



Office for Democratic Institutions and Human Rights

**MALTA**

**PARLIAMENTARY ELECTIONS**  
**26 March 2022**

**ODIHR NEEDS ASSESSMENT MISSION REPORT**

**28 February - 4 March 2022**



Warsaw  
10 March 2022

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**ODIHR Needs Assessment Mission Report**

## **I. INTRODUCTION**

Following an invitation from the Maltese authorities to observe the 26 March 2022 parliamentary elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 28 February to 4 March. The NAM included Ulvi Akhundlu, Deputy Head of ODIHR's Election Department, and Keara Castaldo, ODIHR Election Adviser.

The purpose of the NAM was to assess the pre-electoral environment and preparations for the elections. Based on this assessment, the NAM recommends whether to deploy an ODIHR observation activity for the forthcoming elections and, if so, what type of activity best meets the identified needs. Meetings were held with officials from state and local institutions and with representatives of political parties, media, and civil society, as well as the resident international community. A full list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign and European Affairs for their assistance and co-operation in organizing the NAM. ODIHR would also like to thank each of its interlocutors for taking the time to meet with the NAM and for sharing their views.

## **II. EXECUTIVE SUMMARY**

On 26 March 2022, voters will elect new representatives to the unicameral parliament's House of Representatives. Several substantive amendments were introduced to the electoral legal framework following the 2017 early parliamentary elections including the lowering of the voting age from 18 to 16, the introduction of a gender quota for the allocation of parliamentary seats, provisions on the participation of voters affected by the COVID-19 pandemic and the introduction of electronic vote-counting. While efforts were made to address certain previous ODIHR recommendations, such as the decriminalization of defamation and measures to promote the political representation of women, several recommendations remain unaddressed, including those relating to the oversight of political and campaign finance.

The Electoral Commission holds broad authority over the election process and is responsible for the logistical organization of elections, the counting of ballots and tabulation and reporting of results for all electoral districts, the oversight of political party and candidate financial accounts. ODIHR NAM interlocutors generally approved of the introduction of electronic counting as improving the efficiency of the electoral process, and some noted that the use of technologies could be extended to voters living abroad and to facilitate autonomous voting by persons with disabilities. All ODIHR NAM interlocutors expressed confidence in the administrative preparations for the elections and in the conduct of election-day procedures, but several criticized the composition of the commission for excluding smaller political parties and thus undermining independent oversight of the two major parties.

ODIHR NAM interlocutors generally expressed confidence in the inclusiveness of the voter register. Several described inefficiencies in the administration of voting for citizens residing abroad and noted

barriers to the integration of a significant resident non-citizen population. Citizens who have had their voting rights specifically revoked by a court decision, including on the basis of legal incapacity due to intellectual or psycho-social disability, or who are serving a prison sentence for more than one year regardless of the gravity of the crime, are ineligible to vote, despite previous ODIHR recommendations.

For these elections, 4 independent candidates and 173 candidates representing political parties were registered by the Electoral Commission, including 42 women. In general, ODIHR NAM interlocutors did not raise concerns related to the candidate registration process and noted the minimum requirements to register. The Constitution identifies certain incompatibilities with holding public office, such as possession of dual citizenship, legal incapacity, bankruptcy status, and other disqualifications, which were previously noted by ODIHR as challenging international standards.

While political parties described some internal strategies to promote the participation of women in party executive structures and as candidates, many ODIHR NAM interlocutors noted incidents of sexist or violent rhetoric against women politicians, particularly on social media. While most ODIHR NAM interlocutors welcomed legislative steps to improve the representation of women in the parliament, many criticized the design of a new gender quota, which would allocate additional parliamentary seats to the underrepresented gender from the candidate lists of only two parties, as failing to address structural barriers to the participation of women in political life and as reinforcing the two-party dominance in the legislature.

The Constitution protects the freedom of peaceful assembly and political parties and prospective candidates met by the ODIHR NAM described the ability to campaign and convey their messages without hindrance. However, most interlocutors described an entrenched two-party system which disproportionately disadvantages smaller parties and independent candidates. Many ODIHR NAM interlocutors expressed concerns related to the potential misuse of state resources for electoral purposes and described an overall lack of regulation and oversight mechanisms to ensure the separation of official duties and campaigning, which they claimed exacerbate the advantages of incumbency.

Political parties and candidates rely on private donations for electoral campaigns and must report certain donations and expenditures after the elections; no disclosure or interim reporting is envisaged prior to election day. Several ODIHR NAM interlocutors criticized loopholes in the regulatory framework for campaign financing, such as a lack of accountability for fundraising activities, and stressed a lack of legal requirements for transparency and oversight.

