



Study on children's involvement in judicial proceedings

Contextual overview
for the criminal justice
phase – Malta

June 2013

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

Whilst Maltese law contains some special measures for children involved in criminal proceedings, these are rather limited. Very often the position of the child victim, witness or suspect is similar to that of an adult involved in criminal proceedings. Special measures relate primarily to the protection of children examined as victims or witnesses or questioned by the police and the existence of a Juvenile Court for children under 16 years of age.

As regards specialised bodies dealing with children, the most important is the Office of the Commissioner for Children. This is the focal point that monitors the current social and cultural situation in relation to children in Malta, such that it can contribute to the co-ordination that needs to take place across all sectors in order to have family-friendly policies that are also child oriented. In addition, *Agenzija Appogg* (national welfare agency), provides services aimed at promoting the well-being and protecting the rights of children.

Overview of children's involvement before, during and after judicial proceedings

The position of the child victim and child witness is generally the same given that the criminal action is a public action prosecuted by the Police or the Attorney General. In fact, the position of the victim is traditionally that of witness. Nevertheless, there are certain measures that allow for more active participation of victims when compared to other witnesses. These measures typically apply to both adults and children.

As regards child suspects, a limited number of measures aimed at ensuring child friendly justice are in place. The most important of these are the Juvenile Court and the availability of care orders. The Minister responsible for social welfare can issue care orders in relation to children under 16 years of age. Charges against children under 16 years of age are heard by the Juvenile Court that provides a somewhat more child-friendly setting.

The punishments that can be imposed on adults can also be imposed on children but certain reductions may be applied in favour of children depending on their age.

The remedies available to children for violation of rights and failure to act are the same as those available to adults.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

Children involved in criminal proceedings are very often in the same position as adults. This means that they have the same extent of rights to be heard and to participate in the criminal process whilst special mechanisms to facilitate their position as the victim, witness or suspect of a crime are sparse. In particular, there seem to be no measures specifically aimed at ensuring that children effectively receive information relevant to the proceedings and to their rights. Child victims and witnesses are provided with the same information as adult victims and witnesses.

As regards child suspects, the low age threshold for criminal responsibility (nine years of age) is a point of concern. There are however legislative proposals to increase this threshold.

Some special measures (most notably, the possibility of care orders and trial in the Juvenile Court) apply only to children under 16 years of age rather than to children under 18 years of age. Children between 16 and 18 years of age are tried in the same court as adults.

Positive recent legislative changes available to persons, including children, involved in criminal proceedings are the introduction of an alternative to judicial proceedings through victim-offender mediation and the introduction of the possibility of parole, with more favourable conditions applicable to child offenders.

Abbreviations

CMRU	Police Community and Media Relations Unit
EU	European Union
YOURS	Young Offenders Unit Rehabilitation Services

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

Malta's approach to children in criminal proceedings is somewhat limited. Whilst there are some measures aimed at child friendly justice, very often the position of the child victim, witness or suspect is similar to that of adults involved in criminal proceedings. The relevant provisions are found mainly in the **Criminal Code**¹ and in the **Police Act**².

The position of the child victim and child witness is generally the same given that the criminal action is a public action prosecuted by the police or the Attorney General. In fact, the position of the victim in criminal proceedings is traditionally that of witness. Nevertheless, there are certain measures that allow for the more active participation of victims when compared to other witnesses.

As regards child suspects, a limited number of special measures aimed at ensuring child friendly justice are in place. The most important of these are the establishment of the Juvenile Court under the **Juvenile Court Act**³ and the availability of care orders under the **Children and Young Persons (Care Orders) Act**⁴.

In order to support the contextual overview provided in **sections 2** and **3**, it is important to provide some background on the Maltese courts of criminal jurisdiction, specialised bodies dealing with children and the definition of children for the purposes of the relevant legislation.

Courts of criminal jurisdiction

The Court of Magistrates (Malta) is composed of one magistrate and exercises both a civil and a criminal jurisdiction. In criminal matters, the Court has a two-fold jurisdiction, namely, as a court of criminal judicature for the trial of offences falling within its jurisdiction, and as a court of inquiry in respect of offences falling within the jurisdiction of the Criminal Court⁵.

The Court of Magistrates as a court of criminal judicature is competent to try: (a) all contraventions⁶ (that is, minor criminal offences such as traffic violations) referred to in the Criminal Code; (b) all crimes referred to in the Code which are liable to the punishments established for contraventions, to a fine (*multa*) or to imprisonment for up to six months with or without the addition of a fine (*multa*) or interdiction; (c) all offences referred to in any other law which are liable to these punishments, unless the law provides otherwise. The police prosecute before the Court of Magistrates. The victim or the victim's representative prosecutes offences falling within the competence of the Court of Magistrates that require the victim's complaint. However, if the offence is made more serious by public violence or is accompanied by another offence affecting public order the police can institute proceedings. The same applies where the victim fails to start proceedings before the Court of Magistrates without expressly waiving the right to prosecute within four days from the commission of the offence⁷.

The Court of Magistrates as court of criminal inquiry carries out the preliminary inquiry (investigation) in respect of offences liable to a punishment exceeding the jurisdiction of the Court of Magistrates as a court of criminal judicature and transmits the relative record to the Attorney General. The Attorney General may send for trial by the Criminal Court any person charged with a crime punishable with imprisonment for more than six months but not more than ten years if there is no objection on the part of such person. The court asks the accused whether s/he objects to his/her case being dealt

¹ Chapter 9 of the Revised Laws of Malta.

² Chapter 164 of the Revised Laws of Malta.

³ Chapter 287 of the Revised Laws of Malta.

⁴ Chapter 285 of the Revised Laws of Malta.

⁵ Article 367 of the Criminal Code.

⁶ Offences are divided into crimes and contraventions (Article 2 of the Criminal Code). The punishments that may be awarded for crimes are imprisonment, solitary confinement, interdiction, fine (*multa*). The punishments that may be awarded for contraventions are detention, fine (*ammenda*), reprimand or admonition (Article 7 of the Criminal Code).

⁷ Article 373 of the Criminal Code.

with summarily and if the accused does not object, the Court of Magistrates as a court of criminal jurisdiction becomes competent to try the accused.

The Juvenile Court is a Court of Magistrates and consists of a Magistrate, as Chairman. The Court hears charges against, and holds other proceedings relating to, children under the age of 16 years, and may also issue care orders in their regard. In proceedings before it, two members (one male, one female) assist the Juvenile Court. The President, acting upon the advice of the Prime Minister, appoints the two assistants from amongst persons who in the Prime Minister's opinion have previous experience and special qualifications for dealing with problems of juveniles. The Juvenile Court can consult these assistants in open court in any case for its decision. The Juvenile Court is not bound to abide by the opinion of the assistants⁸.

In the Criminal Court the judge sits with a jury to try offences exceeding the competence of the Court of Magistrates as a court of criminal jurisdiction. The Attorney General is the prosecutor before the Criminal Court.

The Court of Criminal Appeal consists of three judges and hears appeals from persons convicted by the Criminal Court. When formed of one judge, the Court hears appeals from judgments of the Court of Magistrates in its criminal jurisdiction. A number of minor infringements of the law such as minor traffic offences, illegal disposal of litter, tenancy, etc., are heard by Commissioners of Justice in Local Tribunals situated in various localities. As the offences have been decriminalised the case may be decided even in the absence of the accused. Appeals are only possible on points of law.

The Commissioner for Children

The **Commissioner for Children Act**⁹ set up the Office of the Commissioner for Children to promote the welfare of children and compliance with the UN Convention on the Rights of the Child¹⁰, and other international treaties, conventions or agreements relating to children.

The use of the term 'Commissioner' implies that there is a specific person who is working for children, and who is safeguarding their best interests. Rather than simply acting on adult assumptions regarding the needs of children, the Commissioner must promote children's rights by being informed directly of the experience of children themselves.

The establishment of this Office was a significant step in recognising the rights of the child at national level. It focuses on the protection of children, the promotion of children's rights, the provision of necessary services for children, and the participation of children. The Office acts as a focal point monitoring the current social and cultural situation relating to children in Malta, so that it can contribute substantially in the co-ordination that needs to take place across all sectors in order to have family-friendly policies that are also child oriented¹¹.

The Commissioner for Children must seek to ensure that the rights and interests of children are properly taken into account by government departments, local authorities, other public bodies and voluntary and public organisations when decisions on policies affecting children are taken¹². The Commissioner has a number of functions aimed at promoting the best interests of children. In particular, the Commissioner must collect information and investigate any alleged breaches of the rights of children, including the death of any child, if the Commissioner considers an investigation to be necessary; ensure that legislation relating to the protection of children's interests is observed; advise the government and propose to the government measures that may be required in order to provide for the rights and interests of children¹³.

Aġenzija Appoġġ (national welfare agency)

Aġenzija Appoġġ forms part of the Foundation for Social Welfare Services. The Agency's ultimate aim is to provide professional care and support to those in need. Offering a wide range of

⁸ Article 4 of the Juvenile Court Act.

