

ODIHR Assessment Mission on Human Rights Defenders

Meeting with the Social Affairs Committee and the Foreign and European Affairs Committee

22 March 2023

Human Rights Defenders

The “UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, commonly known as the “Declaration on Human Rights Defenders”, was adopted by consensus by the General Assembly in 1998. While it is not a legally binding instrument, it identifies principles based on human rights that are enshrined in other legally binding instruments. Its adoption by consensus also shows a strong commitment by States towards its implementation. The declaration is different from other instruments in that it is not only aimed at States and at Human Rights Defenders themselves – it is aimed at everyone, with the understanding that there is a global human rights movement which is relevant to each and every one of us, and that we all have a role to fulfil in making sure that human rights are a reality for all people all over the world.

Human Rights Defenders (HRDs) are people whose main aim is to protect and promote human rights through peaceful means. These people act alone or in groups to address human rights on behalf of others. The free exercise of their rights creates opportunities for dialogue and potential partnerships, however the reality is that HRDs all over the world often become targets of serious abuse as a result of their work.

These people are often the target of attacks, arbitrary detention, ill-treatment and stigmatisation. They also often have their rights violated, particularly the right to free movement and to freedom of assembly. They face severe retaliation as a result of the work they do, and that same work is often ignored, misunderstood or even regarded as separate from the very human rights issues they seek to defend. They often also face legal and administrative restrictions, judicial harassment, threats, intimidation, and in some extreme cases, even kidnapping and death. In some countries, the absence of proper investigations into violations committed against HRDs just because of their human rights work, remains a problem, just as much as the impunity of perpetrators and the obvious recurrence of violations.

The work done by HRDs is essential for the protection and advancement of human rights. They play a central role in making national policies human rights compliant, while keeping the authorities accountable for their actions. Their work is also instrumental in the defence of victims whose human rights have been violated, as they ensure access to redress and adequate remedies.

HRDs are key partners of the Council of Europe Commissioner for Human Rights – the support of their work, their protection and the provision of an enabling environment for their work, is an important part of the Commissioner’s mandate. The Commissioner’s work does not stop at providing support to people who defend human rights – she provides advice and recommendations to Member States, and also intervenes before the European Court of Human Rights. The Commissioner and HRDs keep regular contact in their work, and they also co-operate with the UN, OSCE, ODIHR and other mechanisms in their work for the protection of human rights.

ODIHR and Human Rights Defenders

As part of its work, the Office for Democratic Institutions and Human Rights, assists national authorities in fulfilling their commitments to protect HRDs. This is done by monitoring their ability to operate and by building their capacity through education and training in human rights. ODIHR also follows the situation of HRDs who end up in detention, makes visits to their detention facilities and raises their cases with the national authorities on a regular basis.

The visits that are made to different countries are an important component of their mandate as they allow ODIHR to obtain first-hand information about the situation of human rights defenders in those specific countries. They also have the opportunity to identify any challenges that might be present, to report on findings, and to make recommendations that will improve the HRDs' situation.

The international perspective of the situation in Malta

Every year, the U.S. Department of State issues Country Reports on Human Rights Practices. The 2021 reports consisted of 198 country reports that highlight any progress made, regressions and work that needs to be done to ensure human rights and fundamental freedoms. While most of the report on Malta shows proper functioning of the system, it also mentions a number of significant human rights issues such as detention of irregular migrants under inhuman and degrading conditions and violence (or the threat thereof) against African migrants.

These same issues were mentioned by Council of Europe Commissioner for Human Rights Dunja Mijatovic. During a recent trip to Malta, Commissioner Mijatovic visited open and detention centres – she was “struck by the deplorable situation in Block A in the Safi Detention Centre” and strongly urged the authorities to take immediate action to improve the conditions in detention, and to avoid endangering people at sea who were already in distress. She also highlighted the need for independent monitoring of detention facilities and for voluntary organisations to have access in order to provide support to the detainees.