The Constitution guarantees the freedom of speech. In line with a previous ODIHR recommendation, the parliament decriminalized defamation in 2020. Despite Freedom of Information Act requirements, several interlocutors described significant delays in obtaining information from public institutions. Media representatives and other stakeholders met by the ODIHR NAM indicated an environment in which press freedoms are generally respected, but some noted potential self-censorship among journalists. Interlocutors expressed concern that the government-operated public broadcaster, together with two major private broadcasters operated by political parties, polarizes media along political lines and creates a limited information space for other political views.

The legal framework provides for possibilities for redress of decisions of the Electoral Commission. The Constitutional Court informed the ODIHR NAM that prior to the elections, in practice, it handles complaints referred by the Electoral Commission within days of receipt, despite a lack of precise legal deadlines, and that the Court intends to be ready to handle any potential election-related

complaints. For matters adjudicated outside of the electoral period, several ODIHR NAM interlocutors described long delays in judicial hearings and decisions, which the Court acknowledged as resulting from a high volume of cases and limited capacity. Some interlocutors noted that the independence and capacity of the judiciary could be further strengthened.

In considering a potential observation activity, the ODIHR NAM noted several changes to the electoral legal framework since the previous parliamentary elections, as well as limited progress towards implementing previous ODIHR recommendations. All interlocutors noted the value of an external review and several requested an ODIHR activity to follow the electoral process. The ODIHR NAM sees benefit in undertaking a closer examination of certain issues, including the administration of the elections, the conduct and financing of the electoral campaign and related oversight mechanisms, and the regulatory framework for electoral coverage in the media. On this basis, the ODIHR NAM recommends deploying an Election Expert Team (EET) for the upcoming parliamentary elections. ODIHR also encourages the authorities to consider previous recommendations that remain unaddressed.

### III. FINDINGS

#### A. BACKGROUND AND POLITICAL CONTEXT

In the 3 June 2017 early parliamentary elections, the incumbent Labour Party maintained power, winning 55.04 per cent of the vote and receiving 37 parliamentary seats; the coalition “National Force”, consisting of the parliamentary opposition Nationalist Party as well as the Democratic Party, received 43.68 per cent of the vote and was allocated 30 seats. Three additional parties contested the elections: the Democratic Alternative (which received 0.83 per cent of the vote), the Maltese Patriots Movement (0.36 per cent), and Alliance for Change (.07 per cent); none of these parties and neither of the two independent candidates obtained sufficient votes to enter the parliament.<sup>1</sup> Only 9 of the 67 members of the outgoing parliament are women.<sup>2</sup>

Public discourse in the ensuing years has been marked by the government’s response to the ongoing COVID-19 pandemic, a series of constitutional reforms, as well as several corruption scandals involving government ministers, including that which resulted in the December 2019 resignation of Prime Minister Joseph Muscat following the implication of members of his office and the arrest of a government contractor in connection with the death of investigative journalist Daphne Caruana Galizia (see also *Media* section).

At a political rally on 20 February, Prime Minister Robert Abela announced that he would request the president to initiate the dissolution of parliament and to schedule the next parliamentary elections for 26 March.

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<sup>1</sup> The current parliamentary composition, following several resignations, includes 36 Labour Party members, 28 Nationalist Party members, and 3 independents.

<sup>2</sup> A [January 2021 report of the National Commission for the Promotion of Equality](#) noted that a “low participation of women in politics is rooted in historical and structural inequalities that disadvantage women, including pervasive gender stereotypes, lack of family-friendly arrangements and a male-dominated political sphere”.

## B. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

Malta has ratified major international instruments related to the holding of democratic elections.<sup>3</sup> The legal framework for parliamentary elections comprises the 1964 Constitution (last amended in 2021), 1991 General Elections Act (GEA, last amended in 2022), and 1939 Electoral Polling Ordinance (last amended in 2007).<sup>4</sup> Several amendments, some substantive, were introduced to the legal framework following the 2017 early parliamentary elections. In 2018, constitutional and other amendments lowered the voting age from 18 to 16. Changes to the electoral laws (including the GEA) in 2019 introduced an electronic counting system, which was piloted during the 2019 European Parliament elections. In 2021, amendments to the Constitution and the GEA introduced a gender quota for seat allocation, increased the number of members of the Electoral Commission from eight to ten, excluding the chief commissioner, and introduced a requirement that at least four members of the Electoral Commission be of each gender.<sup>5</sup> In January 2022, in order to regulate voting by persons affected by the COVID-19 pandemic, amendments to the GEA introduced procedures for voting by persons affected by certain diseases or who are in mandatory quarantine. While efforts were made to address certain previous ODIHR recommendations, such as the decriminalization of defamation and temporary measures to promote the political representation of women, several recommendations remain unaddressed, including those relating to the oversight of political and campaign finance.