⁹ Chapter 462 of the Revised Laws of Malta.

¹⁰ Ratified by Malta on 26 January 1990.

¹¹ <http://www.tfal.org.mt/aboutus.aspx?lid=1>

¹² Article 9(f) of the Commissioner for Children Act.

¹³ Article 11 of the Commissioner for Children Act.

community-based and specialised social welfare services, *Appogg* is the central national agency for children and families in need¹⁴.

The Children, Young Persons and Support Services offer a range of services for children and adolescents facing difficulties. These services aim at providing intensive work with children and their families, in order to promote their well-being, protect their rights and enhance their potential. With the involvement and participation of children/young people themselves, workers in this field develop care plans, take action to promote and protect children's rights and ensure that the well-being of children and young people is always given the highest priority.

Supportline 179 is the national freephone helpline offering support, information about local social welfare services and other agencies, and a referral service to callers in times of difficulty or crisis. Its primary mission is to provide immediate unbiased help to those seeking information, support and/or referral to social service agencies.

Kellimni¹⁵ is a joint effort between *Agenzija Appogg* and other bodies, under the guidance of Child Helpline International. The service offered encompasses mainly e-mail, chat and forum online support targeting children¹⁶.

These organisations are relevant in the context of criminal proceedings in that they can facilitate the reporting of a crime and the provision of information as described in **section 2.1.1** and **section 2.1.2**.

The definition of 'child'

Maltese law has a variable approach to the definition of child. Thus for example, the Commissioner for Children Act defines 'child' as any person who has not attained majority i.e. 18¹⁷. However, some legal instruments refer more specifically to the 'child or young person' and this is defined as a person who is under the age of 16 years¹⁸. In such situations, persons between 16 and 18 years of age are not defined as children. Children or young persons under 16 years of age are afforded a greater degree of protection in the form of more favourable measures than those applied to persons over 16 years of age in criminal judicial proceedings. This is especially the case with respect to the measures found in the Juvenile Court Act and in the Children and Young Persons (Care Orders) Act. On the other hand, some special measures apply to all persons under 18 years of age, for example, the rules for interrogation found in the Police Act¹⁹.

It is therefore important to see whether a specific child friendly measure is available to all children or only to children under 16 years of age depending on the legal instrument in which it is found.

¹⁴ https://secure3.gov.mt/SOCIALPOLICY/SocProt/family/fsws/appogg/appogg_info.aspx

¹⁵ www.kellimni.com

¹⁶ https://secure3.gov.mt/socialpolicy/SocProt/family/fsws/appogg/appogg_socio_legal/intake_overview.aspx

¹⁷ Article 2 of the Commissioner for Children Act.

¹⁸ Article 2 of the Juvenile Court Act and Article 2 of the Children and Young Persons (Care Orders) Act.

¹⁹ See section 3.3.8.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

No legal provisions prohibiting children from reporting a crime in their own right seem to exist in Malta. Generally, the same rules that apply to adults apply to children when reporting a crime.

The procedure for reporting a crime is provided for in the **Criminal Code**. Any person, including a child, can inform an officer of the police of any offence they are aware of that can be prosecuted by the police on their own initiative. The victim of a crime can also make a complaint to the police. This can be done in person at a police station or by calling or sending a letter to the police²⁰. Reports that are not of an urgent nature can be made through the website of the Malta Police Force²¹.

It is also possible for a representative to make a complaint on behalf of a child victim. In fact, complaints may be made by a spouse on behalf of the other spouse, by an ascendant on behalf of a descendant, by a descendant on behalf of an ascendant, by a sibling, by any person on behalf of another person under their tutorship or care, by any administrator or representative of any pious institution or other body corporate recognised by law, and by the immediate heirs for any offence committed against the person under whom they claim²².

As regards measures to facilitate the reporting of a crime by a child, reference can be made to *Supportline 179*. This is a 24-hour free telephone service run by a team of professionally trained volunteers offered by *Agenzija Appogg*²³. It provides immediate, confidential support to callers of any age, who require assistance, both in day-to-day and crisis situations. *Supportline 179* receives calls on situations of child abuse, domestic violence and drug/alcohol/gambling problems, amongst others. As part of *Supportline 179*, a hotline service is offered to report child abuse over the Internet and promote Internet safety²⁴.

When they receive a report, information or complaint requiring proceedings to be taken, the police inform the Court of Magistrates (Malta), the Court of Magistrates (Gozo), or a magistrate, in order to receive the necessary directions for such proceedings²⁵. The investigation of criminal offences is shared between the police and the magistrates. The investigating magistrate may order that an arrest and criminal proceedings be initiated against an offender. In practice, however, the police often seek guidance from the Office of the Attorney General on emerging legal issues that may need to be resolved.

If the exercise of the criminal action is vested in the police and they refuse to start proceedings, the person (including a child) who gave the information, or made the report or complaint, can ask the Court of Magistrates to order the police to institute proceedings. The court will allow the application if the information, report or complaint appear to be justified. Before an action is taken on any such application, the applicant must confirm on oath the information, report or complaint, and provide a sum to be fixed by the court as security that s/he will give evidence at the trial, if so required, or give any evidence s/he has that may lead to the conviction of the party accused²⁶.

The complaint by the victim is not always necessary for the police to institute proceedings. Mainly, this refers to cases where the law does not expressly provide that the complaint of the private party is required. For example, for offences involving domestic violence a complaint is not necessary. However, with respect to domestic violence, the alleged victim (adult or child) can ask the court to

²⁰ Articles 535 and 538 of the Criminal Code.

²¹ <http://www.pulizija.gov.mt/declaration.asp?rtyp=1> (accessed on 27 November 2012).

²² Article 542 of the Criminal Code.

²³ www.appogg.gov.mt/

²⁴ <http://www.kidsmalta.com/view.aspx?n=179> (accessed on 27 November 2012).

²⁵ Article 540 of the Criminal Code.

²⁶ Article 541 of the Criminal Code.

stop proceedings against the alleged perpetrator. The court will give particular consideration to the best interests of any children involved when deciding whether to continue proceedings or not²⁷.

The complaint of the private party, whether child or adult, is necessary for the prosecution of certain offences such as rape, abduction and violent indecent assault. However, there is an exception to this. Criminal action can be taken even without the victim's complaint where any of these crimes is accompanied by public violence or domestic violence²⁸ or with any other offence affecting public order. In the case of a crime accompanied by domestic violence, if the criminal action is taken independently of the victim's complaint, the victim (adult or child) can ask the court to stop proceedings against the alleged perpetrator. As in the case above, the court will give particular consideration to the best interests of any children involved when deciding whether to continue proceedings or not.

2.1.2 Provision of information

Other than the possibility of contacting *Supportline 179* as described in [section 2.1.1](#) above, there do not seem to be any measures in place specifically aimed at ensuring that children effectively receive information relevant to the proceedings and to their rights. Likewise, no measures seem to exist to ensure that parents or guardians and legal representatives are informed of all aspects of judicial proceedings.

However, victims (adults and children) can inform the police that they wish to be present during court sittings. In this case, the victim will be informed of the date, place and time of the first hearing and will have the right to be present in court during all hearings even if s/he is a witness²⁹. No provision stating that victims must be informed of this right beforehand was identified.

2.1.3 Protection from harm and protection of private and family life

Measures aimed at ensuring that children are protected from harm relate to the protection of victims as witnesses in criminal proceedings. Some measures are available to both adults and children whilst others are aimed specifically at children.

Examination of child witnesses

Where the witness is a child under 16 years of age and an audio and video-recording of the child's testimony is produced in evidence, the child will not be examined in person in court. There is an exception to this where the court orders the child's presence because of a reason arising after the date of the audio and video-recording of the child's testimony and the presence of the child is considered by the court to be in the interest of the administration of justice and the discovery of the truth. This child friendly measure is an exception to the general rule that witnesses are always examined in person in court (*viva voce*)³⁰.

The **Police Act** also makes special provision for the hearing of vulnerable witnesses, including children, through video conference³¹. This recognises that children require special protection and aims to secure greater protection of the personal safety, sense of modesty and psychological stability of child witnesses.

Finally, witnesses in the witness protection programme (see below) who give evidence during a trial can be screened from the accused or give evidence by live television transmission³². This option is also available to child witnesses in the witness protection programme.

Witness protection programmes

The **Police Act** contains provisions on the protection of witnesses and victims (children and adults). Victims of a crime who are produced as witnesses in criminal proceedings and are concerned for

²⁷ Article 543 of the Criminal Code.

²⁸ Domestic violence is defined in Article 2 of the **Domestic Violence Act** as any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other.

²⁹ Article 410(4) and (5) of the Criminal Code.

³⁰ Article 646(1) of the Criminal Code.

³¹ Article 90 of the Police Act.

³² Article 78 of the Police Act.

their safety can be placed in a witness protection programme. This is also possible with respect to persons who have participated in committing a crime and whose evidence is indispensable for the prosecution of the principal defendant(s) or accomplice(s) in the crime where that person agrees to cooperate with the public authorities for the purpose of the prosecution³³.

