



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Malta



Dr Joseph Giordmaina

Malta

Dr Joseph Giordmaina



A. Juvenile Justice

A.1. Please describe the legal framework and the main characteristics of the juvenile justice system of your country.

A.1.1. Is there a special law or code regarding juvenile justice?

This section deals with the laws of Malta which specifically talk about the protection of juveniles in all legal procedures taken against them.

The Government of Malta's 1998 State Party Report to the Committee on the Rights of the Child declares that all minors have an implicit right to be heard, and this right has been codified into law. In fact, the Juvenile Court Act (1980) stipulates that all offenders below the age of sixteen are given a voice in all the legal actions taken against them, and all proceedings related to them must be heard by a Juvenile Court Magistrate Judge in the Juvenile Court (YLS, 2005).

The Commissioner for Children's Act of 2003 established the Office of the Commissioner for Children. One of the main objectives of this office is to promote children's welfare and ensure compliance with the United Nations Convention on the Rights of the Child (ratified by Malta on the 26 of January, 1990), as well as other international treaties, conventions or agreements pertaining to children, as are or may be ratified by or otherwise acceded to by Malta (Commissioner for Children, 2014).

The Legal Notice 13, published in 1962, gave the Director of Welfare the power to safeguard the interests of the parentless and neglected children in Malta, and to ensure that they are well provided for (as cited in YLS, 2005). This led to the Children and Young Persons (Care Orders) Act, which was implemented in 1980. This law gave the court and the state the power to issue care orders, whereby in cases of peril and need, a

child or young person is placed under protection. The Juvenile Court was also created in the same year (UNHCHR, 1998 as cited in YLS, 2005).

In cases that concern a child whose parents are deceased or have forfeited their parental authority, the child is placed under guardianship until he/she becomes of age or gets married. His/her guardian is requested by law to represent him/her in all civil proceedings (Civil Code, 1870, articles 158, 172).

In 1994, the Ministry for Social Policy launched the Social Welfare Development Programme, which aims to improve social welfare in Malta. This led to the APPOĠĠ child protection services programme, which was established to enhance protection services for children that require care (YLS, 2005).

The National Focal Point for Drugs and Drug Addiction lobbied for changes to the law, which resulted in the Amendment 64 of Bill 97 of 2012 (as cited in Damato, 2013). This amendment proposed a system called the Arrest Referral Scheme, which aimed to facilitate diversion from court proceedings for first time offenders found in possession of illicit substances for personal use. This scheme would have prevented the offender from being tried in court, and instead, following admission to the offence, he or she would have been referred to a judicial body whose job is to examine the case, taking into consideration the personal and familiar circumstances of the offender in question. As soon as the Board could ensure that the offender has an adequate and healthy support system in place, the police would be notified so that they can close the case. However, this scheme could only be utilised once. Thus, in case of re-offence, the offender would have to go through normal procedures, i.e. via court proceedings (Damato, 2013).

However, this scheme was received a lot of criticism from a number of stakeholders. First of all, it has been perceived as a repackaging of Malta's drug policy without essentially changing any of its widely acknowledged failures (Malta Today, 2014).

Furthermore, the Maltese Code of Police Laws¹ makes reference to a diversionary system when a young person below the age of seventeen is found guilty of consuming alcohol. The law stipulates that if this is his or her first offence, he or she would be formally warned that criminal proceedings will be taken against him/her if caught breaching the law for a second time. At this point, the court may order the offender to follow an educational programme against substance abuse, which can also be combined with psychological counselling. However, research suggests that in reality, such a mechanism is not yet in place. This might be due to a recent change in government in 2013 (Damato, 2013).

Recently, the prime minister has claimed that next on the agenda is decriminalisation of minor drug-related offences for first time offenders. He said that the current system of imprisonment for first time offenders and those found in possession of small amounts of drugs for personal use is "failing our youths" (Times of Malta, 16th April 2014).

1 Code of Police Laws, Cap.10 of the *Laws of Malta* (1854 p.54-55).

A.1.2. Which courts and other special authorities are responsible for the reactions of juvenile offending (criminal courts, specialised juvenile criminal courts, family courts, special prosecutors, police etc.)?

The Maltese authorities have always strived to separate juvenile criminals from their adult counterparts, and there are special provisions in place that provide enhanced possibilities of adjustment and rehabilitation of young persons. The law takes a *parens patriae* approach, giving legal authority to the state in order to highlight the dependency of children and young persons and their need for nurture and safety (Calleja, 2010).

One such provision is the Juvenile Court, which was set up in 1980 (Juvenile Court Act, 1980). The Maltese Juvenile Court is a specialized court dealing with children and young persons. The Maltese Juvenile Court Act (1980) Article 3(1) calls for the set up of “...a court of law to be known as the Juvenile Court for the purpose of hearing charges against, or other proceedings relating to a child or young person...and for the purpose of exercising any other jurisdiction conferred on juvenile courts...” (p. 1).

Although the Juvenile Court is a Court of Magistrates and hence follows the rules of criminal procedure law, it is nevertheless a far less formal court than the actual Court of Magistrates that hears cases in the main building of the law courts in Valletta. The Juvenile Court sittings, which are not open to the general public, are held in a building far away from the Valletta law courts “...to avoid a harmful environmental exposure to these young persons”.²

The jurisdiction of the Juvenile Court as a Court of Criminal Judicature is limited to hearing cases concerning minors who are below the age of sixteen and who are accused of carrying out criminal offences. The penalty that may be awarded upon conviction is that provided for in the Criminal Code (1854) and in the Probation Act (2002) or other specialized legislation, in line with the sort of crime carried (Damato, 2013).

A.1.3. What is the scope (only criminal or also antisocial behaviour) of juvenile justice? How is the age of criminal responsibility regulated (please refer to the different age groups and include the legal definitions on “child”, “youth” and “young person”)?

Maltese law makes a distinction between the terms ‘children’ or ‘young persons’ and the term ‘minor’. Whereas a child or young person “...means a person who is under the age of sixteen years” (Children and Young Persons Act, 1980, Art. 2), a minor is defined as “...a person of either sex who has not yet attained the age of eighteen years” (Civil Code, 1870, Art. 157). According to the Civil Code, (1870: section 157), in Malta, children reach majority at the age of eighteen, and this has been so since the Civil Code was initially enacted. However, there are particular cases where a child is deemed to be accountable

2 Rule 10.3 of the Beijing Rules, 1985 as cited in Damato, 2013.

at an earlier age, specifically, (a) on contracting marriage at the age of not earlier than sixteen (Marriage Act, 1975, Art 3(1), (b) a child may also exercise acts of trade on reaching the age of sixteen following an application for emancipation to the competent court (Commercial Code, 1857: section 9), and (c) a child has the capacity to make a will at the age fourteen, however he/she can only make remuneratory dispositions (Civil Code, 1870: section 597(1)).

The age of criminal responsibility in Malta is that of fourteen years. This means that a child or young person from the age of fourteen onwards can be charged with crimes ranging from smoking to bullying and rape. The law recognises that until the age of fourteen, a child or young person cannot be held accountable for any acts committed, because they are not capable of determining right from wrong.

However, this is a very recent development. Until a few months ago, the age of criminal responsibility was that of nine years. For a number of years, the Commissioner for Children, together with other professionals and academics, had lobbied the government to raise the age of criminal responsibility to the age of fourteen. This resulted in a draft Bill 97, which was later enacted into law (Act No. 3, 2014 as cited in Justice Services, 2014).

The law states that a minor below the age of sixteen shall also be exempt from criminal liability for any act or omission carried out without any mischievous discretion. In the case where the act or omission is carried out with mischievous discretion by a minor who is between fourteen and sixteen years of age, and in the case where the minor is aged between sixteen and eighteen years, the law calls for a diminishment in punishment by one or two degrees (Act No. 3, 2014 as cited in Justice Services, 2014). It must also be noted that the Maltese Juvenile Court Act (1980, Art 2) defines a child or young person as a person who is below the age of sixteen years.