The unicameral parliament comprises at least 65 members elected for 5-year terms in 13 multi-mandate electoral districts through a system of single-transferable votes. Voters may rank on their ballot as many candidates as they wish and may vote across parties. Five candidates are elected from each district based on fulfillment of a quota in which candidates are automatically elected if they receive first-preference votes on 20 per cent of valid ballots, with remaining seats allocated based on the number of first-preference and then second-preference votes received, and so on. Any ballot in which the voter has not expressed a second or additional preference vote is not transferable. The Constitution requires that the number of seats allocated to each party is proportional to the number of votes received nationwide and that a party that obtains more than 50 per cent of first-preference votes receive additional seats, if necessary, to ensure a parliamentary majority. Several ODIHR NAM interlocutors noted that these requirements create an additional barrier to the election of independents or candidates from smaller parties.

Following constitutional amendments adopted in 2021, if fewer than 40 per cent of elected representatives are from either gender, up to 12 additional seats are to be allocated to candidates of the less represented gender from the two parties that attained the most votes.<sup>6</sup> While ODIHR NAM interlocutors welcomed steps to improve the representation of women in the parliament, many criticized the design of the new quota as failing to address structural barriers to the representation of women in parliament and their participation in political life, and as reinforcing the two-party

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<sup>3</sup> Including the 1966 International Covenant on Civil and Political Rights, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1979 Convention on the Elimination of All Forms of Discrimination against Women, 2003 Convention against Corruption, 2006 Convention on the Rights of Persons with Disabilities, 1950 European Convention on Human Rights, and the 1998 Framework Convention for the Protection of National Minorities. Malta is also a member of the Council of Europe's Venice Commission and Group of States against Corruption (GRECO).

<sup>4</sup> Additional relevant legislation includes the 2015 Financing of Political Parties Act (FPPA), 2017 Law on Standards in Public Life, and 1942 House of Representatives (Powers and Privilege) Ordinance.

<sup>5</sup> These amendments automatically expire 20 years after taking force.

<sup>6</sup> The mechanism does not apply if additional parties are elected to parliament.

dominance in the legislature. A legal challenge to the quota filed by a prospective independent candidate is pending in the Civil Court.<sup>7</sup>

The Electoral Commission is required to review and adjust electoral district boundaries every five years, to ensure that no district deviates in population by more than five per cent of the average. The most recent revision, adopted unanimously by the parliament following proposals from the Labour and Nationalist parties and published in the government gazette on 16 March 2021, changed the allocation of 2,539 voters.<sup>8</sup>

### C. ELECTION ADMINISTRATION

The Electoral Commission holds broad authority over the election process and is responsible for the logistical organization of elections, the counting of ballots and tabulation and reporting of results for all electoral districts, the oversight of political party and candidate financial accounts. The Electoral Commission comprises a chief electoral commissioner and ten additional members; members are appointed by the president in consultation with the prime minister and the parliamentary opposition. Since 2021, the Commission must comprise at least four members of each gender (the number of members was simultaneously raised from eight to ten).<sup>9</sup> Assistant Electoral Commissioners are responsible for election-day procedures in some 750 polling stations at 116 at polling centres across the country.<sup>10</sup>

ODIHR NAM interlocutors expressed confidence in the administrative preparations for the elections and in the conduct of election-day procedures, but several criticized the bipartisan nature of the commission as excluding other political actors and leaving the two major parties to monitor their own activities. The legal framework does not provide for citizen or international election observation, but electoral contestants may appoint representatives to attend various stages of the process and authorities assured that a potential ODIHR observation activity would be facilitated.

An electronic counting system will be deployed in the upcoming elections. The system, in which ballots are transported to a counting hall at the Electoral Commission and electronically scanned, was first piloted during the 2019 European Parliament and local council elections.<sup>11</sup> According to the Electoral Commission, for these elections the electronic counting equipment was been tested in the presence of representatives of political parties. ODIHR NAM interlocutors did not raise concerns related to the system of electronic counting, given the overall trust in the conduct of procedures and the expected presence of a large number of contestant representatives at the counting center. Several interlocutors noted that the new system would allow for more efficient reporting of results, which in previous elections has taken several days, given the complexity of the single-transferable vote allocation.