The following witnesses can benefit from the witness protection programme:

- Crime victims;
- Persons who participated in an organisation or group of persons who committed or are organised to commit a crime;
- Persons who participated in the commission of a crime punishable by seven or more years' imprisonment³⁴.

The law does not differentiate between adults and children with respect to access to the programme.

Exclusion of public from hearings and restrictions on reports of proceedings

The **Juvenile Court Act** is relevant to the situation of child suspects and is discussed in **section 2.3.5 below**. However, some of its requirements apply to proceedings involving children in any court of criminal justice³⁵. These requirements are aimed specifically at protecting children.

In criminal proceedings involving a child or young person (that is, a person under 16 years of age) only the following persons can be present at a court sitting or in any place adjacent to the room in which the hearing of the case is held:

- Officials of the court and of the prosecution;
- The parties to the case and their counsel or other members of the legal profession;
- Representatives of the Ministry responsible for social welfare;
- Witnesses or other persons directly concerned in the case;
- The parent or other relative or the guardian of the child or young person charged or concerned in the proceedings; and
- *Bona fide* representatives of newspapers³⁶.

Newspaper reports or broadcasts relating to criminal proceedings cannot reveal the name, address or school, or include any particulars calculated to lead to the identification of any child or young person concerned in the proceedings (either as the person charged or as a witness). The publication of pictures of the child or young person is also prohibited. These prohibitions can be fully or partially removed if the court finds it appropriate to do so in order to avoid injustice to a child or young person³⁷.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

The measures described in **section 2.1.3** above may protect children from secondary victimisation and promote a child friendly environment.

No other measures seem to exist.

³³ Article 75 of the Police Act.

³⁴ Article 76 of the Police Act.

³⁵ Article 11 of the Juvenile Court Act.

³⁶ Article 7 and Article 11(1) of the Juvenile Court Act.

³⁷ Article 8(1) and Article 11(2) of the Juvenile Court Act.

2.1.5 Protecting the child during interviews and when giving testimony

Any person of sound mind is admissible as a witness, unless there are objections to their competency. Children can give testimony. It is enough for the court to be satisfied that the child witness understands that it is wrong to give false testimony³⁸.

A child who gave the police information or reported an offence or made a complaint that resulted in criminal proceedings can also be a witness. If the child witness does not wish to give evidence against a person related to him/her, the court will decide, regard being had to the degree of consanguinity and other circumstances of the case, whether or not to compel the child to give evidence. This applies to all witnesses and covers spouses, ascendants and descendants, siblings, uncles, aunts, nieces and nephews, etc³⁹.

Provisions aimed at protecting the child when giving testimony are described in [section 2.1.3](#) No further measures were identified.

2.1.6 Right to be heard and to participate in criminal proceedings

The criminal action is essentially a public action vested in the State and is prosecuted in the name of the Republic of Malta, through the police or the Attorney General.

Traditionally, the position of crime victims was mainly as witnesses to the prosecution. However, some legal provisions give victims, including child victims, certain important rights as described in this section and in [section 2.1.7](#). In proceedings instituted by the police on the victim's complaint, the victim can be present at the proceedings, engage a lawyer, examine or cross-examine witnesses and produce other evidence. Where the complainant is to be heard on oath, his/her evidence is typically taken before that of any other witness of the prosecution. In proceedings instituted by the police by virtue of their office (*ex officio*), the police and the victim can request a lawyer to assist them. The lawyer can examine or cross-examine witnesses, produce evidence or make any other submission that the court considers admissible. The victim who has an interest in being present in proceedings started by the police can communicate this interest to the police and give his/her particulars and residential address. The victim will be served with a notice of the date, place and time of the first hearing in those proceedings and has the right to be present in court during that and all subsequent hearings even if s/he is a witness. If the victim is not served with this notice, s/he can apply to the court to be admitted into the proceedings as an injured party and if his/her claim is allowed, can be present at all hearings even if s/he is a witness. The failure to serve the victim with the notice of the date of the first hearing after an attempt has been made to that effect or the victim's absence for any reason at any sitting does not preclude the court from proceeding with the trial or inquiry until its conclusion⁴⁰.

Other than the general criminal procedural rules that provide for adults and children alike, no special measures aimed specifically at ensuring that children can effectively participate in criminal proceedings were found. The only special measures that may be relevant are those described in [section 2.1.3](#) above.

Proceedings on complaint of injured party

Where proceedings are instituted on the complaint of the victim, the victim and the defendant must appear personally in court. Advocates or legal procurators of their choice can assist them. Children can have legal counsel in their own right. If the offence is a contravention (that is, a minor criminal offence)⁴¹, the court can exempt either of the parties from appearing personally and allow the spouse or a near relative or other person in charge of such party or authorised in writing by such party to appear instead. If neither of the parties appears, the case is removed from the list. If only the defendant appears, s/he can demand her/his discharge. The victim has four days from when the case was removed from the list or the defendant was discharged to apply to submit an application to the court with a sworn declaration that s/he was prevented from appearing for a reason independent of will and the court will set another day to hear the case. If the defendant does not appear, the court can issue an arrest warrant and bring the defendant before the court.

³⁸ Articles 629 and 630 of the Criminal Code.

³⁹ Article 633 of the Criminal Code.

⁴⁰ Article 410 of the Criminal Code.

⁴¹ As regards contraventions see section 1 on the courts of criminal jurisdiction.

If both parties appear, the hearing of the case will typically proceed as follows:

- i. the victim or advocate or legal procurator state the facts constituting the offence and produce the evidence;
- ii. the defendant or advocate or legal procurator submit the defence and produce evidence;
- iii. the complainant or advocate or legal procurator may reply, and the defendant or advocate or legal procurator is entitled to a rejoinder⁴².

Proceedings by the Police

Where the proceedings are started by the police on their own initiative, the accused (who may be assisted by a lawyer or legal procurator) will appear personally. In the case of minor criminal offences, such as, traffic offences (known as contraventions under Maltese law)⁴³, the court can exempt either of the parties from appearing personally and allow the spouse or a near relative or any other person in charge of such party or authorised in writing by such party to appear instead. The police in charge of the prosecution and the accused or their advocate or legal procurator are heard in the order described above. The court can require that the report made by the officer of the police is confirmed on oath and the accused can cross-examine the officer⁴⁴.

Right of victim or his advocate or legal procurator to be present at the proceedings

Where the police start proceedings on the victim's complaint, the victim can be present at the proceedings, engage an advocate or a legal procurator to assist him/her, examine or cross-examine witnesses and produce other evidence in support of the charge. The victim's evidence is taken before that of any other witness of the prosecution. There is an exception to this rule where in the court's opinion this evidence becomes necessary even at a later stage of the proceedings, or where the accused applies for such evidence at any stage of the proceedings, or where the court sees fit to vary the course of the taking of the evidence⁴⁵.

2.1.7 Right to legal counsel, legal assistance and representation

Children have a right to legal counsel, legal assistance and representation of their own choice. This is the same right that is available to adults under the **Criminal Code** and there do not seem to be any additional or alternative special measures in place for children.

In proceedings instituted by the police *ex officio*, the police and the victim can be assisted by an advocate or a legal procurator. The advocate or legal procurator can examine or cross-examine witnesses, produce evidence or make submissions in support of the charge⁴⁶.

Victims can be present during court sittings. They can inform the police that they wish to be present giving their particulars and residential address. The victim will be sent a notice of the date, place and time of the first hearing and will have the right to be present in court during all hearings even if s/he is a witness. The victim can also apply to the court to be admitted into the proceedings as an injured party and if his/her claim is allowed, can be present at all hearings even if s/he is a witness⁴⁷.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

Children have the same right as adults in the case of a decision by the police not to prosecute. They can apply to the Court of Magistrates for an order to the police to institute proceedings. The court will allow the application if at first sight the information, report or complaint is justified. Before any action is taken on any such application, the applicant must confirm on oath the information, report or

⁴² Article 374 of the Criminal Code.

⁴³ As regards contraventions see section 1 on the courts of criminal jurisdiction.

⁴⁴ Article 375 of the Criminal Code.

⁴⁵ Article 410(1) and (2) of the Criminal Code.

⁴⁶ Article 410(3) of the Criminal Code.

⁴⁷ Article 410(4) and (5) of the Criminal Code.

complaint, and provide a sum to be fixed by the court as security that s/he will give evidence at the trial, if so required, or give evidence that may lead to the conviction of the party accused⁴⁸.

Children can access criminal appeal mechanisms by following the same procedure available to adults under the **Criminal Code**. They can also submit an opinion on the sentence by applying to the Court of Criminal Appeal to be allowed, personally or through legal counsel, to make submissions on the appropriate sentence to be passed on the accused⁴⁹.

No measures to support children in accessing such mechanisms have been identified.