A.1.4. Are there specific procedural rules for young persons and how do they differ from those for adults? Are due process guarantees respected?

As has been discussed above, juvenile offenders who are over sixteen years of age are charged before the Juvenile Court. Offenders are heard along with all other offenders, including adult offenders, being arraigned in the law courts in Valletta, which is separate from the Juvenile Court.

As observed by Damato (2013), the main difference between the Juvenile Court and the adult court is that the prosecutor, who must be a high ranking police officer, is dressed in plain clothes in the Juvenile court, rather than in uniform. The role of the prosecutor is to advocate for the state in order to safeguard society from perilous or injurious behaviour. He or she assembles a dossier of the offender for the Court, which includes the offender's Police Criminal Record, together with other information held by the police. The prosecuting officer also provides his perceptions and suggestions about

the case, together with its potential conclusion.

The child is often defended by a defence lawyer, whose role within the Juvenile Court is identical to that in the adult court. After analysing the facts and studying the case, the defence lawyer ensures that the young offender's position is made clear in court. It must be noted that some parents waive their child's fundamental right to be defended by a lawyer in court, while others engage the services of very prominent criminal lawyers (Damato, 2013).

The Juvenile Court in Malta functions in conjunction with the police, the Commissioner for Children, the Education Department, and the Department of Probation and Parole in certain cases of a particularly sensitive nature. In fact, a social worker from the Education Department is always present during Juvenile Court sittings. This social worker is consulted by the Magistrate in open court for the purposes of providing information regarding the educational history and school attendance of the offender. Moreover, a probation officer representing the Department of Probation and Parole is also present during Juvenile Court sittings. The probation officer is also often consulted in open court on the manner of judgment with respect to orders of supervision (Damato, 2013). Finally it must also be noted that the Maltese Juvenile Court also hears appeals made against care orders made by the Minister accountable for social welfare (The Judiciary Portal, 2014).

Finally, the penalty awarded to minors must always be reduced by one or two degrees. Hence the Juvenile Court never awards the full punishment in its judgments, but follows the rule of a reduction in punishment. This rule applies to all persons under the age of eighteen and not solely to minors under the age of sixteen or only persons charged before it (Damato, 2013).

A.2. Please describe the sanctioning system regarding juvenile justice in your country.

A.2.1. Please give an overview on the sanctions/reactions on youth offending at the different levels of criminal proceedings.

Youth offenders, like their adult counterparts, follow the normal course of justice. Offenders are normally charged and appear before a court of law, which determines the sentence according to the offence.

A.2.2. Which possibilities exist to divert a juvenile from trial?

The National Youth Policy (2010) calls for diversionary tactics in relation to young people. The number of juvenile offenders in Malta is small, and cut across a myriad of services,

and require intensive, tailor-made interventions. Imprisonment is used as the very last resort by the judiciary, after consulting with the relevant professionals and exhausting all available options applicable to each particular case (Camilleri, 2012).

As has been mentioned above, the Maltese Code of Police Laws (Chapter 10) refers to a diversionary system in the case of minors below the age of seventeen found guilty of consuming alcohol. If it is their first offence, they could be formally warned that criminal proceedings would be taken against them if caught reoffending. Mention has also been made to an Arrest Referral Scheme and the decriminalisation of drug-related offences for first time offenders.

Apart from this, as has been mentioned above, there is no other possibility of diversion from trial. Juveniles, like their adult counterparts, are charged before a court of law when caught offending and it is up to the judge to sentence the delinquent as he or she sees fit.

A.2.3. What types of interventions can the competent court impose?

As has been discussed above, the Juvenile court can impose a prison sentence. This is usually served in the YOURS (Young Offenders Unit Rehabilitation Services), which will be discussed in detail later on in this report. However, Maltese legislation allows for a number of alternatives to detention. According to the Maltese Criminal Code (1854, Art. 7) non-custodial penalties are those punishments that are “...not restrictive of personal liberty.” According to Calleja (2010), in fact, most of the sentences handed out favour non-custodial sentences, such as probation orders (28%), conditional discharge (28%) and reprimand (21%).

There are nine non-custodial penalties that are made reference to in Maltese legislation. These include interdiction, fine (*multa*) or fine (*ammenda*), reprimand, suspended sentence, probation order, conditional discharge, community service order and combination order. Each of these will be discussed below. Again, here it must be noted that these measures apply not just to young offenders, but to all offenders, although as already stated above, young offenders benefit from a diminshment in penalty (Montebello, 2007).

The Probation of Offenders Act was enacted in 1957 and revised to include more alternatives to incarceration in 2002 (Scicluna, 2008). The new Probation Act came into force in two stages in 2003. In this new Act, the concept of unpaid work as an alternative to prison was introduced through the Community Service Order (Article 11) and the Combination Order (Article 18) for offenders over 16 years of age. The Act underwent further changes through the amendments effected in June 2010. One of the changes is of particular significance, as it required breach report proceedings to be heard by the Criminal Court instead of the Court of Magistrates (Probation Act, 2002, Art 21). However, this amendment does not apply to cases issued by the Juvenile Court.

Interdiction

The Maltese Criminal Code (1854, Art.10) states that interdiction can either be general or special. A general interdiction disqualifies the offender from any public office or employment, generally, whereas a special interdiction disqualifies the person sentenced from holding a particular public office or employment or from the exercise of any particular profession, art, trade or right. Both types of interdiction may be for life or for a stated time period, and both can be discontinued at any time by an order of the court by which the punishment was awarded if there are good grounds to do so. Any person sentenced to interdiction who infringes any obligations arising from that penalty, shall upon conviction be liable to incarceration for a term not exceeding three months and to a fine (Criminal Code, 1854, Art. 10 as cited in Montebello, 2007).

Fine (Multa)

Article 7, sub article 1 of the Criminal Code (1854) states that a fine (*multa*) is one of the penalties that may be awarded for crimes. Article 11 of the Criminal Code (1854) is dedicated to this non-custodial sanction. It is laid down that where it is not otherwise precisely provided, the maximum fine is €1,164.69, while the minimum is €23.29.

If the fine (*multa*) is not paid within the prescribed period, it is converted into imprisonment at the rate of €35 per day, provided that imprisonment in substitution of a fine exceeds six months if the fine is not higher than €7,000, one year if the fine is not higher than €30,000, eighteen months if the fine does not exceed €80,000 and two years if it is higher than €80,000 (Criminal Code, 1854, Art 11).

Fine (Ammenda)

Within the Criminal Code (1854, Art 7), the fine (*ammenda*) is listed as one of the punishments that may be awarded for contraventions. It is stated that where it is not otherwise precisely provided, the maximum of a fine (*ammenda*) is €58.23 and the minimum is €6.99. If the fine (*ammenda*) is not paid within the prescribed period, it shall be converted into detention at the rate of €11.65, provided that in no case shall detention in substitution of a fine (*ammenda*) exceed one month (Criminal Code, article 13).

An individual who is awarded a fine (*multa*) or fine (*ammenda*) is required by the law to pay the same forthwith, however, it is noted that, the court may for a reason to be recorded, order that the individual sentenced to pay the fine within a certain period of time. In the case of a fine (*ammenda*) of €58.23 or less, the said period shall not be more than ten days, and in the case of a fine (*ammenda*) of more than €58.23 or in the case of a fine (*multa*), the said period shall not exceed one month. In its discretion in sentencing, the court may direct that any fine (*multa* or *ammenda*) be paid in instalments in such amounts and in relation to such recurrent intervals as the court may deem fit. However, the period over which the whole amount must be paid shall in no case exceed three years and in default of payment of any one such instalment, the whole of the amount outstanding shall become and be immediately due and payable and all the provisions of the Criminal Code, applicable to a sentence of fine (*multa*) or fine (*ammenda*) and to

arrest and detention or imprisonment, as the case may be in default of payment, shall apply the same accordingly (Criminal Code, 1854 articles 13-14).