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<sup>7</sup> On 7 March 2022, the Constitutional Court upheld and ordered the continuation of the appeal. In January 2022, the Civil Court had dismissed the case, arguing that the prospective candidate lacked juridical interest.

<sup>8</sup> A total of 1,320 voters moved from the seventh to sixth district and 1,219 voters moved from the twelfth to tenth district. The published revision of the electoral districts is available [here](#) (in Maltese and English).

<sup>9</sup> The current Commission comprises six men and four women; the chief electoral commissioner is a man.

<sup>10</sup> Three days of early voting will be conducted: on 19 March, for voters expected to be abroad or in certain hospitals or residential care facilities on election day, residents of the Corradino Correctional Facility, and Electoral Commission members; on 22 March, for Assistant Electoral Commissioners and reserve commissioners and all police officers; and on 24 March, for voters expected to be in certain additional hospitals.

<sup>11</sup> The delivery and implementation of machines from UK-registered company Idox took place over an 18-month period and the Electoral Commission engaged the two largest parliamentary parties in bulk performance tests. The relevant physical and security infrastructure and training of electoral staff in the use of the machines was provided by Idox together with ScytL.

The Electoral Commission has taken certain positive steps to facilitate the participation of persons with disabilities in the electoral process, including by the provision of Braille ballot templates and audio guides to promote the possibility for autonomous participation by voters with visual impairments. ODIHR NAM interlocutors described the assigned polling centres as generally accessible for persons with physical disabilities owing to high accessibility standards for public schools and the establishment of polling stations on the ground floor, as well as the provision of adapted voting booths for persons with limited mobility. Still, interlocutors noted that conditions should be further updated to enable fully autonomous voting, such as through the use of assistive technologies, describing the ranked-choice voting procedure as too complex for mechanical solutions. The Constitution provides that voters may only receive assistance from an Assistant Election Commissioner and not from a person of their choice, which runs contrary to the Convention on the Rights of Persons with Disabilities and which several interlocutors described as potentially intimidating to voters in a polling facility which comprises party representatives.<sup>12</sup>

In response to the COVID-19 pandemic, the Electoral Commission established a sub-committee together with the superintendent of public health, which assisted in drafting of standards for COVID-19 safety measures during the electoral process. These standards, which have not yet been finalized, are intended to cover the safe conduct of election procedures in the Electoral Commission offices, in polling centres, and in the counting hall.<sup>13</sup> Voters affected by COVID-19 who are in mandatory quarantine will be able to vote at designated drive-by polling stations; a few ODIHR NAM interlocutors raised concerns about this approach, while noting that the number of affected voters was likely to be small.

#### D. VOTER REGISTRATION

Following recent amendments, citizens who have reached 16 years of age by election day are eligible to vote. Citizens who have had their voting rights specifically revoked by a court decision, including on the basis of legal incapacity due to intellectual or psycho-social disability, or who are serving a prison sentence for more than one year regardless of the gravity of the crime, are ineligible to vote, despite previous ODIHR recommendations.<sup>14</sup> To be included in voter lists, citizens must have resided in-country for at least 6 of the 18 months preceding the elections, though ODIHR NAM interlocutors noted that this measure is difficult to monitor and not generally enforced.

Voter registration is passive. Identity Malta, the agency responsible for the issuance of identification cards, manages public registration data as derived from the public registries of Malta and Gozo, and submits this data on a monthly basis to the Electoral Commission to update the voter register.<sup>15</sup> These data are supplemented by applicable rolling updates from the Courts and prisons. On 25 February, the Commission published the voter register for these elections, which contained the records of 355,025 voters, in the government gazette and on its website. Eligible citizens who are not included in the published voter register or whose data is incorrect may appeal to a revising officer until 12 March. Eligible voters may also request the update of other voters' records.<sup>16</sup> The

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<sup>12</sup> In its [2018 Concluding Observations](#), the UN Committee on the Rights of Persons with Disabilities called on the authorities to withdraw the country's reservations to Article 29 of the CRPD.

<sup>13</sup> For example, the EC informed the ODIHR NAM that all election officials will be required to wear personal protective equipment.

<sup>14</sup> Citizens declared legally incapable by a Court may not be removed from voter lists by the Electoral Commission without the instruction of a medical board, and ODIHR NAM interlocutors reported that this approach is rare. However, the Constitution retains discriminatory provisions related to the disenfranchisement of persons with intellectual or psycho-social disabilities.

<sup>15</sup> Citizens are entitled to request that their birth record and identification card, which must be presented at polling stations together with a voter card in order to receive a ballot, be updated to reflect their gender identity.