It must also be noted that every offence can give rise to a criminal action and a civil action. The criminal action is prosecuted before the courts of criminal jurisdiction, and the punishment of the offender is demanded. The civil action is prosecuted before the courts of civil jurisdiction, and compensation for the damage caused by the offence is demanded⁵⁰. Therefore, compensation is typically a civil law remedy under Maltese law. Nevertheless, the criminal courts may award compensation when making an order for suspended sentence. The court will fix the time limit (maximum six months from the date of the ruling) within which the offender must make restitution or compensation to the victim. No appeal by the offender against this ruling can be made. It is the court that determines the amount of compensation to be paid to the victim by the offender after hearing both sides, if the victim and the offender so wish, and also any other relevant evidence. If the offender does not comply with the court's ruling, it will order that the suspended sentence take effect⁵¹.

The court can also order the offender to pay damages for injury or compensation for the loss as described in Article 24 of the **Probation Act**⁵². When issuing a probation order, community service order, combination order, conditional discharge order or on discharging an offender absolutely it can order the offender to pay damages for injury or compensation for the loss. Orders for the payment of damages or compensation can be enforced as if given in a civil action between the offender and the person to whom the damages or compensation are ordered to be paid. This does not derogate from any right of the victim to recover a greater amount by other means from the offender⁵³.

There is also the possibility of State compensation. The **Criminal Inquiries Compensation Regulations**⁵⁴ provide for the award of State compensation to victims who have sustained a criminal injury on or after 1 January 2006. The compensation is granted through a lump sum payment if the Claims Officer is satisfied that the offender is indigent, that proof has been produced that legal action to claim compensation was fruitless, that the victim did not provoke the offender and that the victim's lifestyle and character merit the award of compensation. The compensation cannot exceed EUR 23,293.73 and is computed as part of the civil damages sustained.

2.2 The child as a witness

2.2.1 Reporting a crime

A child can report a crime as a witness by following the same procedure available to adult witnesses under the **Criminal Code**. Children can, in their own right, give information or make a report to a police officer of any offence they are aware of. The police will generally not take action if the report or information is anonymous.

Adults and children reporting crimes must clearly state the fact and its circumstances and must, as far as possible, provide the details necessary to ascertain the offence, establish its nature and make known the offenders. The report or information can be verbal or written. Where it is verbal it will be put in writing and signed by the informer. If the informer cannot write, the police officer by whom it was put in writing will sign⁵⁵.

⁴⁸ Chapter 446 of the Revised laws of Malta.

⁴⁹ Article 500A of the Criminal Code.

⁵⁰ Article 3 of the Criminal Code.

⁵¹ Article 28H of the Criminal Code.

⁵² Article 532A of the Criminal Code.

⁵³ Article 24 of the Probation Act.

⁵⁴ Legal Notice 190 of 2007, the Criminal Inquiries Compensation Regulations implement Directive 2004/80/EC relating to compensation to crime victims. The Regulations were promulgated under the Criminal Code (Subsidiary Legislation 9.12).

⁵⁵ Articles 535 to 537 of the Criminal Code.

Supportline 179, described in [section 2.1.1](#), can facilitate the reporting of a crime by a child witness.

See [section 2.1.1](#), above for further information on reporting a crime.

2.2.2 Provision of information

There are no specific rules regarding the provision of information to child witnesses; the measures in place for adults are available also to children. The situation is as described in [section 2.1.2](#) as the same applies for victims and witnesses.

2.2.3 Protection from harm and protection of private and family life

The measures identified that could protect the child witness from harm are those described in [section 2.1.3](#) above.

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

See [section 2.1.3](#) as the same rules apply to child victims and witnesses.

2.2.5 Protecting the child during interviews and when giving testimony

See [section 2.1.3](#) as the same rules apply to child victims and witnesses.

2.2.6 Right to be heard and to participate in criminal proceedings

See [section 2.1.6](#) as the same rules apply to child victims and witnesses.

2.2.7 Right to legal counsel, legal assistance and representation

See [section 2.1.7](#) as the same rules apply to child victims and witnesses.

2.2.8 Remedies or compensation for violation of rights and failure to act

In order to be able to access remedies or compensation through the criminal justice system (as described in [section 2.1.8](#)) the child witness would also have to be a victim.

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

Criminal responsibility

Children under nine years of age are exempt from criminal responsibility for any act or omission⁵⁶. Children over nine but under fourteen years of age are exempt from criminal responsibility for any act or omission done without mischievous discretion (that is, knowledge of the wrongfulness of the act and its consequences). In both these cases, the police can ask the court to require the parent or other person charged with the upbringing of the child to appear before it.

If the fact allegedly committed by the child is proven and constitutes an offence, the court may order the parent or other person to watch over the child's conduct under penalty for non-compliance of a sum between EUR 11.65 and EUR 232.94. To determine the sum, the court will consider their means and the gravity of the fact. If the offence committed by the child is punishable with a fine (*ammenda*), the court may instead award the punishment against the parent or other person charged

⁵⁶ Where a child under the minimum age of criminal responsibility commits an act that would otherwise be considered a criminal offence, the matter is not dealt with in criminal proceedings. Further information on how such children are dealt with in any other judicial proceedings is provided in the Civil and Administrative reports as appropriate.

with the child's upbringing, if the fact could have been avoided by their diligence. The parent or other person charged with the child's upbringing will be summoned to appear in court⁵⁷.

Children under the age of fourteen but over nine who act with a mischievous discretion to commit an offence are liable to the punishments established for contraventions (that is, the punishments established for minor offences). As explained in section 1, the punishments that may be meted out for contraventions are detention, fine, reprimand or admonition⁵⁸. Instead of sentencing the child to a punishment the court may issue an order to the parent as described in the paragraph above. The court will consider the offender's age and previous conduct, the gravity of the fact and the degree of mischievous discretion to determine whether the punishments established for contraventions would be appropriate. If they are not appropriate in the court's opinion, the court can sentence the child to the punishment laid down for the offence decreased by three degrees⁵⁹. However, the punishment can never exceed four years imprisonment⁶⁰.

For children between 14 and 18 years of age, the punishment that applies to the offence is diminished by one or two degrees⁶¹. Once the child reaches 18 years of age, there is full criminal responsibility.

It should be noted that the proposed amendments to the Criminal Code in **Bill 97** include revisions to these age thresholds. There is a proposal to exempt children under 14 years of age from criminal responsibility and to move the age of mischievous discretion from between 9 and 14 years to between 14 and 16 years.

Special measures for children under 16 years of age

Some special measures apply only to children under 16 years of age. The Minister responsible for social welfare can issue care orders in relation to children under 16 years of age under the **Children and Young Persons (Care Orders) Act**. These are described in **section 3.1.2** below.

Also, charges against children under 16 years of age are heard by the Juvenile Court which provides a somewhat more child-friendly setting. The Juvenile Court is a Court of Magistrates and the provisions of the Criminal Code apply to proceedings before it⁶². If the child turns 16 during proceedings before the Juvenile Court, the court will decide whether to proceed with the hearing and determination of the case or refer it to the competent Court of Magistrates. On the other hand, if during proceedings before the Court of Magistrates it turns out that the person charged or to whom the proceedings relate is less than 16 years old, the Court will stop the case and refer it to the Juvenile Court, which will proceed with the hearing and determination of the case.

The Juvenile Court cannot hear charges against, or other proceedings relating to, a child who is charged jointly with any person over 16 years old⁶³.

Children between 16 and 18 years of age

Children between 16 and 18 years of age are tried in the same courts of criminal jurisdiction as adults. They therefore do not benefit from the special measures available in the Juvenile Court. The only special concession is that the punishment that applies to the offence is diminished by one or two degrees. Similarly, and as stated above, a child under 16 years of age that is co-defendant with a

⁵⁷ Article 35 of the Criminal Code.

⁵⁸ Article 7 of the Criminal Code.

⁵⁹ Article 31 of the Criminal Code deals with the scale of punishments. The scale of punishments of imprisonment is as follows: (i) from 8 to 30 years, (ii) from 7 to 20 years, (iii) from 6 to 12 years, (iv) from 5 to 9 years, (v) from 4 to 6 years, (vi) from 3 to 5 years, (vii) from 2 to 4 years, (viii) from 18 months to 3 years, (ix) from 13 months to 2 years, (x) from 9 to 18 months, (xi) from 7 months to 1 year, (xii) from 5 to 9 months, (xiii) from 2 to 6 months, (xiv) from 1 to 3 months. The descent from the fourteenth degree is to imprisonment for up to 20 days, or to detention or to a fine (*ammenda*). The law establishing in general terms a descent from one punishment to another, does not include cases of contraventions or of crimes liable to the punishments for contraventions. Article 32 of the Criminal Code deals with the gradation in the scale of punishments. Where the punishment includes a latitude of more degrees, the descent is made by lowering the maximum and the minimum to the nearest degree respectively. When the punishment of solitary confinement is added to another punishment, the descent is reckoned on such other punishment and the court may restrict the punishment of solitary confinement to any smaller number of terms or omit such punishment altogether.

⁶⁰ Article 36 of the Criminal Code.