Reprimand

The reprimand is an admonition (Criminal Code, 1854, Art 15) that is made in open court by the judge or magistrate who tried the offence. Any person who receives the reprimand or admonition with overt acts of contempt or want of respect shall be liable to detention or to a fine (*ammenda*).

Conditional Discharge

Article 22 of the Probation Act (2002) starts by stipulating that where a court by which a person is convicted of an offence, not punishable only by a fine or a term of incarceration exceeding seven years, is of the opinion that, after having considered all the circumstances surrounding the case, it is inexpedient to inflict punishment and that other alternatives to imprisonment are not suitable, the court may make an order discharging the offender absolutely or if the court deems adequate, discharging the offender subject to the condition that he/she commits no offence during a period not exceeding three years. If a person that has been conditionally discharged commits another offence during that period, the offender will be liable to be sentenced for the original offence (Probation Act, 2002; article 22).

Suspended Sentence

The suspended sentence of imprisonment was added to the Criminal Code in 1990 and further amended in 2002 (Montebello, 2007). It is indicated that a court that passes an imprisonment sentence for a term not exceeding two years may order that the sentence will not take effect, unless, during a period (known as the operational period) specified in the order, being not below one year and not more than four years from the date of the order, the offender commits another offence, punishable with imprisonment and therefore, a court competent to do so, will order that the original sentence takes effect. The court will deal with an offender by means of a suspended sentence only if the case appears to be one in which a sentence of incarceration would have been adequate in the absence of any power to suspend such a sentence. Upon awarding a suspended sentence, the court is required by law to explain to the offender in ordinary language, his/her liability if during the operational period, he/she commits an offence that merits an imprisonment sentence. The provisions of a suspended sentence are not to be applied to any imprisonment awarded due to failure of payment of a fine (*multa*) or of costs. Moreover, a suspended sentence cannot be awarded in three particular instances – (1) if the offender is already serving a sentence of imprisonment, (2) if the offender is a recidivist and (3) if the offence has been committed during a period of probation or conditional discharge (Criminal Code, 1854, Art 28A).

In cases where the offender is convicted of an offence that has been carried out during the operational period of a suspended sentence, then unless the sentence has already taken effect, the court shall order that the suspended sentence shall take effect. However, if the offence carried out during the operational period is of an involuntary nature or

the court holds the opinion that it would not be just for the suspended sentence to take effect, it may deal with the offender in two manners – (1) it may abstain from making a suspended sentence order and the operational period shall then remain in force or (2) it may vary the original order by substituting for the operational period specified therein, a period expiring not later than four years from the date of the variation (Criminal Code, 1854, Arts. 28B-28D).

Where a sentence of more than six months imprisonment is suspended, the court may in addition make a suspended sentence supervision order, placing the offender under the supervision of a probation officer for a period specified in the order, which period shall not exceed the operational period. This order of supervision may require the offender to comply with any or all of the conditions that may be imposed by the Court under the Probation Act of 2002. An offender placed under such an order is required to keep in touch with the probation officer and to notify the same officer if he/she changes his/her place of residence. This order of supervision shall cease to have effect if a court orders that the suspended sentence passed in the proceedings in which the supervision order was made shall have effect, or if the order is discharged or replaced. A supervision order may be discharged upon the application of the probation officer or the offender by the court that made the order. The court which made the supervision order may replace the order by extending its duration. If at any time of the supervision order the court is informed that the offender failed to comply with the conditions of the order via the written report of the probation officer, the court shall order that the offender be brought before it, and if the court, after hearing the offender, is satisfied that such failure did happen, it may order that the suspended sentence passed in the proceedings in which the supervision order was made shall have effect (in serious cases or reoffenders), or it may impose on the offender a fine (*ammenda*) not exceeding €232.94 (Criminal Code, 1854, Art. 28G).

Probation Order

The aim of the service of probation is to bring about social stability via its contribution to the minimisation of the frequency of crime by ensuring the reintegration of offenders into society and making sure that the diverse services provided will address the requirements of the criminal justice system. The primary objective is to change offenders into law-abiding citizens. Importance is directed towards young, non-hardened offenders, as these are the individuals would most likely be given a non-custodial sentence. Typical offenders that come into contact with this service are young males who require help with overcoming their problems, finding a job and becoming productive members of society. In Malta, this service does not make use of the assistance of volunteers, but it does greatly rely on the services that voluntary, non-governmental and state agencies provide. Certain services that probationers make use of are offered by other agencies (Scicluna, 2008). These services will be discussed further on.

With regards to probationers, particularly young offenders, the problems that these may face are multi-faceted, hence probation officers' liaising with other agencies becomes a major strength. On various occasions, probation officers end up working with other

members of the offender's family and other professionals and/or agencies that are involved in the case. When juvenile probationers are involved, the probation officer also maintains regular contact with the school that the juvenile attends, and even attends or holds regular case reviews with the other professionals involved in the juvenile's case, to gather and provide feedback and discuss any important matters regarding the young offender (Farrugia, 2006).

According to the Probation Act (2002, Art. 7), the court may, instead of sentencing the offender to imprisonment, make a probation order, that is, an order requiring the offender to be under the supervision of a probation officer for a period of not less than one year and not more than three years. This order is made under three circumstances – (1) if the offender is convicted of an offence, not being an offence punishable only with a fine (*multa*) and not being an offence punishable by imprisonment for a term not exceeding seven years, (2) the court is satisfied that the offender's supervision by a probation officer will occur in the interest of assuring the offender's rehabilitation and/or safeguarding the public from harm from the offender or preventing recidivism, and (3) taking into consideration the circumstances of the case, including the nature of the offence and the character of the offender, it appears that the issue of such an order is adequate (Probation Act, 2002, Art 7).

Via Article 7 (2) of the same Probation Act (2002), it is indicated that provided that where in the opinion of the court there are circumstances that merit placing the offender under a probation order, in the case of an offence which is punishable with imprisonment for a term exceeding seven but not ten years, the court may award a probation order. The same Act also stipulates that a probation order may further require the offender to comply with certain requirements that the court deems vital to secure the good conduct of the offender and to prevent re-offending. Thus the court may give the probation officer certain directions as it may deem necessary in order to secure these purposes. Moreover, a probation order may include requirements relating to the residence of the offender. Where the order contains any such requirements, the place at which the offender is to reside will be specified in the order (Probation Act, 2002, Art 7).

Moreover, the law stipulates that where in the viewpoint of the court, the mental state of the offender is one that requires treatment, but not such as to justify other measures or procedures, or where the court is satisfied that the offender is a drug addict, and proper arrangements have been or can be made for treatment, a probation order may include a requirement that the offender shall submit to treatment for a term not exceeding the length of the order, by or under the direction of adequately qualified persons. The treatment may be on a non-residential or residential basis in a hospital or other appropriate agencies or institutions. In any such case, an amendment of the order may also be made on an application made by a suitably qualified person, in conjunction with the probation officer in charge of the case. The Act further stipulates that where the court deems that such an order may facilitate the rehabilitation of the offender, it may include as a condition in the probation order an order that for a period not exceeding six months, the probationer shall, when not required to work or study, present him/herself

and remain at a certain residential institution (Probation Act, 2002, Art 7).