<sup>16</sup> The register is publicly searchable by street address on the Electoral Commission's website.



Electoral Commission may request assistance from the Police in verifying existing records or requested changes. The GEA provides that the Commission may expunge a voter record from the voter register, on its own initiative or upon the complaint of any other registered voter, if it determines that a person does not meet the eligibility requirements to vote; the Commission must communicate such a decision in writing to the affected person, who may appeal to the appellate court.

ODIHR NAM interlocutors generally expressed confidence in the maintenance and inclusiveness of the voter register. Several described barriers to the integration and political participation of the significant resident non-citizen population. Others described an inefficient process for out-of-country voting, which is facilitated by state-subsidized Air Malta flights for citizens residing temporarily abroad to return to Malta for election day.<sup>17</sup> Some questioned the necessity of the practice of delivering and presenting voter cards, citing an additional bureaucratic burden on voters.<sup>18</sup>

## E. CANDIDATE REGISTRATION

Citizens of at least 18 years of age who retain voting rights are eligible to stand for election to the House of Representatives. The law prohibits candidatures of persons holding dual citizenship, government contractors, military personnel, persons who have declared bankruptcy, persons whose legal capacity has been revoked by a Court on the basis of intellectual or psycho-social disability, and persons serving a prison sentence of more than one year.

Prospective candidates seeking to contest the elections independently or as representatives of political parties could submit their nomination documents, together with an application deposit of EUR 90 and the signatures of 4 voters from the respective district(s), online or in-person at the Electoral Commission from 2 to 6 March.<sup>19</sup> Registered political parties seeking to contest the elections were required to submit their lists of approved candidates by 6 March. On 7 March, the Electoral Commission announced the nomination of 177 candidates, including 4 independents and 173 representing 6 political parties. In total, 42 women were nominated. Several candidates will contest more than one district. Applicants could appeal decisions related to their non-registration within two days of the application deadline, or within one day of the decision of the Electoral Commission, on 8 March.

ODIHR NAM interlocutors did not raise concerns related to the accessibility and inclusivity of the candidate registration process and noted the minimum requirements to register. While the political parties met by the ODIHR NAM described some internal strategies to promote the participation of women in party executive structures and as candidates, many interlocutors described systemic patriarchal attitudes and incidents of sexist or violent rhetoric against women politicians on social media. Some noted cases of discrimination, including in some media, against previous candidates and politicians with disabilities, and noted that women with disabilities faced particular barriers to

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<sup>17</sup> Applicable round-trip tickets for Maltese citizens are available for purchase for EUR 90. Interlocutors noted that this opportunity is less accessible for citizens living outside the network of Air Malta flights.

<sup>18</sup> Police distributed voter cards to voters' registered addresses starting from 28 February, and any undelivered cards from 11 March may be collected at the applicable police station or municipal office between 16 March and 20 March, or ultimately from the Electoral Commission from 21 to 24 March. The law permits representatives of political parties to accompany police during the delivery of voter cards. Voters must present these cards in polling stations in order to vote.

<sup>19</sup> Nominated persons may withdraw their candidacy during the nomination period. The deposit is returned if the candidate receives at least 10 per cent of the votes in the respective district, divided by the number of available seats.

political participation.<sup>20</sup> Interlocutors described a lack of participation and inclusion of national minorities in political life, including the exclusion of minority citizens, particularly from non-European Union countries, in political parties and campaigns.

## F. ELECTION CAMPAIGN

Political parties and prospective candidates met by the ODIHR NAM described the ability to campaign without hindrance and freely convey their messages to voters. However, most interlocutors described an entrenched two-party system which disproportionately disadvantages smaller parties and independent candidates, including loopholes in campaign finance regulations and a lack of sufficient oversight of party financing (see *Campaign Finance*), as well as a polarized broadcast media that lacks coverage of smaller political parties and independent candidates (see *Media*).

The Constitution protects the freedom of peaceful assembly; public rallies, including during election campaigns, may take place with a two-day notification procedure to the Malta Police.<sup>21</sup> All political parties met by the ODIHR NAM described a reliance on social networking platforms, particularly Facebook, to convey their campaign messages. Several indicated that they would rely on door-to-door canvassing and small events rather than large campaign rallies, due in part to ongoing restrictions on public gatherings imposed by the government in response to the COVID-19 pandemic. While political parties indicated that they planned to provide sign language interpretation at campaign events as is the case with televised political debates, ODIHR NAM interlocutors described an overall lack of accessible information about party platforms on their respective websites and in the mass media.<sup>22</sup>

