PROJECT OutinOut

WORKSTREAM 1.1: COMPARATIVE INVESTIGATION

Juvenile Justice in Malta

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Introduction

The aim of this report is to discuss the national regulatory system in Malta, with particular reference to the juvenile criminal system. It follows the structure laid out by the work stream coordinator so that it can easily be compared with research from the other countries involved. The first part of the report outlines the methodological approach used to collect the data, and then gives a general overview of the Maltese islands, giving particular attention to the penal system. Next, it delves into the juvenile criminal system into more detail, providing qualitative data, as well as giving a qualitative description of the system. Finally, it describes the conditions of imprisonment for juvenile offenders, basing its findings on a semi-structured interview and questionnaire.

Methodology

The main method of data collection, both for the quantitative as well as the qualitative data, was document analysis. We have consulted official documents such as the population census, the criminal code, and so on, and we have also cited a number of books and dissertations. We have also gathered data from a number of people who work in different governmental departments. In order to acquire more detailed information, we have also conducted a semi-structured interview and questionnaire with one of the main key-players. However, there were some instances where the required data do not exist, or is not relevant due to the fact that Malta is a small country with only one main prison.
1.1 General data

Overview

Malta is a southern European country located in the Mediterranean Sea, between Africa and Sicily. According to the Census of the Population and Housing 2011 (NSO, 2014), Malta is the smallest European Union country. Nevertheless, it is by far the most densely populated Member State, with an average of 1,325 persons per square kilometre, compared to an overall average of 117 persons per square kilometre for the European Union. Over the past 100 years, Malta’s population has increased almost two-fold, reaching 417,432 in 2011. This population includes Maltese nationals and non-Maltese nationals and includes Gozo, Malta’s sister island. The gender distribution compares well with European averages and the general population comprises of slightly more females (209,807) than males (207,625). In 2011, the average age of the general population was recorded at 40.5 years. The 65+ age group comprise 16.3% of the general population. Compared to European ratios, the population in Malta is still considered as relatively young, with the old-age dependency ratio translating to 23.7% of the population compared to Europe’s average of 26.8%. The literacy rate stands at 93.6% for persons aged 10 years and over, with illiteracy rates dropping steadily with age – 23.3% for the 90+ age group down to 1% in the 10-19 year age bracket. In terms of languages spoken, 93% speak Maltese fluently, whereas two thirds of the population also claimed to be fluent in English.

The 2011 Census also reveals that the number of non-Maltese nationals stands at 20,289, comprising 4.9% of the general population. 60.2% of non-Maltese nationals are EU citizens, more than half of which emerge from the United Kingdom. The non-EU citizen cohort comprises mainly of Somali nationals, which amount to 1,041 persons. 8,649 persons reside in institutional households, 2,279 of which are non-Maltese nationals, residing predominantly in open centres and refugee homes. Over the past years, irregular migration has emerged as a top national priority. Since 2002, Malta has been experiencing an influx of irregular migrants from the African content. Although modest in numbers, such migration has left a considerable impact on Malta, due to the country’s small size and highly dense population (University of Malta, 2009).
Malta has a GDP of €16,100 (MFSA, 2013) and is the world’s second safest place to live in terms of exposure to and ability to cope with natural disasters, according to the World Risk Report 2013 drawn up by the United Nations University’s Institute for Environment and Human Security in Bonn and Alliance Development Works.

Malta’s economic profile can be described as follows: agriculture makes up 1% of all economic activity, industry 24.4% and services 73.2%. The emigration rate of the tertiary educated stands at 58.3%, while 20.2% of the workforce has reached a tertiary level of education. The number of people gainfully employed is recorded at 164,000 while 12,000 people are seeking employment, with the general unemployment rate recorded at 6.0%. 47.5% of the latter have been unemployed for 12 months or more. The total number of youth not in education or employment stands at 5,600, and the youth unemployment rate is at 13.1% (World Economic Forum, 2013).

The predominant religion in the Malta is Roman Catholicism. The Constitution of Malta (1964: article 2) establishes that the religion of Malta is the Roman Catholic Apostolic Religion and that it is compulsory for state schools to provide education regarding the Roman Catholic Apostolic faith. Such is the significance of the Roman Catholic religion in Maltese society that the Criminal Code states that:

> Whosoever by words, gestures, written matter, whether printed or not, or pictures or by some other visible means, publicly vilifies the Roman Catholic Apostolic Religion which is the religion of Malta, or gives offence to the Roman Catholic Apostolic Religion by vilifying those who profess such religion or its ministers, or anything which forms the object of, or is consecrated to, or is necessarily destined for Roman Catholic worship, shall, on conviction, be liable to imprisonment for a term from one to six months (Criminal Code, 1854: article 163).