Community Service Order (CSO)

Article 11 of the Probation Act (2002) stipulates that a CSO may be given to offenders aged sixteen years and over and who are convicted of an offence punishable by imprisonment. Such an offence cannot be punishable only by a fine and cannot be punishable by a term of imprisonment exceeding seven years. Instead of sentencing the offender to imprisonment, the court may order the offender to be placed on a CSO. This order requires the offender to perform unpaid work and/or training, varying from forty to four hundred and eighty hours. The order shall only be made if the court is satisfied that after considering the offender's circumstances and the pre-sentencing/verbal report prepared by a probation officer, the offender is suitable to perform such work. Moreover, for such an order to be made, the court must be satisfied that arrangements can be made for such work, the offender has agreed to the order and the offender has signed the community service work agreement form (Probation Act, 2002, Art 11).

When a court makes an order and there is in force a sentence of imprisonment or the offender is detained without bail, the CSO shall come into effect after the offender's release from prison, provided that, the probation officer is of the opinion that the offender is still suitable to perform such work. If the offender is not suitable, the community service officer, who is a probation officer, shall return the case to the court and the court shall deal with the offender as if the CSO has never been made (Probation Act, 2002, Arts 11-14).

An offender that has been placed under a CSO shall report to the relevant authority from time to time according to the instructions issued by the probation officer, perform satisfactorily for the number of hours indicated in the order and notify the probation officer in charge of any changes in residence. The work to be carried out under a CSO shall be conducted in a period of not less than one month and not more than two years (Probation Act, 2002, Arts 11-14).

Combination Order

The court may, instead of imprisoning the offender, place him/her under a combination order that requires the offender to be placed under probation supervision and to perform a CSO of not less than forty hours and not more than one hundred hours. The provisions pertaining to the CSO, as mentioned above, shall apply in this case (Probation Act, 2002: article 18).

Conviction following an order

It must be noted that the Probation Act (2002, Art 23) also caters for conviction following an order. It is laid down that if a person against whom a community sanction or an order of conditional discharge has been made is subsequently convicted by or before any court during the probation period or the period of the conditional discharge, the court, if it is the same court that made the probation order, the CSO, the combination order or the order of conditional discharge, may deal with that person for the offence for which the

order was made, in any way in which it would deal with the offender if he/she had just been convicted by or before that court of that offence. If it is a different court, it shall commit that person before the court by which the order was made and such court shall cause the person to appear or be brought before it and it may deal with the offender as if he/she had just been convicted by or before that court of that offence. Where a person is dealt with for the offence for which he/she was placed on any such order, it shall not be lawful for the court to place the offender under a community sanction. This however does not apply when the offence is committed during the probation period or the period of conditional discharge and for which the person is subsequently convicted, is a contravention or the crime is an involuntary homicide, or involuntary bodily harm or involuntarily damage to property (Probation Act, 2002: article 23).

A.2.4. Which forms of liberty depriving sanctions are provided? What is the minimum and what is the maximum length for liberty depriving measures?

In Malta, persons who are sentenced to imprisonment are confined within the Corradino Correctional Facility (CCF). Such persons are subject to the restrictions laid down in the prison regulations. The length of one's imprisonment is specified in every case. The punishment of solitary confinement demands keeping a person throughout his/her sentence of imprisonment closed in an appointed location within the prison. In such cases, only persons assigned on duty have the authority to access that person. Solitary confinement shall not be longer than ten days and can only be applied with a two-month interval between one term and another. This penalty can only be applied following certain infringements of the prison regulations. Prior to awarding a penalty of solitary confinement, the court shall satisfy itself by medical proof, which may consist of a medical examination, that the convicted person is fit to undergo that penalty. If the person is not fit, the execution of this penalty shall be suspended until the person is deemed medically suitable to undergo this solitary confinement (Newman, 2010).

A.2.5. What types of residential and custodial institutions exist for juvenile criminal offenders?

With regards cure and intervention, one would find that some of the young inmates had already received some form of attention, such as psychiatric interventions or supervision by a probation officer prior to being admitted to the YOURS. While at the YOURS, inmates may be provided with help from local drug prevention agencies, social workers and so on. The YOURS provides its inmates with the services of a social worker, a psychologist and a psychiatrist. Records indicate that the population at the YOURS is on the increase because of three main reasons (1) the offences carried out are quite serious and entail incarceration, (2) recidivism and (3) there are cases where even the court would not know where to send these young offenders because the home ambience in which they live is of risk to them. It must be kept in mind that with the YOURS being a section of the

CCF, it is intended that apart from rehabilitation, the YOURS acts as a place to which people are sent to and kept as a deterrent and to protect society (Battistino, 2006).

Recently, a change has been made in that the YOURS section was moved to Imtahleb, away from the compounds of the CCF. According to information provided by the Dr Michael Mallia, the local Minister for Home Affairs and National Security (as cited in the *The Malta Independent*, 2013) in November of 2013, when the move was being made, there were seventeen inmates at the YOURS. The reason for this move is that it is perceived by local authorities that the YOURS should be separate from the CCF, hence distancing young inmates from adult inmates (*The Malta Independent*, 2013). With regards to young female inmates, the situation at present is that unlike male young inmates, these do not have a separate section and are kept at the women's division within the CCF (*Malta Today*, 2013).

Residential Services

There can be instances where the court, including the Juvenile Court, decides to place young offenders displaying very challenging behaviour or offenders who are at risk or who pose risk to themselves and/or to others within certain institutions/homes for a period of time, rather than prison. This section will look into a number of these placements (Damato, 2013; OCC, 2012). Moreover, probation officers working with juvenile offenders who reside in such settings maintain constant contact with the residence's staff and also visit their juvenile clients at this place of residence.

i) Young Persons Unit (YPU)

Since the closing down of the Juvenile Section within Mount Carmel Hospital (MCH), the YPU has become the sole care structure that is specifically dedicated to young persons displaying mental health problems (OCC, 2012). The location of YPU next to MCH has the benefit of easy of access to staff, however on the other hand, one must not forget the stigma attached to MCH (Saliba, 2006).

Young persons admitted within the YPU are often between the ages of eight and sixteen and are referred there due to displaying severe and challenging behavioural problems that require specialised intervention on a residential basis. In other words, such youngsters need to have their conduct primarily corrected in a controlled ambience. The YPU benefits from a multidisciplinary team approach. Nurses offer a family and home ambience when following the care plans that are cautiously based on behavioural care programs. The YPU also has a small classroom run by a qualified teacher. Throughout the academic school year, the teacher liaises with the children's schools and individual attention is devoted to ease re-entry to school when the youngsters are ready to do so. The duration of stay in the ward depends on the needs of the minor. When recovered, the young person is sent home 'on leave', implying that he/she will remain on the YPU's medical records until the consultant psychiatrist in charge feels that he/she can be discharged from the hospital. (MHS, 2011:47).

However, a task force that was set up in February 2011 with the aim of drawing up

recommendations pertaining to minors has found that there are also instances where minors with mental health problems, particularly within the age bracket of thirteen and seventeen years, who become too behaviourally disturbed, sexually promiscuous or unmanageable, are temporarily or permanently placed in adult wards within MCH (OCC, 2012; Farrugia 2006). The report prepared by this Task Force indicates that as from the 15th of June 2011, there were seven minors in an adult ward at MCH. Moreover, another eight minors had also been placed in an adult ward prior to being temporarily discharged back to their place of residence in society (OCC, 2012).

ii) Homes

a) Conservatorio Vincenzo Bugeja (CVB)

The CVB has two residential units – Program Fejda and Jean Antide Home, which cater for girls between the ages of eleven and eighteen. After they reach the age of eighteen, after-care services are offered. The objective of the residence is to provide alternative care over a period of time. Program Fejda provides a twenty four hour emergency shelter to girls who find themselves in crisis situations. The same program also provides a therapeutic program for girls having emotional and behavioural problems that can often manifest themselves in unmanageable, aggressive conduct. Most of these girls come from dysfunctional families and have experienced neglect, abuse and rejection (Zammit, 2006).