Many ODIHR NAM interlocutors expressed concerns related to the potential misuse of state resources for electoral purposes and described an overall lack of regulation and oversight mechanisms to ensure the separation of official duties and campaigning, which they claimed contribute to an excessive advantage of incumbency. Several interlocutors described a widespread practice of constituents receiving phone calls from ministers' offices offering personal favours. Some alleged that billboard spaces hired by government ministries in advance of the election campaign, including advertisements for the Malta Film Festival, were *de facto* reserved for ruling-party campaign posters. A 2020 report by the Commissioner of Standards in Public Life noted that several ministers had used public funds to promote their private accounts (as opposed to the Facebook accounts of their respective Ministries), and issued subsequent guidelines which were endorsed by the government.<sup>23</sup> A 2021 report by the Commissioner determined that a minister had used public funds for a full-page print advertisement in several national newspapers that seemed intended to raise his political profile, in breach of ethical standards, and referred the case to

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<sup>20</sup> Constitutional anti-discrimination clauses do not include disability as a protected category.

<sup>21</sup> ODIHR NAM interlocutors shared differing interpretations related to additional requirements for requesting space for campaign assemblies to be filed with the Malta Tourism Authority. According to the [Authority's website](#), categories of events requiring approval include cultural performances, sporting events, corporate events, markets and exhibitions, and weddings.

<sup>22</sup> See also the 2018 Concluding Observations of the UN Committee on the Rights of Persons with Disabilities, which expressed concern with the "lack of accessibility of most television broadcast and mass media, beyond news bulletins and political debates".

<sup>23</sup> Established in 2017, the Commissioner is appointed by the president on the basis of approval by a two-thirds majority of parliament, and is mandated to, *inter alia*, consider whether certain categories of public officials have acted in ways that "are against the law; are in breach of any ethical or other duty set out by law; or constitute an abuse of power" (see also *Campaign Finance*). The Commissioner's published case reports are available [here](#) (in Maltese and English).

parliamentary committee.<sup>24</sup> While welcoming the existence of institutions responsible for the detection and oversight of misuse of public resources, interlocutors generally described a lack of legal authority, independence and capacity for such institutions to effectively oversee and respond to potential breaches.<sup>25</sup>

## G. CAMPAIGN FINANCE

Political parties and electoral contestants do not receive state subvention and rely on private donations.<sup>26</sup> Electoral campaigns may be financed through private donations from individuals and legal entities (up to EUR 25,000 per calendar year per donor), and a through a party's or candidate's own funds.<sup>27</sup> Donations above EUR 7,000 must be published and donations above EUR 500 must be reported to the Electoral Commission, while donations above EUR 50 must only be recorded in case of an inquiry, and anonymous donations below this amount are permitted. Political parties and candidates may conduct fundraising activities, including lucrative televised fundraising events, which are not subject to these disclosure requirements and individual donor amounts for such events are not required to be reported. Candidates may not spend more than EUR 20,000 for electoral campaigns in each contested constituency. Potential third-party campaigns are not regulated. Several ODIHR NAM interlocutors criticized loopholes in the regulatory framework for campaign financing and claimed that the two parliamentary parties benefit from income generated by their significant commercial interests, with limited transparency and oversight.

The Electoral Commission holds responsibility for oversight of political party and candidate finances. Elected candidates must submit a statement of declared income and expenditures to the Electoral Commission within ten days of being declared elected, and unelected candidates must submit the report within 31 days of the publication of official results in the government gazette. Political parties are only required to report electoral income and expenditures in their annual financial reports, with no designated campaign-finance reporting.<sup>28</sup> In 2018, in response to a complaint filed by the Nationalist Party, the Constitutional Court determined that the GEA provisions affording the same entity (the Electoral Commission) with investigatory and adjudicatory powers to be incompatible with Article 39 of the Constitution. The parliament has not yet amended the GEA in response to this judgment, and as such no entity is clearly mandated with oversight during the campaign and no new regulations for potential investigations of complaints have been introduced. ODIHR NAM interlocutors expressed dissatisfaction with the lack of meaningful and timely oversight of campaign financing and the resultant lack of transparency for voters and contestants.

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<sup>24</sup> The case was referred to a parliamentary committee on standards in public life, which considered the case but issued no sanction following a vote along party lines with one abstention.

<sup>25</sup> In its [2019 Fourth Evaluation of its Second Compliance Report relating to Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors](#), and in its subsequent [2021 Addendum](#), the Council of Europe's Group of States Against Corruption (GRECO) welcomed the implementation in 2018 of the Act on Standards in Public Life and the appointment of the respective Commissioner, while noting that the Act lacks dissuasive sanctions, and a need to assess its implementation in practice.