⁶¹ Article 37 of the Criminal Code.

⁶² Article 3 of the **Juvenile Court Act**.

⁶³ Article 6 of the **Juvenile Court Act**.

person over 16 years of age cannot be tried in the Juvenile Court and will be tried in the same court as an adult, thus also losing the benefit of the special measures available in the Juvenile Court⁶⁴.

2.3.2 Provision of information

There are no measures in place aimed specifically at ensuring that a child effectively receives information relevant to the proceedings and to their rights. The criminal law rules that apply to adult crime suspects apply also to child suspects.

When a person (adult or child) is arrested or detained s/he must be informed, in a language that s/he understands, of the reasons for the arrest or detention. If necessary, an interpreter will be used. Any suspect who has been arrested or detained must be released or brought before a court within 48 hours. The suspect must be tried within a reasonable time or released unconditionally or upon reasonable conditions that will ensure that s/he appears for trial. If a person is unlawfully arrested or detained s/he is entitled to compensation⁶⁵.

Other provision of information requirements are described in [section 2.3.3](#) below.

2.3.3 Immediate actions following first contact with police or other relevant authority

The immediate actions following first contact with the police or other relevant authorities are found in the [Criminal Code](#). There are no special provisions relating to children and therefore it would seem that the same rules that apply to adults also apply to children.

Information to be given on arrest, search on arrested person and report of arrest

As soon as a person, including a child, is arrested s/he is informed that s/he is under arrest and of the reasons for the arrest or detention in a language that s/he understands. If an interpreter is necessary and not readily available, this requirement is complied with as soon as possible⁶⁶.

A police officer can immediately search the person arrested if s/he thinks that the arrested person may present a danger to her/himself or others; or for anything the arrested person might use to help her/him to escape from custody; or for any evidence related to an offence⁶⁷.

If the arrested person is not released within six hours from arrest, the arresting police officer or superior must inform a Magistrate, giving all details as to time and place where the person is being held. The Magistrate can order that the person arrested is immediately transferred to another place. Any person arrested for a crime and who has not been brought before a court with 48 hours of arrest must be released⁶⁸.

Right to inform relatives or friends

The police must immediately inform the person arrested or detained that s/he can request that a relative or friend is informed of the arrest unless such relative or friend is reasonably suspected of being involved in the offence being investigated. The investigating officer can apply to a Magistrate to delay informing a relative or friend of the detained person if there are reasonable grounds for suspecting that the giving of such information may hinder the investigation or the recovery of things, or that it may alert other persons who are connected with the offence and are still not in police custody. This delay cannot exceed six hours from the time of arrest⁶⁹.

Right to legal advice⁷⁰

Any person, including a child, arrested and held in police custody at a police station or other place of detention can privately consult a lawyer or legal procurator, in person or by telephone, for a maximum

⁶⁴ Article 6 of the Juvenile Court Act.

⁶⁵ Article 34(4) of the [Constitution of Malta](#).

⁶⁶ Article 34(2) of the [Constitution of Malta](#) and Article 355AC of the [Criminal Code](#).

⁶⁷ Article 355AF of the [Criminal Code](#).

⁶⁸ Article 355AJ of the [Criminal Code](#).

⁶⁹ Article 355AS of the [Criminal Code](#).

⁷⁰ Article 355AT of the [Criminal Code](#).

of one hour. The police must inform the person in custody of this right as early as practical before being questioned. Compliance with the request can be delayed, for up to 36 hours from the time of arrest, if the person making the request is in police detention for a crime and if an officer not below the rank of superintendent authorises such delay. An officer may only authorise delay where s/he has reason to believe that exercising the right at the time when the person detained wishes to do so:

- a) will interfere with or harm evidence connected with the offence being investigated or interfere with or physically injure other persons; or
- b) will alert other persons suspected of having committed such an offence but not yet arrested for it; or
- c) will hinder the recovery of any property obtained as a result of such an offence; or
- d) in the case of a person detained for an offence of drug trafficking, bribery, or money laundering, will hinder the recovery of the value of that person's proceeds from the offence.

Where the person detained chooses not to seek legal assistance, the investigating officer records this fact in writing in front of two witnesses and proceeds immediately to questioning.

Appropriate consent

No special provisions in relation to children were identified except as regards the taking of finger prints, palm prints, photographs, intimate or non-intimate samples, etc. where 'appropriate consent' is required. This means that in relation to children under 14 years of age the consent of the parent or guardian is necessary and in relation to children between 14 and 18 years of age, their consent and that of their parent or guardian is necessary⁷¹.

2.3.4 Conditions for pre-trial detention/ custody

The rights described in [section 2.3.3](#) apply to both adult and child pre-trial detainees.

The [Constitution of Malta](#) provides the general principles against the deprivation of liberty. The deprivation of liberty is only authorised in specific cases. These include deprivation of liberty upon reasonable suspicion that the person has committed, or is about to commit, a criminal offence⁷².

Any suspect who is in custody for a criminal offence can be granted temporary release upon giving security to appear at the proceedings. The court can impose conditions in the decree granting bail⁷³.

The main prisons in Malta form part of the Corradino Correctional Facility in Paola. Apart from the main prisons in Paola there are other locations that are considered by law as places of custody, namely: the Substance Abuse Therapeutic Unit, the 'Lock-up' below the Maltese Law Courts and the Forensic Unit (Mount Carmel Hospital)⁷⁴.

A valid committal document signed by a police officer not below the rank of Inspector is necessary before a person arrested for an offence can be confined in a prison. The Director of Prisons will inform the Minister responsible for prisons whenever a person under 18 years of age is admitted to prison. The Director will also inform the Minister whenever a prisoner is detained or kept under arrest in prison for more than 48 hours without being brought before a court⁷⁵.

Upon admission, prisoners have the right to inform of their imprisonment, through the Director, their spouse, if married, or the nearest relative or any other person indicated by the prisoner. If s/he does not wish to do so no person will be informed of the imprisonment unless there are overriding reasons such as the age, state of mind or other incapacity of the prisoner. The fact that the prisoner is a child means that a relative or other person should be informed of the imprisonment on the basis of the overriding reason of age. Children in pre-trial detention can contact a legal adviser of their choice and can apply for free legal aid⁷⁶. It was not possible to obtain further information on the policy applied.

⁷¹ Articles 350, 355AA, 355AZ and 355BA of the Criminal Code.

⁷² Article 34(1)(f) of the Constitution.

⁷³ Article 574(1) of the Criminal Code.

⁷⁴ <http://www.mjha.gov.mt/page.aspx?pageid=134>

⁷⁵ Regulation 4 of the [Prisons Regulations](#).

⁷⁶ Regulation 5(2) and (3) of the [Prisons Regulations](#).

It is not standard practice to hold a child under the age of 16 in detention; however, there are no legal impediments to this. Children between the age of 16 and 18 are treated in the same way as adults but are kept separate from mainstream detainees⁷⁷. According to the [Prisons Regulations](#)⁷⁸, prisoners under 21 years of age must be kept under conditions that take account of the needs of their age and protect them from harmful influences⁷⁹. One of the departments of the Corradino Correctional Facility is the Young Offenders Unit Rehabilitation Services (YOURS) which is meant to cater for young inmates but is nevertheless situated on the same site as the prison for adults⁸⁰. It was not possible to obtain further information on the policy applied.

2.3.5 Protection of private and family life

The [Juvenile Court Act](#) contains a number of legislative measures aimed at protecting children under 16 years of age involved in judicial proceedings. These measures are typically aimed at protecting the child's identity, limiting the dissemination of information and media reporting, excluding the public from hearings or avoiding the need for the child's presence in court.

Children under 16 years of age

Exclusion of the public from hearings and power of court to hear evidence with closed doors

Unless special permission is obtained from the Juvenile Court, only the following persons can be present at sittings of the Juvenile Court or in places adjacent to the room where hearings of the case or proceedings are held:

- Officials of the Juvenile Court and of the prosecution,
- The parties to the case and their counsel or other members of the legal profession,
- Representatives of the Ministry responsible for social welfare,
- Witnesses or other persons directly concerned in the case,
- The parent or other relative or the guardian of the child or young person charged or concerned in the proceedings, and
- *Bona fide* representatives of newspapers (Note that the law does not mention other forms of media).

As stated in [section 3.1.3](#) above, this applies to any court of criminal justice where the person or persons charged or indicted, or where the appellant or the respondent or one of the appellants or respondents is under 16 years of age⁸¹. Moreover, when a child or young person is a witness in proceedings before a court of criminal justice in relation to an offence against, or contrary to, decency or morality, the court can direct that any person, other than the persons listed above, be excluded from the court during the taking of the child's evidence⁸².

Restrictions on reports of proceedings

There are a number of restrictions on reports of proceedings in the Juvenile Court. Newspaper reports or broadcasts relating to proceedings in the Juvenile Court cannot reveal the name, address or school, or include any particulars calculated to lead to the identification of any child or young person concerned in the proceedings (either as the person charged or as a witness). The publication of pictures of the child or young person is also prohibited. These prohibitions may be fully or partially

⁷⁷ Information obtained from the Police Community and Media Relations Unit (Malta Police Force contact point). Presumably, should a child under 16 years of age be detained s/he would also be kept separate from mainstream detainees.