Residents are provided with an integrated learning and living experience within a social, physical, educational and therapeutic ambience. The girls residing here lead a structured daily program that consists of an individual care plan for each girl and group programs. The programs also give importance to recreational activities. The ultimate objective of Program Fejda is to assist residents into gaining the necessary social and personal skills which would enable them to reintegrate positively back into the community. This program receives three kinds of referrals. There are girls who are referred there on a voluntary basis, where the parents agree that their daughter is placed on this program. There are also referrals of girls who are protected by a Care Order where the State is directly accountable for the girls, while other girls are referred by a court order. In such cases, the care plan mirrors the decision taken by the court. If alterations in the care plan are needed, an application in the courts is filed requesting these alterations. If the courts grant the care and custody of the girl to the agency where the girl is placed, the court is notified of any modifications in the care plan (Zammit, 2006).

Within Program Fejda, there is a residential social worker who works in coordination with other social workers, probation officers and other professionals involved in the case. Most of the girls display aggressive behaviour and can be of risk to themselves, other residents and the staff on duty, hence most of the girls are typically followed by a psychiatrist. One of Program Fejda's policies is that the length of the stay in the residential home is not longer than required. Nevertheless, due to a lack of professional evaluation of the girls before being admitted to the home and a shortage of services such as family therapy, the length of the girls stay in care is not clearly stated upon admission

and during their stay in care (Zammit, 2006).

It is reported that the residence finds problems when faced with a resident who displays an aggressive, violent conduct. The residence is not equipped to deal with this form of conduct due to reasons such as lack of physical space, which does not enable the separation of that resident from other residents, and ways and means to physically constrain the girl and assist her in gaining control of herself. When the resident is under psychiatric care and displaying unmanageable behaviour and posing a real peril to herself and to others, she is admitted to the YPU for a period of time. Upon release from the YPU she returns to Program Fejda (Zammit, 2006). Research indicates that as from June 2011, there was one female minor from Fejda at MCH, but there were six other girls residing at Fejda who were on leave from MCH and had utilised the inpatient services some time before (OCC, 2012).

b) Other homes/programmes

Apart from the CVB, other residential settings/homes for young persons exist, with the vast majority of them being still to this day being run by the church and not the State (Spiteri and Law, 2010). In Malta, the different homes that exist are usually divided into different categories with the first being what are called children's homes, which are often institutional buildings, usually forming part of a convent that only caters for children (Eurochild, 2010 as cited in Farrugia 2011). Reference is also made to hostels that admit older adolescents and young persons in a group living environment. However, research indicates that although such residential settings for children and young persons do exist, sometimes it appears as if these are not enough and there are instances when due to lack of space, young persons are admitted into settings that are not targeted for them. For example, even though homeless shelters are not perceived to be well suited for young persons, at times they end up taking such persons in when no other placements are available. The same appears to be the case with shelters for domestic violence (Farrugia, 2011). Research indicates that adolescents aged between fourteen and seventeen have been admitted in such shelters (CYPAB 2009-2011 as cited in Farrugia, 2011).

It must be noted that in the past, residential programs that were specifically targeted for young persons did exist. For instance, Formula One, a much needed one year residential programme for thirteen to eighteen year old adolescent boys who were passing through emotional, behavioural, family and mental health difficulties was launched in 2001 (Corrado, 2003 as cited in Muscat Azzopardi, 2006). Unfortunately, despite the benefits of such a programme in providing not only shelter for adolescents, but care and support via a multidisciplinary team of professionals, the program was terminated (Muscat Azzopardi, 2006).

c) Residential Drug Addiction Programmes

As already stated above, an offender's admittance into a residential addiction program can form part of one of the conditions of a supervision order that is made by the court. In Malta, residential drug rehabilitation services are offered by three bodies: Sedqa, which is the Maltese national agency against dependencies, Caritas which is run by the church,

and OASI foundation which is a non-profit organization located in Gozo. Sedqa provides two types of residential services for drug addicts. The primary service is the Substance Misuse In-Patient Unit which offers in-patient detoxification services to persons that are substance abusers. The other type of residential service is the Residential Drug Rehabilitation Program known as 'Komunita Santa Marija'. This program is an intensive, long-term residential program providing a structured, communal living ambience. Here residents are both male and female and they are provided help with regards to changing their lifestyle and reintegrating back into society as drug-free persons (NAO, 2013).

Moreover, Caritas provides three forms of residential services. The first service is that provided at the Harm Reduction Shelter that provides assistance to homeless persons having a drug problem. Apart from providing an ambience that encourages stability and support, this shelter also serves as a means of containing illicit activities linked to drug use and homelessness. Caritas also run the San Blas Therapeutic Community, where male clients follow a full residential rehabilitation program that is highly structured. Caritas has also developed a residential rehabilitation program for female drug abusers, where female clients follow the same structured program as the one offered at the San Blas Therapeutic Community. Finally, the OASI Foundation provides another residential program that is based on the Minnesota model, which is usually characterised by a continuous assessment of all aspects of the client through therapeutic approaches that are multimodal (NAO, 2013).

In Malta, as is the situation at present, minors and young persons who need a residential placement in order to address their drug addiction, have no alternative but to make use of the above-mentioned services that are in actual fact targeted to cater for the needs of adults. The main reason behind this is that eligibility criteria for residential programs that are specifically targeted to cater for minors and young persons, categorically exclude people with a drug problem. It was noted that there is no specified age bracket for one to be able to be admitted into a residential drug rehabilitation facility and hence it comes as no surprise that there may be particular implications that are not encouraging to the general rehabilitative procedure when there are noticeable differences in the residents' ages. It is reported that during 2009, 2010 and 2011, Sedqa has admitted seven persons aged between fifteen and seventeen to its residential rehabilitation programs. The current situation that is characterised by a lack of specific services targeted for the needs of minors presents a lacuna and professionals working in this field has emphasized the need to introduce specialised services for minor drug abusers (NAO, 2013).

iii) Non-residential services

It is perceived that the Juvenile Court has a significant role to fulfil and it can be viewed as one of the structures that juvenile offenders may be brought before and as such it should work more closely and collaborate with all the institutions involved and the various agencies and departments, that work with young persons, in order to perhaps provide a more holistic approach to such young offenders. One must not forget that, as already discussed above, when making an order of probation or a suspended sentence with respect to an offender, including a juvenile offender, the court may as part of

that order, impose on the offender the condition of maintaining contact with a certain professional/s and/or seeking and receiving the necessary assistance and/or support from a specific agency or department on a non residential basis (Probation Act, 2002, Arts 3-5). Such professionals, agencies and departments are also considered important within the local juvenile justice system because with respect to probationers, probation officers broker from different non-residential services provided by both church and state agencies and departments (Scicluna, 2008). For the purposes of this section, a number of these services will be outlined.

a) Drug agencies and organisations

As already discussed above, where the court is satisfied that the offender being charged before it, is a drug addict, and proper arrangements have been or can be made for treatment, a probation order may include a requirement that the offender shall submit to treatment, even on a non-residential basis (Probation Act, 2002, Art 5). Moreover, the services provided by local drug agencies and organisations are very valuable to the Probation Services, especially when considering that around 12% of offenders in the care of the Probation Services are sentenced for possessions of drugs and almost 47% are sentenced for theft, with the majority of them being drug-related (Scicluna, 2008). The same bodies mentioned above, that is, Caritas, Sedqa and OASI, are the main providers of the non-residential service to drug abusers in Malta and Gozo.