<sup>26</sup> The parliamentary parties receive EUR 100,000 per year to support legislative work, which can also be used for other purposes, including campaigning.

<sup>27</sup> Members of parliament are required to disclose their assets after their election.

<sup>28</sup> Parties' externally-audited reports must be submitted to the Electoral Commission within four months of the end of the financial year.

## H. MEDIA

The Constitution guarantees the freedom of expression and the media market is pluralistic. National and international condemnation arose following the 2017 murder of investigative journalist Daphne Caruana Galizia and subsequent apparent delays by public authorities in investigating and prosecuting the crime.<sup>29</sup> While media representatives and other stakeholders met by the ODIHR NAM described a reporting environment in which press freedoms are generally respected, some noted potential self-censorship among journalists following the death of Ms. Galizia. Subsequent reforms undertaken by the government to improve the legal framework for media were criticized by interlocutors as lacking sufficient consultation. In February 2022, the OSCE Representative for Freedom of the Media (RFoM) issued legal analysis and recommendations of draft media laws which are pending in the parliament, and called on authorities to ensure meaningful public consultation before their adoption.<sup>30</sup>

In line with previous ODIHR recommendations, the parliament decriminalized defamation in 2020, a step which was welcomed by ODIHR NAM interlocutors. However, despite Freedom of Information Act requirements, several interlocutors described significant delays in obtaining information from public institutions.<sup>31</sup> Many ODIHR NAM interlocutors expressed concern that the government-operated public broadcaster, together with two major private broadcasters operated by political parties, decreases public consumption of objective information related to the two major parties and creates a limited information space for other political views.<sup>32</sup>

The Constitution requires that political reporting in public and private broadcasting be impartial and that coverage be fairly distributed amongst political parties; the Broadcasting Act includes additional requirements for impartiality. The Broadcasting Authority is responsible for the oversight of all radio and television broadcasters and issued a directive for the coverage of the electoral campaign which is in effect from 28 February to 26 March. During election campaigns, all broadcasters planning to feature political content must supply the Authority with an advance programming schedule. Paid political advertising on television is prohibited, but the Authority apportions free airtime to contestants and organizes debates on the public broadcaster. For these elections, the Authority informed the ODIHR NAM of plans to organize several debates, including one to which only the two parliamentary parties will be invited, preceded by debates between smaller parties and independent candidates. ODIHR NAM interlocutors representing other political actors described failed attempts to request inclusion in the debate between the parliamentary party leaders as well as for additional broadcasting time and several interlocutors described mistrust in the impartiality of the Authority, which comprises representatives of the two parliamentary parties. The Broadcasting Authority informed the ODIHR NAM that its prioritization of airtime for the two parliamentary parties is proportionate and equitable given previous election results.

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<sup>29</sup> An independent public inquiry board, established in December 2019, concluded in its July 2021 report that the government of Malta, namely the cabinet of former Prime Minister Joseph Muscat, bore responsibility for the death of Ms. Galizia and failed to take steps to protect her from clear risks by “creating an atmosphere of impunity, generated from the highest echelons of the administration [...] which then spread to other institutions, such as the police and regulatory authorities, leading to a collapse in the rule of law”. See also [Resolution 2293\(2019\) of the Parliamentary Assembly of the Council of Europe](#) as well as the [August 2021](#) and [October 2019](#) statements of the OSCE Representative on Freedom of the Media.

<sup>30</sup> See the March 2022 [statement of the OSCE RFoM](#).

<sup>31</sup> See sections of the [February 2022 report of the Council of Europe’s Commissioner for Human Rights](#) relating to the protection of media freedom and rights to access to public information in Malta.

<sup>32</sup> The television station *One* is operated by One Productions, which is owned by the Labour Party, and *Net Television* is operated by Media.link Communications, which is owned by the Nationalist Party.

