UNIVERSAL PERIODIC REVIEW – THIRD CYCLE

Submission to the 31st session of the Human Rights Council’s Universal Periodic Review Working Group

November 2018, Geneva, Switzerland

MALTA

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.

2. This report explains why Malta should continue to affirm the sanctity of life on the part of all human beings, including the unborn. Moreover, this report encourages Malta to ensure that its laws do not chill speech on important social questions.

(a) Abortion

3. The law regarding abortion in Malta under Articles 241 of the Criminal Code provides that any person who by food, drink, medicine, or by violence, or any other means, causes a woman with child to have a miscarriage is liable to eighteen months' to three years' imprisonment. Criminal liability attaches regardless of whether the woman consents. A pregnant woman who undertakes or consents to the miscarriage of her child shall be liable for the same punishment.¹

4. Moreover, if the means used to conduct an illegal abortion causes the death of or serious injury to the mother, regardless of whether the miscarriage occurs, carries a punishment applicable to willful homicide or willful bodily harm with only a reduction of one to three degrees.²

5. Additionally, if a physician, surgeon, obstetrician, or apothecary knowingly prescribes or administers means by which a miscarriage is procured, is liable from eighteen months' to four years' imprisonment and the loss of their ability to practice medicine. See Article 243. Imprisonment for up to six months, or a fine of up to €2,329.37, may be imposed if the same category of individual through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations causes a miscarriage. See Article 243A.

6. Malta is the only member of the European Union that does not allow abortion. And should be commended for its continued commitment to protect the lives of the unborn.

The right to life in international law

² Ibid.
A so-called international “right to abortion” is incompatible with various provisions of international human rights treaties, in particular provisions on the right to life.

Article 6(1) of the ICCPR states, “Every human being has the inherent right to life.” The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn.

Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states that the “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” This clause must be understood as recognizing the unborn child’s distinct identity from the mother and protecting the unborn child’s right to life.

The travaux préparatoires of the ICCPR explicitly state that “the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.” Similarly, other early UN texts note that the intention of the paragraph “was inspired by humanitarian considerations and by consideration for the interests of the unborn child.”

The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”

Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds that “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

Legalizing abortion does not make it safe

The medical infrastructure in many developing countries is poor, with an inadequate number of trained health professionals and unsanitary, poorly-equipped health facilities. Women who receive abortions will still face the same poor conditions faced by women who give birth and deal with similar complications, such as bleeding and infection. Providing more access to abortion will mean more women will suffer from abortion complications.

\(^3\) A/C.3/SR.819, para. 17 & para. 33; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a “supplementary means of interpretation.”

\(^4\) Commission on Human Rights, 5\(^{th}\) Session (1949), 6\(^{th}\) Session (1950), 8\(^{th}\) Session (1952), A/2929, Chapter VI, Article 10.
14. High rates of maternal mortality have less to do with the legality of abortion per se than with an inability to access obstetric care, lack of information, and lack of health workers, especially in the case of women living in poverty and in rural areas. Further, abortion can never be safe because it takes the life of the unborn child, and harms the mother through the loss of her child.

(b) Freedom of expression

15. On 14 April 2015, the Maltese Parliament passed a law entitled "Gender Identity, Gender Expression, and Sex Characteristics Act." The Act defined a number of terms, including "gender expression" and "gender identity," and established a framework for Maltese citizens to establish their gender.

16. The Act imposes criminal penalties on any person who "expose[s]" a person who changes their identity, or "insult[s] or revile[s]" a person who changed their identity. The law's language is extraordinarily broad and will freeze conversation about the propriety of the Act, the provisions of the Act, or other gender-related issues.

17. The ambiguity and expansiveness of the statute contravenes ICCPR Art. 19, which guarantees the right to freedom of opinion and freedom of expression, as well as Art. 18, which guarantees the freedom to manifest one’s religion, which often involves discussions and teaching related to social questions. Gender identity, expression, and change are social questions that should involve robust discussion. The statute does not define what will constitute an insult or revilement, does not indicate whether a single instance or pattern of behaviour is necessary for criminal penalties to attach, or whether the comment about gender identity, expression, or change must be specific to an individual or if a general comment is sufficient. The overly-broad language will chill discussion surrounding this issue and will prevent engagement in public forums.

(c) Recommendations

18. In light of the aforementioned, ADF International suggests the following recommendations be made to Malta:

a. Affirm that there is no international human right to abortion and that the right to life applies from conception until natural death, and as such that the unborn child has the right to protection of his or her life at all points;

b. Resist calls to allow access to abortion, and continue to implement laws aimed at protecting the right to life of the unborn; and

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6 In the Act, "gender expression" means each person's manifestation of their gender identity and, or the gender identity perceived by others; "gender identity" is defined as each person's internal and individual experience of gender, which may not correspond with one's sex and is informed by one's "personal sense of the body." Ibid.
c. Clarify, and amend as required to guarantee freedom of religion and freedom of expression under ICCPR articles 18 and 19, statutes that criminalize speech—especially speech involving important social issues.