Sedqa provides these forms of services in two manners. The Substance Misuse Outpatient Unit provides a service pertaining to, basically, medical services that mostly consist of the daily provision of methadone. On the other hand, the Drugs Community Team (DCT), provides one-to-one counselling sessions, where clients are assigned a key worker who follows their progress from their initial days of contact through to the social reintegration phase. The Community Outreach service within Caritas provides more or less the same services as the DCT. Moreover, the OASI Foundation provides an evening program that caters for clients who are free from drugs, but recovering from a drug addiction, and who cannot attend a residential program due to certain commitment. The same type of evening program is also provided by Caritas (NAO, 2013). Probation officers would maintain constant contact with the agencies' staff to check on the progress and contact of probationers with the agency/organisation concerned. Probation officers would then inform the court accordingly about this. Again here it must be noted that none of these services specifically target young drug users but rather they are open to both adult and young clients.

b) Mental Health Services

The Child Guidance Clinic (CGC) which is found at St Luke's Hospital, offers psychiatric multidisciplinary services to children via clinical assessment and follow-up. Clinical interviewing and the utilisation of psychometric testing in order to identify a child's strengths, areas that need additional support and whether there is a learning disability that needs intervention, constitutes the assessment administered by psychiatrists and psychologists (MHS, 2011). Children and adolescents will continue to be followed at the CGC till age sixteen (Camilleri et al., 2009). Upon attaining the age of sixteen, adolescents

with mental health difficulties will be transferred to the Psychiatric Outpatients Department (POP) at Mater Dei Hospital, which provides mental health services to all persons from age sixteen onwards (MHS, 2011).

c) Social Work Services

The Children, Young Persons and Support Services provide a variety of services for children and adolescents who are going through some form of problems in their lives. These services seek to provide intensive work with children, young persons and their families. The court and probation officers refer young probationers to and work in close collaboration with these services, particularly, the Youth in Focus Service that offers social work intervention to young persons aged between thirteen and eighteen, who display severe emotional and/or behavioural difficulties and/or have an addiction problem. The scope is to ameliorate the well-being of such persons, while maintaining close contact with their parents/carers (MFSS, 2014).

d) Education Services

In Malta, education is compulsory for persons aged from five to sixteen (Council of Europe, 2005), although research indicates that pupils spend less than sixteen years within the education system (Eurostat, 2012). Compulsory education is provided across three sectors – the state, the church and private/independent (Council of Europe, 2005). As already discussed above, a social worker from the Education Department is always present during Juvenile Court sittings. This social worker is consulted by the Magistrate in open court for the purposes of providing information regarding the educational history and school attendance of the offender (Damato, 2013). Moreover, probation officers often maintain contact with the school that the probationer attends to and even conduct school visits and/or meetings with teachers, heads of schools and/or guidance teachers. Besides academic services, the Education Department in Malta also provides services such as psycho-social services to students, through counselling, career guidance, education, medical service, psychological and social work services, and anti-bullying and anti-substance abuse programs, amongst others (Government of Malta, 2013).

e) Embark For Life (E4L)

The E4L project which is coordinated by the Foundation for Social Welfare Services, in collaboration with the Employment and Training Corporation, provides support to young persons between sixteen and twenty-four years of age, who require help to integrate themselves better within the labour market and Maltese society (Aġenzija Żgħażaġħ, 2012). Through E4L, young persons benefit from a number of one-to-one sessions with a professional youth support worker and they are aided in identifying areas that they need to work on to ameliorate their employability prospects. Young persons also have the opportunity to benefit from vocational training (Government of Malta, 2012).

A.2.6. What does in practice happen with most juvenile offenders? Are they regularly subject to diversion schemes or to court trials? Do you have any reliable data about the diversionary and sentencing practice?

As has been discussed above, the National Youth Policy calls for diversionary tactics in relation to juveniles. Imprisonment is often used as a last resort after the authorities have exhausted all the possible options applicable to each particular offender. Nevertheless, an increase could be noted in the number of persons under the age of 14 being arraigned in court as indicated in the following table:

Persons under 16 years of age given a prison sentence

| Year | Number of persons under 16 years of age given a prison sentence* |
|-------------|---|
| 2008 | 12 |
| 2009 | 10 |
| 2010 | 10 |
| 2011 | 5 |

*As per PQ No. 35066: May 30, 2012.

Also noticeable is an increase in the number of persons under the age of 14 years who were arraigned in court between 2008 and 2011. In fact as shown in the following table, a 163% increase could be noted in this four-year period.

Persons under 14 years of age arraigned in court

| Year | Number of persons under 14 years of age arraigned in court* |
|-------------|--|
| 2008 | 19 |
| 2009 | 18 |
| 2010 | 45 |
| 2011 | 52 |

*As per PQ No. 35068: May 30, 2012.

There are three inmates in Malta under 18 years of age (prison data as at 20.03.2014), constituting 0.46% of the prison population. Two of these inmates have been found guilty of escape from police custody and are of African origin. There is one inmate under 18 years of age awaiting trial, which results in 0.15% of the general population. This inmate is being charged with aggravated theft and is a non-Maltese EU national. As portrayed in Table 5, there are a total of 33 inmates between 18 and 21 years old, constituting 5.1% of the prison population. Eight of these are awaiting trial, whereas 25 are serving a prison sentence.

Distribution of inmates between 18 and 21 years old

| Age | Number of inmates awaiting trial | Number of sentenced inmates |
|--------------|----------------------------------|-----------------------------|
| 18 | 1 | 5 |
| 19 | 3 | 10 |
| 20 | 2 | 6 |
| 21 | 2 | 4 |
| Total | 8 | 25 |

Source: Department of Correctional Services

As indicated in the following table, a noticeable decrease has been registered in the number of juveniles placed under probation supervision in the past four years. This decrease is more significant when taken as a percentage of all new cases in the past four years, since adult probation supervision has been on the increase, except in the year 2012.

Number of juveniles given a community based sanction (with supervision) and as a percentage of total number of new cases

| Year | Juvenile new cases | Total new cases | % of juveniles |
|------|--------------------|-----------------|----------------|
| 2010 | 61 | 314 | 19.4 |
| 2011 | 53 | 355 | 15 |
| 2012 | 44 | 319 | 13.8 |
| 2013 | 48 | 466 | 10.3 |

Source: Department of Probation and Parole

B. Restorative approach within juvenile justice

B.1. Where do you see a restorative approach within the juvenile justice system (this questionnaire follows a process based definition of restorative justice)?

As will be explained below, the Restorative Justice Act (2012) permits some instances where restorative justice can be utilised, namely when it comes to parole and victim support. However, in practice it does not seem to be functioning properly, if at all. This might be due to the fact that the law was ratified in 2012, and subsequently there was a change in the administration.

As has been mentioned above the prime minister has recently said publicly that this administration will start working on the decriminalisation of minor drug-related offences for first time offenders (Times of Malta, 16th April 2014). However, there has been no further clarification on how this would take place.

B.2. What are the types of restorative justice measures provided for juveniles (e.g. victim-offender mediation, family conferencing, circles)? Please also refer to their legal basis.

In February 2009, the White Paper on Restorative Justice was published by the Directorate for Policy and Development within the Ministry for Justice and Home Affairs (MJHA, 2009) and a public consultation process was launched. The task force assigned with the consultation process concluded its report and presented it to the Minister of Justice and Home Affairs in August 2009 (Gerada and Camilleri, 2009).

Bill No 73, called the Restorative Justice Act, 2010, was published in the *Government Gazette of Malta* on 25 January 2011 (Department of Information, 2011a). The Restorative Justice Act (Act XXI of 2011) was published on 6 December 2011 (Department of Information, 2011b) and came into force in its entirety through a legal notice published on 27 January 2012 (Department of Information, 2012).