Public Holidays in Malta are regulated in terms of the National Holidays and Other Public Holidays Act (Chapter 252) of the Laws of Malta and according to the law; eight out of 14 public holidays in Malta are religious feasts. A large number of towns and villages in Malta and Gozo are named after Christian saints and there are well over 300 churches all over the islands. The Church as an institution is still highly influential and owns a commercial bank, a radio station transmitting on a national level, and also has a stake in the published media.
The Church has within it strong voluntary organisations, offering family related and counselling services. Caritas Malta is one of the major local service providers and its operations include community outreach, most notably for people with substance abuse problems; addiction counselling; a temporary shelter for crisis intervention; aftercare for mental health patients; and support to the elderly and children in residential homes.

The interaction between politics and religion has helped shape Malta’s history, politics and society. In the past century, religious and political powers collided on various occasions and such litigations resulted in turbulent periods, especially in the 1930s and 1960s. Despite of, and not completely unrelated to, the turbulent period in the 1960s, Malta acquired its independence from the British in 1964 and became a Republic in 1974. Other important political and economic landmarks include Malta’s accession into the European Union that took place in 2004 and Malta’s subsequent adoption of the euro in 2008, replacing the Maltese lira.

**Prison population rate**

Data indicates that the prison population in Malta is on the increase and that the adult institution, which is currently holding 565 inmates (Prison data as at March 2014), is nearing full capacity. Current figures of the prison population indicate that the number of prisoners per 100,000 inhabitants stands at approximately 154. Over a 10-year period, a substantial increase could be noted in the prison population as revealed in Table 1.

<table>
<thead>
<tr>
<th>Year</th>
<th>Prison population</th>
<th>Prison population/100,000 inhabitants</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>246</td>
<td>64,7</td>
</tr>
<tr>
<td>2005</td>
<td>294</td>
<td>73</td>
</tr>
<tr>
<td>2010</td>
<td>598</td>
<td>144,3</td>
</tr>
</tbody>
</table>

Source: Eurostat

**Impact of alternative measures**

5
The total number of active alternative measures within the Department of Probation and Parole as at 31 December 2013 was 853 cases. This total includes all alternative measures with an element of supervision, namely, the probation order, the community service order, the combination order, the suspended sentence supervision order and parole. This figure is greater than that of the prison population by 38%.

Table 2
Alternative measures with supervision

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of active cases as at 31 December</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>657</td>
</tr>
<tr>
<td>2011</td>
<td>738</td>
</tr>
<tr>
<td>2012</td>
<td>749</td>
</tr>
<tr>
<td>2013</td>
<td>853</td>
</tr>
</tbody>
</table>

Source: Department of Probation and Parole

Budget for the Penal System

According to the Financial Estimates 2014 (Ministry of Finance, 2014), the 2013 approved budget for the Department of Correctional Services amounts to €8,602,000 and caters for both juvenile and adult penal institutions. This figure reflects a 4% decrease on the actual expenditure recorded in 2012. 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.

Budget for Education

An increase in public spending in the education sector was registered in 2013 over the previous year. In fact, the approved budget for 2013 was of €177,215,000 compared to the amount spent in the previous year, which totalled €157,045,940 (Ministry of Finance, 2014). The public spending on education stands at 5.4% of the GDP (World Economic Forum, 2013).
Budget for Social Affairs

Social protection expenditure amounted to a total of €1,319.6 million in 2012, resulting in an increase of 6.4% over the previous year. The Old Age and Sickness and Health Care functions absorbed 86% of this increase. Expenditure on Unemployment and the Family also benefited from increased expenditure over 2011. The only two areas within social protection that registered a decrease in expenditure in 2012 were Housing and Social Exclusion. In 2011, Malta’s social protection expenditure amounted to 18.7% of GDP (National Statistics Office, 2014).

1.2 General data: Juvenile criminal system/juvenile offenders (quantitative data)

When referring to juvenile offenders, the numbers being dealt with are admittedly small but they 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). Nevertheless, an increase could be noted in the number of persons under the age of 14 being arraigned in court as indicated in Table 3.