## I. COMPLAINTS AND APPEALS

The legal framework provides for possibilities for redress of decisions of the Electoral Commission. The Constitutional Court has jurisdiction over any matters arising from Article 56 of the Constitution, which pertains to the elections to the House of Representatives, as well as any matter which refers to any related laws. The Court informed the ODIHR NAM that prior to the elections, in practice, it handles complaints referred by the Electoral Commission within days of receipt, despite a lack of precise legal deadlines, and that the Court intends to be ready to handle any potential election-related complaints. For matters adjudicated outside of the electoral period, several ODIHR NAM interlocutors described long delays in judicial hearings and decisions, which the Court acknowledged resulted from a high volume of cases and limited capacity. Several ODIHR NAM interlocutors welcomed the exclusion, since 2019, of the prime minister from the process of judicial appointments, though some noted that the independence and capacity of the judiciary could be further strengthened.<sup>33</sup>

## IV. CONCLUSIONS AND RECOMMENDATIONS

In considering a potential observation activity, the ODIHR NAM noted several changes to the electoral legal framework since the previous parliamentary elections, as well as limited progress towards implementing previous ODIHR recommendations. All interlocutors noted the value of an external review and several requested an ODIHR activity to follow the electoral process. The ODIHR NAM sees benefit in undertaking a closer examination of certain issues, including the administration of the election, the conduct and financing of the electoral campaign and related oversight mechanisms, and the regulatory framework for electoral coverage in the media. On this basis, the ODIHR NAM recommends deploying an Election Expert Team (EET) for the upcoming parliamentary elections. ODIHR also encourages the authorities to consider previous recommendations that remain unaddressed.

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<sup>33</sup> In a [2021 Addendum](#) to previous evaluations, GRECO noted with satisfaction “the measures taken to strengthen the system of judicial independence and accountability by making the Commission for the Administration of Justice in charge of judicial discipline procedures and discontinuing the involvement of Parliament in the dismissal of judges. That said, no tangible steps have been taken to improve the transparency of such procedures in the judiciary”.

## **ANNEX: LIST OF MEETINGS**

### **Ministry of Foreign Affairs**

Leonie Aquilina, Director, International Development, Economic Affairs and European Institutions

Antonella Bajada, First Secretary and Desk Officer on OSCE

### **Electoral Commission**

Joseph Camilleri, Chief Electoral Commissioner

Marion Portelli, Electoral Commissioner

Joseph Scicluna, Electoral Commissioner

Richard Dimech, Electoral Commissioner

Angelito Sciberras, Electoral Commissioner

Veronique Dalli, Electoral Commissioner

Joseph Fenech, Officer, Public Service

Josianne Sultana, Secretary to the Commission

### **Constitutional/Superior Courts**

Mark Chetcuti, Chief Justice

Christian Falzon Scerri, Judge

### **National Audit Office**

Charles Deguara, Auditor General

Noel Camilleri, Deputy Auditor General

Brian Vella, Assistant Auditor General

### **Permanent Commission Against Corruption**

Lawrence Quintano, Chairperson

Philip Magri, Commissioner

John Rizzo, Commissioner

### **Broadcasting Authority**

Frank V. Farrugia, Chairperson

Joanna Spiteri, Chief Executive Officer

### **Department for Information**

Paul Azzopardi, Director

Roderick Caruana, Senior Manager

### **Commissioner for Standards in Public Life**

George Hyzler, Commissioner

### **Commissioner for Rights of Persons with Disabilities**

Samantha Pace Gazan, Commissioner for the Rights of Persons with Disabilities

Bernard A. Busuttil, Executive Director for Investigations, Compliance and Enforcement

### **Malta Police**

Angelo Gafa, Commissioner of Police

Alexandra Mamo, Deputy Commissioner

Ramon Mercieca, Deputy Commissioner

Stefania Sgandurra, Director General

Kenneth Haber, Assistant Commissioner

**Political Parties and Independent Candidates**

Carmel Cacopardo, Chairperson, Democratic Alternative – Democratic Party (AD-DP)

Ramona Attard, President, Labour Party

Ronald Vassallo, Head of Communications, Labour Party

Michael Piccinino, Secretary General, Nationalist Party

Martina Caruana, President, Political Research, Nationalist Party

Boris Xerri, Director, Elcom, Nationalist Party

Arnold Cassola, Independent Candidate

**Media**

Mark Sammut, Executive Chair, Public Broadcasting Service

Charles Dalli, Chief Operations Officer

Norma Saliba, Chief of News

Herman Grech, Editor-in-Chief, Times of Malta

**Civil Society**

Neil Falzon, Director, Aditus Foundation

Maria Pisani, Director, Integra Foundation

Anna Borg, Malta Women's Lobby

Martina Farrugia, Malta Women's Lobby

Romina Lopez, Malta Women's Lobby

Louiselle Vassallo, Malta Women's Lobby

Manuel Delia, President, Repubblika

Alessandra Dee Crespo, Vice-President, Repubblika

Vicki Ann Cremona, Repubblika

**International Community<sup>34</sup>**

Representatives of diplomatic missions of OSCE participating States

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<sup>34</sup> The ODIHR NAM extended an invitation to representations of all OSCE participating States resident in Malta.