⁷⁸ Subsidiary Legislation 260.03, Legal Notice 118 of 1995 as amended.

⁷⁹ Regulation 12 of the Prisons Regulations.

⁸⁰ For further information see [section 3.1.3](#).

⁸¹ Articles 7 and 11(1) of the Juvenile Court Act.

⁸² Article 9 of the Juvenile Court Act.

removed by the Juvenile Court or the Minister responsible for justice in order to avoid injustice to a child or young person. This applies to proceedings before any court of criminal justice⁸³.

Exclusion of children from court

Children who are not accompanied by their parent or other relative or guardian are not allowed to be present in any court of criminal justice during the trial of any person charged with an offence or during any preliminary proceedings. Unaccompanied children will be ordered to be removed by the court unless they are the person charged with the offence, or except for the time that their presence is required as a witness or otherwise for the purposes of justice⁸⁴.

Children between 16 and 18 years of age

The special measures described above are not available to children between 16 and 18 years of age. These are treated in the same way as adults.

2.3.6 Alternatives to judicial proceedings

As an alternative to judicial proceedings it is possible for both adults and children under 18 years of age to resort to victim-offender mediation. The legal basis for this is the **Restorative Justice Act**⁸⁵.

The Restorative Justice Act sets up the Victim-Offender Mediation Committee, the duties of which include determining the eligibility of offenders and victims for mediation as well as the offence's suitability for mediation. The Committee's duties also include the drawing up of a list of mediators and criteria for the appointment of mediators⁸⁶. Victim-offender mediation is resorted to by the parties in person without legal representation⁸⁷.

Case referral to victim-offender mediation⁸⁸

The court, the prosecutor and/or the advocate of the offender and/or the probation officer can refer a case to the Victim-Offender Mediation Committee to see whether it is suitable and eligible for victim-offender mediation. The request can be made at any stage of the criminal proceedings.

Where instead of sentencing the offender to imprisonment, the court subjects the offender to a probation order or to a suspended sentence, the probation officer or the surveillance officer supervising the offender, can ask the court to refer the case to the Committee to see if it is suitable and eligible for victim-offender mediation. Similarly, the Offender Assessment Board, the Parole Board and the Remission Board can also refer a case to the Committee to see whether it is suitable and eligible for victim-offender mediation at any post-sentencing stage.

An offender is eligible for victim-offender mediation if s/he is capable of agreeing to take part in it, agrees voluntarily to take part in it and has formally admitted to committing an offence. A victim is eligible for victim-offender mediation if the offence is committed by an eligible offender, the victim is capable of agreeing to take part in it and s/he agrees voluntarily to take part in it.

The Restorative Justice Act does not specify for which offences victim-offender mediation is available. This will depend on whether the Committee considers that mediation is suitable for the offence. To determine this, the Committee considers the nature of the offence, including the level of harm caused by or violence involved in its commission and any potential power imbalance between the persons who are to take part in it. The Committee also decides whether victim-offender mediation is suitable for an eligible victim and eligible offender by considering their personal characteristics, their motivation to take part in mediation, the impact of the offence on the victim and the potential psychological effects it may have on the victim and the impact of the offence as perceived by the offender and the extent (if any) of the offender's contrition or remorse for the offence.

⁸³ **Articles 8(1) and 11(2) of the Juvenile Court Act.**

⁸⁴ **Article 10 of the Juvenile Court Act.**

⁸⁵ **Chapter 516 of the Revised Laws of Malta.**

⁸⁶ **Article 31 of the Restorative Justice Act.**

⁸⁷ **Article 39 of the Restorative Justice Act.**

⁸⁸ **Articles 31 to 35 of the Restorative Justice Act.**

The elements the Committee must consider as highlighted in the previous paragraph should afford an adequate degree of protection to victims and offenders (including children) despite the absence of specific legal safeguards to protect the child.

Reparation agreement

Successful victim-offender mediation results in a reparation agreement between the parties⁸⁹. Reparation agreements may include:

- The offender providing compensation for damages (pecuniary or non-pecuniary) suffered by the victim;
- The offender performing personal work for the victim or community work;
- The offender undertaking a rehabilitation programme;
- Restitution to the victim of any item stolen by the offender;
- A formal apology by the offender to the victim.

The parties may agree to another form of reparation.

Protection of rights under formal proceedings

Victims and offenders are not obliged to take part in victim-offender mediation or to continue to take part in it after proceedings have started. Mediation can be terminated when either or both parties wish to do so⁹⁰.

Evidence given in mediation proceedings is not admissible in any proceedings unless certain circumstances exist such as where disclosure is necessary for public policy considerations. Mediators are prohibited from submitting any evidence, report, assessment, evaluation, or finding of any kind concerning mediation (other than a report that is mandated by the court and which states whether an agreement has been reached) unless the parties expressly agree to this in writing⁹¹.

Outcomes of victim-offender mediation proceedings during the pre-sentencing stage are not taken into consideration by a court passing judgment. If the parties have reached a reparation agreement it does not prevent the court from prescribing another appropriate punishment on the offender. The offender's participation in mediation cannot be used as evidence of admission of guilt by the offender⁹².

No information was found on the impact of alternatives to judicial proceedings on the criminal record.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

The only measures identified that could minimise the burden and hardship of criminal proceedings are those described in **section 2.3.5** above. No measures aimed at supporting the child through this process were found. In addition, the measures described in **section 2.3.5** apply only for children under 16 years of age. Children between 16 and 18 years of age are in most aspects treated in the same way as adults.

2.3.8 Protecting the child during interviews and when giving testimony

The **Police Act** contains procedures for the questioning of suspects⁹³. Some of these rules apply to both adults and children; other rules are specific to children. The Police Act recognises the importance of the statement of the suspect as evidence and stresses that nothing should be done during the interview which may, even in the slightest way, throw doubt on the validity of the statement. The

⁸⁹ Article 41 of the Restorative Justice Act.

⁹⁰ Articles 38 and 40 of the Restorative Justice Act.

⁹¹ Article 42 of the Restorative Justice Act.

⁹² Article 43(3) of the Restorative Justice Act.

⁹³ These are found in the Fourth Schedule of the Police Act (Code of Practice for Interrogation of Arrested Persons).

statement must be made voluntarily and not extorted or obtained by means of threats or intimidation, or of any promise or suggestion of favour.

As a rule, the interrogation should be conducted at the Police General Headquarters, a police station or other areas under police control, except when there are serious reasons indicating that this would seriously prejudice the investigations.

The person being questioned can refuse to answer any question asked. Before being questioned the suspect must be warned that s/he does not have to say anything against his/her will and that what s/he says may be given in evidence. When, after the caution is given, the person being interviewed decides to make a statement, a record must be kept of the place where the statement is taken, the time the interrogation started and ended, every period of interruption, and the names of the persons present during the questioning.

An interpreter must be present when a person who does not understand English or Maltese is interviewed or the person conducting the interview does not understand the language spoken by the interviewed person.

There is a requirement to give special attention when interviewing children under 18 years of age. As far as possible, and if this is not prejudicial to the investigation, they should be interviewed in the presence of one of the parents, or their tutor, or in the presence of any other person, not being a member of the Police Force, who is of the same sex as the juvenile, e.g. the person who has the effective care and custody of the young person, or a social worker.

Children attending school or other educational institutions, should not, as far as possible, be arrested, or interviewed, at school. Where it is found essential to conduct the interview at school, this should be done in the presence of the head teacher.

The measures in place in relation to how a child gives testimony are described in [section 2.3.5](#) above.

2.3.9 Right to be heard and to participate in criminal proceedings

The measures in place to ensure that a child suspect has a right to participate and to be heard in criminal proceedings are the same as those in place for adults and are described in [section 2.1.6](#).

Persons charged (children and adults) with a criminal offence must be provided with adequate time and facilities for the preparation of their defence⁹⁴ and have the right to legal counsel⁹⁵ and to examine the witnesses called by the prosecution⁹⁶.

There is also the right to remain silent with respect to the charges brought against them as well as the right not to incriminate oneself⁹⁷.

2.3.10 Right to legal counsel, legal assistance and representation

Child suspects have a right to legal counsel, legal assistance and representation of their own choice. This is the same right that is available to adults under the Criminal Code and there do not seem to be any additional or alternative special measures in place for children.

If the suspect has not briefed an advocate, the Advocate for Legal Aid will undertake the defence⁹⁸. In fact, any person, including a child, appearing before a court of criminal jurisdiction in Malta can make use of free assistance of the Advocate for Legal Aid. The financial means of the suspect are not relevant.

⁹⁴ Article 39(6)(b) of the [Constitution of Malta](#).

⁹⁵ Article 355AT(1) of the [Criminal Code](#).