Table 3
Persons under 16 years of age given a prison sentence
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of persons under 16 years of age given a prison sentence*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>12</td>
</tr>
<tr>
<td>2009</td>
<td>10</td>
</tr>
<tr>
<td>2010</td>
<td>10</td>
</tr>
<tr>
<td>2011</td>
<td>5</td>
</tr>
</tbody>
</table>

*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 Table 4, a 163% increase could be noted in this four-year period.

Table 4
Persons under 14 years of age arraigned in court

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of persons under 14 years of age arraigned in court*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>19</td>
</tr>
<tr>
<td>2009</td>
<td>18</td>
</tr>
<tr>
<td>2010</td>
<td>45</td>
</tr>
<tr>
<td>2011</td>
<td>52</td>
</tr>
</tbody>
</table>

*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.
Table 5
Distribution of inmates between 18 and 21 years old

<table>
<thead>
<tr>
<th>Age</th>
<th>Number of inmates awaiting trial</th>
<th>Number of sentenced inmates</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>19</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>21</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>25</td>
</tr>
</tbody>
</table>

Source: Department of Correctional Services

There is only one detention centre in Malta that houses both juvenile and young offenders. It caters for male offenders under 21 years of age and includes those awaiting trial. This centre is separate from the main Kordin prison compound. The Young Offenders’ Unit of Rehabilitation Services (YOURS) can cater for a total of 20 young male offenders. Currently the YOURS section is housing 20 inmates and is thus operating at full capacity (Prison data as at March 2014). This number makes up 3.1% of the whole prison population. There are no specific premises available for female young offenders.

As indicated in Table 6, 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.
Table 6
Number of juveniles given a community based sanction (with supervision) and as a percentage of total number of new cases

<table>
<thead>
<tr>
<th>Year</th>
<th>Juvenile new cases</th>
<th>Total new cases</th>
<th>% of juveniles</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>61</td>
<td>314</td>
<td>19.4</td>
</tr>
<tr>
<td>2011</td>
<td>53</td>
<td>355</td>
<td>15</td>
</tr>
<tr>
<td>2012</td>
<td>44</td>
<td>319</td>
<td>13.8</td>
</tr>
<tr>
<td>2013</td>
<td>48</td>
<td>466</td>
<td>10.3</td>
</tr>
</tbody>
</table>

Source: Department of Probation and Parole

Since several components of the juvenile criminal justice system are amalgamated with the adult criminal justice system, a budget that reflects the actual expenditure on juvenile justice could not be extrapolated. The prison budget as published by the Ministry for Finance in the Financial Estimates 2014 also does not include a separate entry for the YOURS division. Thus it is not possible to provide data in this regard.

1.3 General Data: Juvenile criminal justice system/juvenile offenders (qualitative data)

1.3.1 National Regulatory System

1.3.1a Introduction: Definition of the Child/Young Person

Under Maltese law a distinction with regards to the age limit is made 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: article 2), a minor is defined as “...a person of either sex who has not yet attained the age of eighteen years”
According to the Civil Code, (1870: section 157 as cited in UNHCHR, 1998), in Malta, children reach majority at the age of eighteen, and it has been so since the Civil Code was initially enacted. Nevertheless, there are cases were a child is given adult accountability at an earlier age, specifically, (a) on contracting marriage at the age of not earlier than sixteen (Marriage Act, 1975: article 3(1) as cited in UNHCHR, 1998), (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 as cited in UNCHR, 1998), and (c) a child has capacity to make a will at age fourteen, however he/she can only make remuneratory dispositions (Civil Code, 1870: section 597(1) as cited in UNHCHR, 1998).

With regards to criminal responsibility, up until recently, in Malta the age of criminal accountability was that of nine years and the upper age limit that of eighteen. However, there has recently been a change in legislation, whereby the age of criminal responsibility has been raised from nine to fourteen years. Moreover, 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 by a minor who is between fourteen and sixteen years of age, with mischievous discretion 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: article 2) defines a child or young person as a person who is below the age of sixteen years.

1.3.1b Regulatory System

This section will outline the national regulatory system that specifically relates to children and young persons in Malta. Malta possesses a formal system of child protection and it is required by law that children be heard directly in all proceedings concerning them. The Juvenile Court Act (1980) stipulates that all proceedings related to offenders below the age of sixteen are heard in the Juvenile Court.

