aspects of a safe and enabling environment conducive to human rights work

- i) Establish an independent and adequately resourced national human rights institution, with a broad mandate in line with the UN Paris Principles. (To the Government and the Parliament, in consultation with the Parliamentary Ombudsman, other relevant bodies and civil society)
- j) Launch a wide public consultation process to implement the recommendations of the Public Inquiry with a view to adopting policies and laws which strengthen the rule of law. (To the Government)
- k) Launch an open, inclusive and effective consultation process on legislative media reforms without delay, to give all stakeholders a meaningful opportunity to contribute towards this reform and to collaborate with relevant stakeholders and experts in the preparation and drafting of legislative proposals before these are tabled before Parliament. (To the Government)
- l) Review relevant legislation and legal regulations pertaining to freedom of expression, such as the Criminal Code provisions criminalizing threats and insult, to ensure that they are sufficiently clear, narrowly defined and do not unduly interfere with the rights of HRDs as required by relevant international standards, which prescribe that all restrictions to freedom of expression must be in full conformity with the principles of legality, necessity and proportionality towards a legitimate aim. (To the Government and the Parliament)
- m) Establish protocols and guidelines for relevant investigative and prosecutorial authorities to identify the extent to which they may interfere with the exercise of civil and political rights through their investigative and prosecuting functions, and to prevent the abuse of and misuse of laws and administrative processes against HRDs. (To the Government; Ministry for Home Affairs, Security, Reforms and Equality; Malta Police Force; and Attorney General)
- n) Consider including freedom of the media in the Constitution as a fourth pillar of democracy in a manner which meets international human rights standards; at a minimum, ensure that the recognition of the contribution of independent journalism to society, and the State's obligation to provide a safe and enabling environment for journalists which includes the protection of their right to access information held by public authorities, as well as the protection of their sources is firmly anchored in domestic law. (To the Government and the Parliament)
- o) Reform and widely promote the whistleblower protection framework, while ensuring an effective agency responsible for the implementation and enforcement of whistleblower protection is in place. (To the Government, in consultation with civil society)
- p) Open the review of the Freedom of Information Act for public consultation, publish the review commissioned by the government, and make quality legislative proposals that reflect the principles of transparency and accountability in governance, with limitations in line with the recognized international standards and good practices. As an urgent interim measure, establish guidelines instructing government entities to adhere to the standards of transparency and accountability that are expected of democratic good governance, and restrictively interpret the exceptions in the Freedom of Information Act. (To the Government and the Parliament; in consultation with the IDPC, civil society and journalists)
- q) Assess what are justified and proportional assembly policing strategies in the vicinity of the Parliament. (To the Malta Police Force, in consultation with civil society and journalists)

- r) Ensure that where resources, including financial resources, are allocated to HRDs, these are disbursed through independent structures, following objective criteria, and through a transparent process. (To government actors, in consultation with the Commission for Voluntary Organisations and civil society)
- s) Actively and constructively engage with HRDs through regular and ongoing institutionalized and open consultation processes, that are inclusive, meaningful, transparent, accessible, accountable, efficient and overall capable of facilitating HRDs' effective participation in the conduct of public affairs, with the due consideration given to HRDs' recommendations. (To the Government, the Parliament and public authorities)
- t) Facilitate the work of search and rescue NGOs and ensure wide access of HRDs to immigration detention centers so that they are able to provide support to refugees and migrants in detention in exercising their rights. (To the Government and relevant public authorities, in co-operation with civil society)
- u) In addition to specific legislative reforms referred to above, conduct a thorough review of existing legislation to identify gaps pertaining to the operation and protection of HRDs, with the view to addressing them; actively involving civil society in the process. (To the Parliament)
- v) Consider seeking ODIHR's legislative assistance for review of draft and existing laws relevant to HRDs and their work. (To the Parliament)
- w) Provide oversight of the actions of state authorities pertaining to the safe and enabling environment conducive to human rights work. (To the Parliament, the Parliamentary Ombudsman, and other relevant bodies)
- x) Follow the status of implementation of the present recommendations. (To the Government; in particular Human Rights Directorate of the Ministry for Home Affairs, Security, Reforms and Equality, in co-operation with civil society)