⁹⁶ Article 39(6)(d) of the [Constitution of Malta](#).

⁹⁷ Article 392(2) of the [Criminal Code](#).

⁹⁸ Article 570 of the [Criminal Code](#).

2.3.11 Remedies or compensation for violation of rights and failure to act

The remedies available to children are the same as those available to adults.

Any person who has been the victim of arrest or detention against his or her right to liberty and security of person has an enforceable right to compensation⁹⁹.

Everyone who has clearly and conclusively been a victim of a miscarriage of justice due to some serious failure in the judicial process involving grave prejudice to the convicted person has a right to compensation.

Children can access criminal appeal mechanisms by following the same procedure available to adults under the [Criminal Code](#).

No measures to support children in accessing such mechanisms were identified.

⁹⁹ Article 34(4) of the Constitution of Malta.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

No specific measures aimed at ensuring that a child effectively receives relevant information after judicial proceedings were identified.

3.1.2 Sentencing

The punishments that can be imposed on adults can also be imposed on children. Certain reductions may be applied in favour of children depending on their age, e.g. for children between 14 and 18 years of age, the punishment applicable to the offence is diminished by one or two degrees¹⁰⁰. For further information see [section 2.3.1](#) above.

Some special measures apply to the sentencing of child offenders and are described below. These measures benefit mainly children under 16 years of age. Children between 16 and 18 years of age are in most aspects treated in the same way as adults.

Care orders

Care orders are available for children under 16 years of age but are not available for children between 16 and 18 years of age.

Where a child under 16 is found guilty of an offence, the court can issue a care order under the [Children and Young Persons \(Care Orders\) Act](#). This is possible where, in the court's opinion, the other methods for dealing with the case are not suitable and the child or young person needs care or control which s/he is unlikely to receive unless the court makes a care order.

The court may, instead of sentencing the child or young person to imprisonment or dealing with her/him in another manner available according to law, make an order committing the child to the care of the Minister responsible for social welfare for between one and five years. Unless it has ceased to have effect earlier, a care order ceases to have effect when the child or young person turns 18 years old¹⁰¹.

The Minister can also remove a child or young person from prison and take the child into his care. This may occur where the Minister is advised by the Children and Young Persons Advisory Board¹⁰² that it is in the interest of the education or welfare of a child or young person to do so. This option is not available if the imprisonment sentence is for wilful homicide¹⁰³.

In essence, the Minister has the same powers and duties with respect to the care and custody of children and young persons in her/his care as the parents or guardian would have but for the order. The Minister has a general duty to further the best interests of the child or young person and to afford her/him the opportunity for the proper development of her/his character and abilities. Nevertheless the Minister can act inconsistently with this general duty if necessary for the protection of members of the public¹⁰⁴.

Children under care orders are placed in residential homes, hostels or similar institutions or boarded out with a suitable person or private care institution. The Minister can make other suitable accommodation and maintenance arrangements. The Minister can also allow children under 16 in her/his care to be under the charge and control of a parent, guardian, relative or friend.

¹⁰⁰ Article 37 of the [Criminal Code](#).

¹⁰¹ Article 3(1) of the [Children and Young Persons \(Care Orders\) Act](#).

¹⁰² The [Child and Young Persons Advisory Board](#) has the duty to advise the Minister on the best methods of dealing with children or young persons committed or taken into his care, to exercise general supervision over them and in general, to promote their welfare.

¹⁰³ Article 6 of the [Children and Young Persons \(Care Orders\) Act](#).

¹⁰⁴ Articles 8 and 9 of the [Children and Young Persons \(Care Orders\) Act](#).

If a child under 16 absconds from where s/he is required to live or is absent at an unpermitted time, s/he may be apprehended without warrant by the police and taken back to such premises. Anyone who compels, incites, assists, aids or abets in absconding or being absent, is guilty of an offence and liable to up to six months' imprisonment or a fine (*multa*) not exceeding EUR 232.94 or to both¹⁰⁵.

Probation orders

Another alternative to imprisonment are probation orders under the **Probation Act**¹⁰⁶. Instead of sentencing the offender (adult or child), the court can make a probation order placing the offender under the supervision of a probation officer for a specified period of not less than one year and not more than three years.

Before making a probation order, the court explains to the offender, in ordinary language, the effect of the order and that if s/he fails to comply with it or commits another offence, s/he can be sentenced for the original offence. If the offender is over 14 years of age, the court will not make the order unless the offender states her/his willingness to comply with its requirements.

Probation orders are served on the probationer and the Director of Probation Services who will assign a probation officer to supervise the probationer. If the probationer is under 18 years of age, a copy of the probation order will also be furnished to the parent or person charged with her/his upbringing¹⁰⁷.

Where possible, the Director of Probation Services assigns a probation officer experienced in dealing with children or young persons to supervise offenders who are under 16 years of age¹⁰⁸. This does not apply in the case of children between 16 and 18 years of age.

3.1.3 Deprivation of liberty

Prisons

According to information from the Police Community and Media Relations Unit (CMRU)¹⁰⁹, children over nine years of age may be deprived of their liberty; however, this has rarely been the case. Similarly, whilst there are no impediments to holding anyone under arrest, it is not normal practice to hold a child below the age of 16 under arrest. Those between the age of 16 and 18 are treated in the same way as adults but are kept separate from mainstream detainees in order to avoid any possible worsening of a situation. Social workers may be involved to work with the family and help maintain family ties.

The main prisons in Malta form part of the Corradino Correctional Facility. In addition, there are other locations that are considered by law as places of custody (see **section 2.3.4** above). According to the **Prisons Regulations** when allocating prisoners to different prisons, the judicial and legal situation of offenders must be given due account. With specific reference to children, due distinction must be made, as far as practicable between prisoners under 21 years of age and prisoners over that age. Moreover, prisoners under 21 years of age must be kept under conditions that take account of the needs of their age and protect them from harmful influences¹¹⁰.

Training programmes provided in prisons, work within the prison, and food provided in prison must take into account the age of the prisoner¹¹¹.

One of the departments in the Corradino Correctional Facility is YOURS (Young Offenders Unit Rehabilitation Services). This facility is meant to cater for young inmates but is nevertheless situated on the same site as the prison for adult offenders. There are currently plans to restructure YOURS. These plans include relocating the facility beyond the precincts of the mainstream correctional facility and enhancing the educational and therapeutic components of the section's programme. According to the Office of the Commissioner for Children, this change would mean that child prisoners will no

¹⁰⁵ Articles 10 and 12 of the Children and Young Persons (Care Orders) Act.

¹⁰⁶ Chapter 446 of the Revised Laws of Malta.

¹⁰⁷ Article 7 of the Probation Act.

¹⁰⁸ Article 9 of the Probation Act.

¹⁰⁹ The Malta Police Force contact point.

¹¹⁰ Regulation 12 of the Prisons Regulations.

¹¹¹ Regulations 11(2), 29(1) and 25(1) of the Prisons Regulations.

longer be vulnerable to the stigma and negative influences associated with Corradino Correctional Facility¹¹².

Alternatives to imprisonment

The main alternatives to imprisonment are care orders (for children under 16 years of age) and probation orders (available to both adult and child offenders) as described under [section 3.1.2](#).

In addition, the [Restorative Justice Act](#) provides for the eligibility to parole¹¹³. As a general rule, the parole eligibility date of a prisoner serving an imprisonment sentence for a term of one year and not more than two years is calculated at 33 percent of the term of imprisonment and in the case of an imprisonment sentence of more than two but less than seven years at 50 percent of the term of imprisonment. In the case of imprisonment sentences of more than seven years it is calculated at 58 percent of the term of imprisonment. In its judgment, the court can include an earlier parole eligibility date for offenders under 16 years of age at the time the offence was committed. This last measure is thus not available to children between 16 and 18 years of age.

3.1.4 Criminal records

The criminal record of a person regarding convictions is never cleared. All convictions are recorded and stay in police records¹¹⁴. On the other hand, certain convictions are not entered in conduct certificates as regulated by the [Conduct Certificates Ordinance](#)¹¹⁵. In this respect there is a special measure for children: if the person convicted of a crime was at the time of its commission under 18 years of age the conviction will not be entered in the conduct certificate¹¹⁶.

Conduct certificates can only be issued at the request of the person to whom they refer or upon an order of a court. In addition, a number of competent national authorities¹¹⁷ can request a complete record of criminal convictions from the Commissioner of Police. The written consent of the person to whom the record relates is necessary and the request must be connected with the recruitment or continued employment of a person or the issue or renewal of a licence or permit¹¹⁸.

¹¹² Office of the Commissioner for Children, Annual Report 2011, p.29.

¹¹³ Article 11 of the Restorative Justice Act.

¹¹⁴ Information from Police Community and Media Relations Unit.

¹¹⁵ Chapter 77 of the Revised Laws of Malta.

¹¹⁶ Article 5 of the Conduct Certificates Ordinance.