The safeguarding of parentless and neglected children in Malta was initially implemented in the year 1962 via the adoption of Legal Notice 13 (as cited in YLS, 2005), whereby the Director of
Welfare was given the power to ascertain that such children are well provided for. The Children and Young Persons (Care Orders) Act was implemented in 1980, where the court and the Minister were given 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).

As disclosed in the Government of Malta’s 1998 State Party Report to the Committee on the Rights of the Child (as cited in YLS, 2005), children in Malta have a longstanding implicit right to be heard. In more recent years, this right has been codified into law. The Office of the Commissioner for Children was established in terms of the Commissioner for Children’s Act of 2003 to promote children’s welfare and the compliance with the United Nations Convention on the Rights of the Child, as ratified by Malta on the 26 of January, 1990 and such 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). It must be noted that in Malta, there is no systematically practised law that provides for children’s voices to be heard in legal proceedings. Moreover, in Malta, international treaties are not self-executing, for treaty obligations to be given the force of law domestically, they must be merged into domestic legislation (YLS, 2005).

An exception to the general structure of child protective proceedings in Malta takes place in cases that concern a child whose parents are deceased or have forfeited their parental authority. Such a child is subject to be placed under guardianship until he/she becomes of age or gets married and his/her guardian is requested by law to represent him/her in all civil proceedings (Civil Code, 1870, articles 158, 172 as cited in YLS, 2005). In 1994, Malta’s Ministry for Social Policy developed the Social Welfare Development Program to work towards amelioration of Malta’s social welfare sector. As part of this initiative, the APPOĠĠ child protection services program was established to enhance services for children that require care (YLS, 2005).

1.3.1c Legislative Update in this Field

A lobby with government by the National Focal Point for Drugs and Drug Addiction and actual drafted proposals resulted in suggested changes. Amendment 64 of Bill 97 of 2012 (as cited in
Damato, 2013) proposed a system entitled the Arrest Referral Scheme, which scheme would enable diversion from court proceedings for first time offenders found in possession of illicit substances for personal use. On entering this scheme, the offender would not be tried in court and following admission to the offence, he/she is referred to a Judicial Body that examines the case. The end result is dependent on the personal and familial circumstances of the person. When the Board is ascertained by an adequate and healthy support system, they notify the police and they in turn close the case and refrain from prosecuting. It must be noted that this is a onetime chance and the offender re-offends, the matter will be dealt with via court proceedings. However, this amendment was discarded when the Parliament was dissolved due to the 2013 General Elections (Damato, 2013).

Moreover, the Maltese Code of Police Laws (1854: article 319 as cited in Damato, 2013) makes reference to a diversionary system when a young person below the age of seventeen is caught consuming alcohol. If it is the first time, the young person is formally warned by a police officer that criminal proceedings will be taken against him/her, if caught breaching the law for a second time. The law further stipulates that if eventually there is an additional lapse, the minor is taken to court and the court may order the minor to take part in an educational program, which, if and as necessary may be combined with counselling. However, research indicates that such a mechanism is not yet in place (Damato, 2013).

1.3.2 Juvenile Penal System

1.3.2a Pre-Trial Phase

In Malta, intervention in the pre-trial stage began to be experimented upon during the mid 1980’s via what were known as Police Cases. An agreement was made between the Commissioner of Police, the Attorney General and the Principal Welfare Officer, who was also the Principal Probation Officer, with regards to the manner with which to deal with petty offences, especially those that were carried out by first-time offenders. This agreement was perceived to prevent the stigma and negative experience that a court case might have on juvenile first-time offenders.
Once the police arrest a suspect whom they are considering prosecuting, they have the option to refer the case to probation officers. The latter would work with the offender and even with his/her family if the need arises, while the police would be given a report every couple of months on the general progress of the offender. Regretfully, this was discontinued due to a change in the policy concerning social welfare (Scicluna, 2008).

As is the situation at present, the police can only keep suspects arrested for a maximum of forty-eight hours before taking them to court; therefore, the pre-trial phase is short, with not much time for intervention. Often, suspects would look for help on their own initiative, with the hope that if they are arraigned in court, the sentencing magistrate or judge would look favourably on their case, grant them bail and in the long-term avoid a sentence of incarceration. Moreover, the police may utilise pre-trial detention to shock first-time offenders into ameliorating their conduct (Scicluna, 2008).