Issues related to the arrival of migrants were also mentioned in the Amnesty International Report 2020/21. The report says that during the pandemic, “the government resorted to unlawful practices to prevent people arriving by sea. These practices exposed refugees and migrants to grave dangers, including by delaying their rescue, pushing them back to Libya and denying disembarkation”. The report also talks of an intervention by the UN High Commissioner for Human Rights in order to raise concerns about the rescue of people at sea and the conditions in which asylum-seekers were being kept in detention.

The local situation

Malta has long been championing human rights issues and despite a few setbacks in some areas, much overall progress has been made. Our Constitution states that everyone is entitled to fundamental rights and freedoms, irrespective of race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity. As a country, we are also signatory to several international and European conventions that aim to protect human rights, which means that we are obliged to follow their principles and to ensure that our law does not conflict, while at times also enforcing the necessary provisions at a local level.

The Human Rights Directorate (HRD), which was set up in 2015, works toward the attainment of national objectives in the areas of equality, non-discrimination, civil liberties and the integration of migrants. Furthermore, any work that is done, needs to uphold fundamental human rights and possibly enhance equality in our society. The Directorate's work is split up in order to cover different aspects of human rights, with the main units being:

- Intercultural and Anti-Racism Unit
- Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics Unit
- Gender Mainstreaming Unit
- Human Rights Initiatives Unit
- Legal Unit
- Research and Coordination Unit

In spite of all the work carried out, in December 2017, articles in the local media called for respect for human rights defenders in their work towards Malta's well-being. In a statement, Aditus Foundation said that HRDs work to ensure that everyone is able to enjoy their fundamental human rights and that they are present "where State interventions are either absent or insufficient, where the risk of human rights violations is high". In return for their work, many of the local HRDs were "bullied, harassed, insulted, threatened and stigmatised. Many of us are denied access to important dialogue with State entities, or exploited by the State as we provide those public services the State refuses or is unable to provide". They also expressed their concern that following the assassination of Daphne Caruana Galizia, they themselves might be at risk in their working environment. They continued to criticise Malta's stance in this regard, saying that "by tolerating this on-going abuse of its human rights defenders, Malta is not only offending the principles human rights embody – equality, non-discrimination, individual and social empowerment – but it is also further marginalising those communities and themes human rights defenders so vehemently stand up for".

Aditus Foundation is not the only local organisation that is working to promote and protect human rights. The Platform of Human Rights Organisations in Malta is a network of voluntary organisations that was established to "provide a national forum for human rights organisations in Malta to develop, promote and advocate for the values of human dignity and equality more effectively". This platform is made up of organisations that work in the field of human rights, as they believe that networked advocacy is more effective and ultimately, more sustainable. The network is based on the Universal Declaration of Human Rights, and it supports the indivisibility of civil, political, social, economic and cultural rights as it is through their acknowledgement that human rights can flourish.

Points for Discussion

- A. 82A of the Criminal Code states that "Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or hatred against another person or group of persons on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, age, disability, religion or belief or political or other opinion or whereby such violence or hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months".

A. 83B then goes on to say that "The punishment established for any offence shall be increased by one to two degrees when the offence is aggravated or motivated, wholly or in part by

hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A.”

In cases where anyone is abusive towards HRDs or threatens them in any way, the above articles can be used to mete out justice and provide protection for the HRDs. In this way, their working environment can be made more secure, allowing them to continue with their work for the protection of human rights

- The Human Rights Directorate has spearheaded a number of initiatives aimed at safeguarding human rights, including:
 - - The National Action Plan on Human Trafficking (2020-2023)
 - A reform to enhance the fight against trafficking
 - A reform on prostitution
 - a networking event for Government officials representing all Ministries, with the aim of strengthening national cooperation to combat human trafficking
 - Project TRANSFORM: Raising standards of healthcare service provision for LGBTIQ people (2019 – 2022)
 - The LGBTIQ Equality Strategy and Action Plan 2018 – 2022
 - Gender-based Violence and Domestic Violence Strategy & Action Plan – Vision 2020
 - ‘I Belong’ Programme – a programme aimed to provide a holistic approach to integration (as part of the Migrant Integration Strategy & Action Plan (Vision 2020)
 - The launch and implementation of the Anti-Racism Strategy 2021-2023, Malta’s first national action plan against racism and xenophobia.