The objective of this act was to provide the possibility of granting parole to inmates and to provide other restorative justice measures at any phase of the criminal justice process, including victim-offender mediation. The Act calls for the establishment of a Parole Unit, which forms part of the Department of Probation and Parole, the Offender Assessment Board (OAB) and the Parole Board, and the appointment of parole officers, a victim liaison officer, with the latter two being employed by the Department of Probation

and Parole and the parole clerk, who is employed by the Corradino Correctional Facility (Restorative Justice Act, 2012, Arts 3, 5, 7, 8, 26).

It is stipulated that parole may be granted to inmates serving an imprisonment sentence of one year or more. Inmates with an imprisonment sentence of less than one year, detainees under the provisions of the Immigration Act, foreign nationals who are to be deported as soon as they finish their sentence, prisoners who are being detained for conspiring against the State, prisoners sentence for offences related to terrorism and inmates sentence to life imprisonment, are not eligible to apply for parole. Subject to the provisions of this Act, the parole eligibility date of an inmate serving an imprisonment sentence for a term of one year and not exceeding two years, shall be calculated at thirty-three percent of his/her term of imprisonment. The parole eligibility date for inmates serving a sentence of imprisonment of more than two years but not more than seven years, shall be calculated at fifty percent of their term of imprisonment, while for inmates serving a term of imprisonment for more than seven years, shall have their parole eligibility date calculated at fifty-eight percent of his/her imprisonment term (Restorative Justice Act, 2012, Arts 10-11).

However, with regards to young inmates, the Act permits that the court may include in its judgement, an earlier parole eligibility date, in case of offenders who have not yet reached the age of sixteen, at the time of the commission of the offence (Restorative Justice Act, 2012, Art 11(4)).

The ultimate decision as to whether an inmate is granted parole or not is taken by the Parole Board. If an inmate is granted parole, the Parole Board may, impose any conditions as may be deemed necessary. The inmate that has been granted with parole shall be under the supervision of a parole officer throughout his/her period of parole. The parolee is required to meet up with the parole officer in accordance with instructions that may be given by the Parole Board from time to time and to comply with the instructions of the parole officer. The parole officer is duty bound to supervise, guide and help the parolee, to receive feedback from the parolee and from professionals, as may be considered necessary, to devise a plan, monitor and help the parolee to fulfil the conditions imposed on him/her, to further help the parolee to comprehend the harm caused to the victim and society, to provide the Parole Board with bi-monthly reports on the parolee, to help the parolee in widening his/her social and educational milieu, where required, to help parolees engage in suitable employment and to instantly report to the Parole Board of any breach of parole conditions by the parolee (Restorative Justice Act, 2012, Arts 14, 19).

All the conditions imposed on the parolee may be amended or revoked, or additional conditions may be imposed by the Parole Board on its own initiative or following recommendations made by the victim, the OAB or the parole officer assigned to supervise the parolee, at any time during the parole period. The police and other organisations may also make their recommendations to the Parole Board with regards to parole conditions that ought to be imposed. The Parole Board has the power to amend, suspend or revoke

a person's parole licence, if it is reported that the parolee has failed to comply with any of the parole conditions or presents to the parole officer or police officials, reasonable suspicion that he/she may re-offend, or is charged with committing another offence (Restorative Justice, 2012, Art 14-15).

Articles 29-43 in part VI of the act provides for victim-offender mediation, which aims to offer reconciliation and closure for the victims. Article 29 of the act establishes the Victim-Offender Mediation Committee, the main aims of which are to determine the suitability and eligibility of the victim and the offender, as well as the case itself for mediation. One of the conditions is that the offender must admit to the offence in question and be willing to enter into mediation. The victim must also voluntarily agree to take part in this process of victim-offender mediation. The motivations of the offender and the victim, as well as the nature of the offence are taken into consideration. The committee also considers the personal characteristics of both the offender and the victim, as well as the impact of the offence as seen by both the offender and the victim. The agreement reached between the two parties may include compensation for damages, non-pecuniary compensation, community service or even rehabilitation programmes and formal apologies among other measures. Unlike the punitive system, this concept of victim-offender mediation is aimed at forgiveness, reconciliation and reintegration, and its main objectives are to support offenders and give closure to victims, and the strengthen community ties.

B.3. Do these restorative measures play a role in juvenile justice (sentencing) practice?

Although the Restorative Justice Act provides for parole and victim-offender mediation, it seems that it is in its early stages and is not yet functioning for juveniles. It is hoped that more emphasis will be given to it in the near future.

B.4. What are the main actors involved in delivering restorative justice measures (public institutions, NGOs...). Who bears for the costs of restorative justice measures?

The main actors involved in delivering restorative justice measures are the Probation Services, the Victim Support Unit, the CCF (Corradino Corrective Facility), Mediation Services and the courts. The costs are paid for by the state. The 2013 approved budget for the Department of Probation and Parole, which provides for juvenile and adult alternative measures, amounted to €710,000. This resulted in the prison service and the probation service operating on a total budget of €9,312,000 in 2013.

C. Foster care within the juvenile justice system

C. 1. Does foster care play any role in your juvenile justice system?

No, unfortunately foster care does not play a role in the Maltese juvenile system. The foster care system is already stretched as it is, since there are not enough families who are willing to foster children. According to a senior official in charge of the fostering services at Agenzija APPOGG, foster parents in Malta are only paid 70 Euros per week for every child that they foster, and many foster parents feel that this is not enough to cover the expenses associated with raising children. Thus, there are not enough foster parents to foster younger children, who are considered to be easier to raise. Furthermore, fostering juvenile delinquents requires a lot of training, as these youths often display a lot of psychological and behavioural problems. There also seems to be a certain stigma associated with them, which often discourages fostering.

C. 2. Under which conditions can foster care be imposed within the juvenile justice system (at pre- or post-sentencing level or in case of diversion)? Can foster care be imposed as an alternative to custody or pre-trial/police detention? If so please describe the regulations for foster care (length, rights of the children/the foster carers etc.) If there are possibilities in law, how are they used in practice?

As explained above, the juvenile system does not include foster care as an alternative to detention.

C. 3. Does your system know any other alternatives to custody like alternative care in case of pre-trial detention (e.g. in closed juvenile welfare institutions instead of prisons) or in case of juveniles sentenced to youth prison or comparable forms of custody? If there are possibilities in law, how are they used in practice?

No, unfortunately the system does not allow for other alternatives to custody.

References

- Agenzija Zghazagh, (2012), *Embark for life- Integration of young people into the labour market*. In <http://www.agenzijazghazagh.gov.mt/News/188/> (Accessed 05/03/2014).
- Battistino, J., (2006), The Young Offenders Unit. In Commissioner for Children (Ed.). *A fair deal: A study on children and young people with very challenging behaviour*, Office for the Commissioner for Children: Malta.
- Calleja, F., (2010), *Juvenile Delinquency in Malta (2003-2008)*, Unpublished Dissertation: University of Malta.
- Camilleri, N., Cassar Parnis, A., and Cassar, J.R., (2009), *Problems associated with the diagnosis and the prescribing of anti-psychotic medication in children and adolescents for psychiatric conditions, by non-psychiatric-specialists* (Malta Medical Journal, Volume 21, Issue 01). In <http://www.um.edu.mt/umms/mmj/PDF/236.pdf> (Accessed 19/02/2014).
- Children and Young Persons (Care Order) Act, (1980), Chapter 285, Laws of Malta.
- Civil Code, (1870), Chapter 16, Laws of Malta.
- Commercial Code, (1933), Chapter 13, The Laws of Malta.
- Commissioner for Children, (2014), *About us*. In <http://www.tfal.org.mt/aboutus.aspx?lid=1> (Accessed 12/12/2014).
- Commissioner for Children Act, (2003), Chapter 462, Laws of Malta.
- Council of Europe, (2005), *Youth policy in Malta*, Council of Europe: Strasbourg Cedex.
- Criminal Code, (1854), Chapter 9, Laws of Malta.
- CYPAB 2010, Annual Report 2009, Children and Young Persons Advisory Board, Malta in Farrugia, A., (2006), Current services and residential care. In Commissioner for Children (Ed.). *A fair deal: A study on children and young people with very challenging behaviour*, Office for the Commissioner for Children: Malta.
- CYPAB 2011, Annual Report 2010, Children and Young Persons Advisory Board, Malta in Farrugia, A., (2006), Current services and residential care. In Commissioner for Children (Ed.). *A fair deal: A study on children and young people with very challenging behaviour*, Office for the Commissioner for Children: Malta.