¹¹⁷ The Authority for Transport in Malta; the Lotteries and Gaming Authority, in respect of applications for a licence and the supervision of licence holders, in terms of the Lotteries and Other Games Act; the Public Service Commission, in respect of any person who is employed in the public service or who is a candidate for employment in the public service; the Security Service.

¹¹⁸ Article 3 of the Conduct Certificates Ordinance.

4 Strengths and potential gaps

Whilst Maltese law does provide some special measures for children involved in criminal proceedings, these are rather basic and cannot be said to provide a complete basis for child friendly justice as established under the UN Convention. Children are very often in the same position as adults and whilst this means that they have the same extent of rights to be heard and to participate in the criminal process it also means that special mechanisms to facilitate their position as the victim, witness or suspect of a crime are sparse.

In particular, whilst there are general rules on provision of information, there are no special measures aimed at ensuring that child victims and witnesses are provided with the necessary information during proceedings. However, victims can inform the police that they wish to be present during court sittings. In this case, they will be informed of the date, place and time of the hearing and can be present in court during all hearings.

Positive elements that help contribute towards child friendly justice include special measures for the examination of child witnesses through video-recording of the child's testimony or through live video conference. Child witnesses in the witness protection programme can be screened from the accused during trial or give evidence by live television transmission.

As regards child suspects, the low age threshold for criminal responsibility (nine years of age) demonstrates 'a poor consideration of the inherent immaturity of children'¹¹⁹. Children between 9 and 14 years of age are also exempt from criminal responsibility for any act or omission done without mischievous discretion (that is, knowledge of the wrongfulness of the act and its consequences). However, if children between 9 and 14 years of age act with a mischievous discretion they are liable to punishment. The punishment can never exceed four years' imprisonment. For children between 14 and 18 years of age, the punishment that applies to the offence is diminished. Once the child reaches 18 years of age, there is full criminal responsibility.

The proposed amendments to the Criminal Code in **Bill 97** include revisions to the age thresholds. The proposal is to exempt children under 14 years of age from criminal responsibility and to move the age of mischievous discretion from between 9 and 14 years to between 14 and 16 years.

When a child suspect is arrested, the police do not automatically inform the child's parent/guardian, but the child is given the same right as an adult to request that a relative or friend is informed of the arrest. Arrested children, like adults, have the right to consult a lawyer. However, the child can waive this right. Where the child chooses not to seek legal assistance, the investigating officer must record this fact in writing in front of two witnesses and proceed immediately to questioning.

Maltese law only allows the deprivation of liberty in specific cases. These include deprivation of liberty upon reasonable suspicion that the person has committed, or is about to commit, a criminal offence¹²⁰. This means that a child can be detained if there is such reasonable suspicion. In addition, although it is not standard practice to hold a child under the age of 16 in detention, there does not seem to be any law prohibiting this. Children between the age of 16 and 18 are kept separate from mainstream detainees and all prisoners under 21 years of age must be kept under conditions that take account of the needs of their age and protect them from harmful influences¹²¹. However, the lack of specific pre-determined criteria and conditions for the detention of children constitutes a weakness in the Maltese system.

Some special measures apply only to children under 16 years of age. The Minister responsible for social welfare can issue care orders in relation to children under 16 years of age under the Children and Young Persons (Care Orders) Act. More importantly, whereas children under 16 years of age can be tried in the Juvenile Court which provides a somewhat more child friendly setting, children between 16 and 18 years of age are tried in the same court as adults. Moreover, the Juvenile Court cannot hear charges against, or other proceedings relating to, a child who is co-accused with a person over 16 years of age¹²². Therefore a child under 16 years of age will be tried in the same court as an adult if s/he is co-accused with a person over 16 years of age (and thus lose the child friendly protection measures available in the Juvenile Court). This fact has been criticised by the

¹¹⁹ Office of the Commissioner for Children, Annual Report 2011, p.28.

¹²⁰ Article 34(1)(f) of the Constitution.

¹²¹ Subsidiary Legislation 260.03, Legal Notice 118 of 1995 as amended.

¹²² Article 6 of the Juvenile Court Act.

Commissioner for Children. The Commissioner recommends that measures be taken to establish the right for children not to be considered as co-accused and to have their cases heard before the Juvenile Court¹²³.

Newspaper reports or broadcasts relating to proceedings in the Juvenile Court cannot reveal the name, address or school, or include any particulars calculated to lead to the identification of any child or young person concerned in the proceedings (either as the person charged or as a witness). This in itself is a positive child friendly measure. However, the phrase 'calculated to lead to the identification' leaves room for interpretation and lacks clarity as to what particulars might fall within its scope. Moreover, this applies only to children under 16 years of age. Children between 16 and 18 years of age do not benefit from this measure.

A recent legislative change that has strengthened the position of persons, including children, involved in criminal proceedings is the adoption of the Restorative Justice Act which provides an alternative to judicial proceedings through victim-offender mediation. The same Act also provides for the possibility of parole, with more favourable conditions applicable to child offenders.

¹²³ Office of the Commissioner for Children, Annual Report 2011, p.29.

Conclusions

Maltese law provides some special measures for children involved in criminal proceedings. However, these are rather limited and very often the position of the child victim, witness or suspect is similar to that of an adult involved in criminal proceedings. This means that children and adults have the same extent of rights to be heard and to participate in the criminal process but special mechanisms that take into account the vulnerability and best interests of children are scarce. For instance, there seem to be no special measures aimed at ensuring that child victims and suspects are provided with the necessary information during proceedings. This would seem to be a rather important element in ensuring child friendly justice.

The position of the child victim and child witness is generally the same given that the criminal action is a public action prosecuted by the police or the Attorney General. In fact, the position of the victim is traditionally that of witness. Nevertheless, there are certain measures that allow for more active participation of victims when compared to other witnesses. These measures typically apply to both adults and children.

Positive elements that help contribute towards child friendly justice relate primarily to the protection of children examined as witnesses (for example, through the use of video-recordings of the child's testimony) or questioned by the police and the exclusion of the public from hearings involving children.

With reference to child suspects, the most important child friendly measures are the existence of the Juvenile Court and the availability of care orders issued by the Minister for social welfare. The Juvenile Court provides a somewhat more child-friendly setting than the normal courts of criminal justice. Care orders, on the other hand, can constitute an alternative to imprisonment for children convicted of a criminal offence. However, these measures are only available for children under 16 years of age. Children between 16 and 18 years of age will be tried in the same court as adults. Moreover, children under 16 years charged jointly with a person over 16 years of age will also be tried in the same court as an adult and will not benefit from the special measures available in the Juvenile Court.

It must be noted that the age threshold for criminal responsibility in Malta is very low (nine years of age). Children between 9 and 14 years of age are exempt from criminal responsibility for any act or omission done without mischievous discretion (that is, knowledge of the wrongfulness of the act and its consequences). However, if children in this age group act with a mischievous discretion they are liable to punishment. For children between 14 and 18 years of age, the applicable punishment is diminished by one or two degrees. The punishments that can be imposed on adults can also be imposed on children but certain reductions may be applied in favour of children depending on their age. Once the child reaches 18 years of age, there is full criminal responsibility.

The proposed amendments to the Criminal Code in **Bill 97** include revisions to the age thresholds for criminal responsibility. The proposal is to exempt children under 14 years of age from criminal responsibility and to move the age of mischievous discretion from between 9 and 14 years to between 14 and 16 years.

The remedies available to children for violation of rights and failure to act are the same as those available to adults.

Positive recent legislative changes affecting persons, including children, involved in criminal proceedings are the introduction of an alternative to judicial proceedings through victim-offender mediation and the introduction of the possibility of parole, with more favourable conditions applicable to child offenders.

As regards specialised bodies dealing with children, the Office of the Commissioner for Children is the focal point that monitors the current social and cultural situation in relation to children in Malta, such that it can contribute to the co-ordination that needs to take place across all sectors in order to have family-friendly policies that are also child oriented. In addition, *Agenzija Appogg* provides services aimed at promoting the well-being and protecting the rights of children.

Annex – Legislation reviewed during the writing of this report

- Restorative Justice Act, Chapter 516 of the Revised Laws of Malta, 27 January 2012
- Criminal Injuries Compensation Scheme Regulations, Legal Notice 190 of 2007, 29 May 2012
- Commissioner For Children Act , Chapter 462 of the Revised Laws of Malta, 5 December 2003
- Probation Act, Chapter 446 of the Revised Laws of Malta, 10 March 2003
- Prisons Regulations, Legal Notice 118 of 1995, 1 October 1995
- Children And Young Persons (Care Orders) Act, Chapter 285 of the Revised Laws of Malta, 8 August 1980
- Juvenile Court Act, Chapter 287 of the Revised Laws of Malta, 25 July 1980
- Constitution of Malta, 21 September 1964
- Police Act, Chapter 164 of the Revised Laws of Malta, 10 February 1961
- Criminal Code, Chapter 9 of the Revised Laws of Malta , 10 June 1854
- Conduct Certificates Ordinance, Chapter 77 of the Revised Laws of Malta, 5 January 1934