### 1.3.2b Trial Phase

Once the police establish a case and gather all the necessary information, charges are issued against the offender and that same offender is arraigned in court. Cases of offenders who are between fourteen and sixteen years of age are heard by the Juvenile Court. However, it must be noted that persons between the ages of fourteen and sixteen are not always exclusively charged before the Juvenile Court, the reason being that it may often happen that such a person would be co-accused of an offence with one or more persons who exceed the age of sixteen, and hence all of these, including the minor, would be charged before the Court of Magistrates in the Valletta law courts and their case treated similar to and together with other criminal cases (Vella, 2006). Offenders who exceed the age of sixteen 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.

#### i) Court of Magistrates (COM)

The Court of Magistrates is the court where the majority of criminal cases are decided upon. In this court, a Magistrate sits alone. This court has both civil and criminal jurisdiction. In its
criminal jurisdiction, the court has a twofold competence. As a court of criminal judicature, it deals with all cases where the penalty for the alleged offence does not exceed six months imprisonment. Nevertheless, with the consent of the Attorney General and of the accused, this court may determine cases where the offence carries a penalty of not more than ten years imprisonment. As a court of criminal inquiry, the COM gathers the evidence brought by the police against a person accused of an offence, falling within the jurisdiction of the Criminal Court. At the end of this inquiry, the court has to decide whether or not there is enough proof for a Bill of Indictment to be filed by the Attorney General before the Criminal Court (The Judiciary Portal, 2014).

ii) The Juvenile Court

In Malta, the need has always been felt not to place juvenile offenders with adult, sometimes career criminals, but to enact special provisions that would provide enhanced possibilities of adjustment and rehabilitation of young persons. Hence, the Juvenile Court was set up in 1980 (UNHCHR, 1998). 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...” The Maltese Juvenile Court is a specialized court dealing with children and young persons (Damato, 2013). The classic law takes the parens patriae approach, whereby giving legal authority to the state to stress the dependency of children and young persons and their need for nurture and safety (Calleja, 2010 as cited in Damato, 2013).

The Juvenile Court is presided over by one Magistrate who is aided by two court assistants, one of whom has to be a female, both of whom are chosen by the President of Malta (Vella, 2006). Even though 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” (Rule 10.3 Beijing Rules, 1985 as cited in Damato, 2013).
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 and in the Probation Act or other specialized legislation, in line with the sort of crime carried (Damato, 2013; Vella, 2006). These will be discussed further detail below.

The Juvenile Court deals with young persons between the ages of fourteen and sixteen. Furthermore, the penalty awarded must always be reduced by one or two degrees whenever a minor is involved. The Juvenile Court hence 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).

Within the Juvenile Court the role of the prosecutor, who is a senior police officer, advocates for the state in order to safeguard society from perilous or injurious behaviour. As opposed to the Valletta Law Courts, the prosecuting officers within the Juvenile Court wear plain clothes. Here, the prosecuting officer assembles a dossier for the Court and provides each offender’s Police Criminal Record, together with other information held by the police. The prosecuting officer also provides his perceptions and suggestions in open court about the case together with its potential conclusion. With regards to the defence lawyer, in various manners his/her role within the Juvenile Court is similar 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 even though the right to a lawyer is a fundamental right, certain parents prefer to relinquish this right for their children (Damato, 2013).

The Juvenile Court in Malta functions in coordination with the police, the Commissioner for Children, the Education Department, and the Department of Probation and Parole when certain cases need to be discussed due to their 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).

iii) Measures utilised by the court during the trial phase

a) Bail

Article 574 of the Maltese Criminal Code (1854) stipulates that any person charged or accused, who is in custody for any offence, may on application be granted temporary release from custody, upon giving enough security to appear at the proceedings, at the appointed time and place, under such conditions as the court may deem suitable to impose in the decree granting bail, which decree shall in each case be served on each person that is being accused. The law also stipulates that it may also be lawful in special cases for the President of Malta to grant temporary release to any accused person who is in custody, subject to any conditions that the President of Malta may deem suitable to impose. If the accused fails to respect these conditions, he/she will be re-arrested (Criminal Code, 1854: article 574).

b) Provisional Order of Supervision (POS)