- CYPAB 2012, Annual Report 2011, Children and Young Persons Advisory Board, Malta in Farrugia, A., (2006), Current services and residential care. In Commissioner for Children (Ed.) *A fair deal: A study on children and young people with very challenging behaviour*, Office for the Commissioner for Children: Malta.
- Damato, J., (2013), *Restorative justice for the juvenile justice system in Malta: Masters in mediation*, Unpublished Dissertation: University of Malta.
- Eurostat, (2012), *Education statistics*. In http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Education_statistics (Accessed 02/03/2014).
- Farrugia, A., (2011), *Children of the state: A case study of residential care provision for children in Malta*. In http://www.academia.edu/2652042/Children_of_the_State._A_Case_Study_of_Residential_Care_Provision_for_Children_in_Malta (Accessed 23/01/2014).
- Farrugia, A., (2006), Current services and residential care. In Commissioner for Children (Ed.) *A fair deal: A study on children and young people with very challenging behaviour*, Office for the Commissioner for Children: Malta.
- Gerada, J. and Camilleri, M. (2009). *Task force report on the consultation process of the White Paper for Restorative Justice*. Unpublished: Malta.
- Government of Malta, (2013), *Education psycho-social services*. In http://education.gov.mt/en/education/student-services/Pages/Psycho-Social_Services/Psycho-Social-Services.aspx (Accessed 02/02/2014).
- Government of Malta, (2012), *Embark for life – Integration of young people into the labour market*. In <https://fsws.gov.mt/en/fsws/Pages/EU%20Projects/Embark-for-Life---Integration-of-Young-People-into-the-Labour-Market.aspx> (Accessed 03/03/2014).
- Justice Services, (2014), *Act No. III of 2014: An ACT to further amend the Criminal Code (Cap.9)*. In <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25940&l=1> (Accessed 23/02/2014).
- Juvenile Court Act, (1980), Chapter 287, Laws of Malta.
- Malta Today, (2013), *Situation at young offenders rehabilitation unit ‘unacceptable’ – Coleiro Preca*. In <http://www.maltatoday.com.mt/news/national/26034/situation-at-young-offenders-rehabilitation-unit-unacceptable-coleiro-preca-20130412#.UyP7fT-9dX6s> (Accessed 12/02/2014).
- Malta Today, (2012), *Drug campaigners unimpressed by justice minister’s arrest referral scheme*. In <http://www.maltatoday.com.mt/news/national/19727/drug-campaigners-unimpressed-by-justice-minister-s-arrest-referral-scheme-20120719#.U1jWpVWSzh4> (Accessed 14/12/2014)

- Marriage Act, (1975), Chapter 255, The Laws of Malta.
- MHS (Mental Health Services), (2011), *A practical guide to the mental health services*, Mental Health Services: Malta.
- MFSS (Ministry for the Family and Social Solidarity), (2014), *Children and young persons' support services*. In https://secure3.gov.mt/socialpolicy/family/fsws/apogg/apogg_socio_legal/intake_overview (Accessed 04/03/2014).
- MJHA (Ministry for Justice and Home Affairs), (2009), *White Paper on Restorative Justice*. Directorate for Policy and Development: Malta.
- Montebello, M., (2007), *The impact of 'radicalisation' on community punishments in Malta: An outline*. In <http://webcache.googleusercontent.com/search?q=cache:b9rQInvH-7nIJ:users.onvol.net/98560/site/news/AGIS%2520hate%25202%2520Research%2520Study.doc+&cd=1&hl=en&ct=clnk&gl=mt> (Accessed 29/01/2014).
- Muscat Azzopardi, M., (2006), History of services- offered in Malta over the past 50 years. In Commissioner for Children (Ed.). *A fair deal: A study on children and young people with very challenging behaviour*, Office for the Commissioner for Children: Malta.
- NAO (National Audit Office), (2013), *Performance audit: Tackling problem drug use in Malta*. In <http://www.nao.gov.mt/loadfile.ashx?id=fa255785-1123-48a8-908b-02be57a9e-7fa> (Accessed 24/02/2014).
- National Youth Policy, (2010), http://cdn02.abakushost.com/agenzijasghazagh/downloads/o662_001.pdf (Accessed on 22/03/2014)
- Newman, G.R., (2010), Malta. In Janet P. Stamatel, Hang-en Sung, and Graeme R. Newman (Eds.). *Crime and punishment around the world*. ABC-CLIO LLC: California.
- OCC (Office for the Commissioner of Children), (2012), *Interim recommendations by the Task Force regarding minors*. In http://www.tfal.org.mt/MediaCenter/PDFs/1_Interim%20recommendations%20-%20Task%20Force%20regarding%20Minors.pdf (Accessed 24/01/2014).
- Probation Act, (2002), Chapter 446, Laws of Malta.
- Restorative Justice Act, (2012), Chapter 516, Laws of Malta.
- Saliba, J.R., (2006), A psychiatric perspective. In Commissioner for Children (Ed.). *A fair deal: A study on children and young people with very challenging behaviour*, Office for the Commissioner for Children: Malta.

- Scicluna, S., (2008), Malta. In A.M. van Kalmthout and J.T.M. Derks (Eds.) *Probation in Europe*. Wolf Legal Publications: The Netherlands.

- Spiteri, D. & Law, K. (2010), *Citizenship Education and Young People in Care in a Maltese Context*, paper presented to Education and Citizenship in a Globalising World, London, 19 November 2010, http://www.ioe.ac.uk/about/documents/About_Overview/Spiteri_D_Law_K.pdf (Accessed on 25.06/2011)

- The Judiciary Portal, <http://www.judiciarymalta.gov.mt/home>, (Accessed 12/03/2014)

- The Malta Independent, (2013), *Young offenders' section moved from Kordin to Mtahleb*. In <http://www.independent.com.mt/mobile/2013-11-08/news/yours-moved-to-mtahleb-3127410689/> (Accessed 19/02/2014).

- The Times of Malta, (2014), *No jail for first-time minor drug offenders*. In <http://www.timesofmalta.com/articles/view/20140416/local/-No-jail-for-first-time-minor-drug-offenders-.515130> (Accessed 15/04/2014)

- United Nations High Commissioner for Human Rights, (UNHCHR), (1998), *Convention on the rights of the child: Initial reports of states parties due in 1992: Malta 09/03/1998: CRC/3/C/Add.56 (State Party Report)*. In [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/c7ca5644d962a7548025677e00352d53?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/c7ca5644d962a7548025677e00352d53?Opendocument) (Accessed 24/02/2014).

- YLS (Yale Law School), (2005), *Representing children worldwide: How children's voices are heard in child protective proceedings: Malta*. In http://www.law.yale.edu/rcw/rcw/jurisdictions/euros/malta/frontpage.htm#_edn7 (Accessed 20/02/2014).

- Zammit, C., (2006), Experiences and challenges of the Vincenzo Bugeja Foundation. . In Commissioner for Children (Ed.). *A fair deal: A study on children and young people with very challenging behaviour*, Office for the Commissioner for Children: Malta.

**European Project ‘Alternatives
to Custody for Young Offenders -
Developing Intensive and Remand
Fostering Programmes’**

JUST/2011-2012/DAP/AG/3054



With financial support from the Daphne III Programme of the European Union