The provisional order of supervision (POS), was introduced in 2002 (MHAS, 2014). The Probation Act (2002: article 2) states that the court may, if it deems to be in the best interest of the person accused, issue a POS of the accused by a probation officer, even during any criminal proceedings, under such conditions as the court may deem fit. In other words, the POS, which may be issued with bail conditions, may be issued by the court with respect to offenders who have been arraigned in court but who have not yet been found guilty. In this regards, the offender will be under the supervision of a probation officer during the criminal proceedings. A POS may be issued irrespective of the nature of the offence with which one is charged. From time to time, the probation officer will inform the court about the offender’s progress or lack of it, either verbally or in writing (PSJ-OPM, 2014).
A PSR, which is carried out by a probation officer, can be requested by the court when a suspect has been proven guilty in a court of law, but the court still needs social and familial information about that suspect, before awarding a sentence of imprisonment, a probation order or a suspended sentence. However, the court may ask for such a report with respect to all offenders under the age of eighteen years, who are faced with incarceration, or for offenders that the court is considering awarding a Community Service Order or Combination Order. According to the law, only the court can ask for such a report and hence should the prosecution or defence lawyer desire to have a PSR on the offender, they have to ask the court. In practice, this is usually granted.

The Probation Services have created an outline of the content and writing of this report. This was deemed vital so that the report writer, the court and the offender or his/her lawyer, would know what to expect once this report is asked for. The role of the PSR is to make summary of an offender’s criminal and non-criminal history, in order to help the court deal with the offender in the most adequate manner, with the well-being of the victim and society being kept in mind. A PSR should consist of a detailed description of the current offence from an official viewpoint, together with the offender’s and victim’s viewpoints. Every significant piece of information on the accused’s background should be verified and inserted in the report. The PSR would consist of sections relating to the criminal history, information on the family of origin and the conjugal family, vocational and academic history, employment history, psychosocial history, health issues and religious/spiritual beliefs and affiliations. Moreover, any professional report prepared on the offender will be inserted as part of the report’s appendices. A central part of the report is the probation officer’s summary of the whole report and sentencing recommendations. Whilst most of the report is made up of factual information that is verified whenever possible, the summary is the location where the probation officer can give his/her personal view on the accused and justify his/her recommendation (Scicluna, 2008).

The information required from the PSR writer may vary from case to case, depending on the gravity of the offence and the sentence being recommended. Nevertheless, the fundamental aim of the report is always to provide information for the court. Even though the final judgement always lies in the role and duty of the sentencing court, the probation officer conducting the
report has to make some decision pertaining to risk assessment. In certain cases, the probation officer might realise that a combination of sentences might be available. In such instances, the information on every option must be listed. When asking for a PSR, the court may give an indication of its opinion with regards to the gravity of the offence and sentence imposed. However, the probation officer writing the report still has the duty to inquire into the case, taking into consideration the court’s desires; however he/she should not feel bound by them. A significant consideration is whether the offender should be awarded with a custodial or a non-custodial judgement (Scicluna, 2008).

The offender has a right to read the PSR, and although the report is confidential in nature, both the prosecution and the defence lawyer will be provided with a copy of it. Both the prosecution and the defence lawyer have the right to challenge any information found in this report. This is part of the due process of a criminal trial. For all other parties, the report is confidential and under no circumstance can the probation officer provide a copy of the report to third parties. Should a professional or agency request a copy of this report, the probation officer can only provide this copy via the offender’s consent (Scicluna, 2008; Probation Act, 2002: article 6).

2. Social Inquiry Report (SIR)

The SIR is requested by the court prior to the deliberation of guilt. These are social reports on the accused’s psychosocial life. The report is similar to the PSR, with the exception that the part which deals with the crime and the probation officers’ recommendations are not included in the report (Scicluna, 2008; Probation Act, 2002).

3. Verbal Report

Article 11 (3) of the Criminal Code (1854) stipulates that a Community Service Order shall only be made by the court if the same court is satisfied that the offender is suitable to perform work under this order, after considering the offender’s circumstances and the PSR prepared by a probation officer. However, it is also stipulated that provided that where the court is so satisfied, after taking into account the offender’s circumstances, dispense from the requirement of a PSR and order that a verbal report shall be submitted by a probation officer (Criminal Code, 1854: article 11(3)).
As is the case with the PSR and the SIR, the Probation Services have also created an outline for this verbal report. Similar to the PSR and SIR the aim of this report is to inquire into the offender’s circumstances and gather information about the accused, however its format is shorter and requires less detailed descriptions than the PSR and SIR. Via this report, the probation officer would be in a better position to make a recommendation to the court as to whether the offender is suitable to be placed under a community service order.

It is crucial to note that the measures mentioned in this section are not exclusive to young offenders, but may be applied to both young and adult offenders.

iv) Imprisonment and Solitary Confinement

In Malta, persons who are sentenced to imprisonment are confined within the Corradino Correctional Facility (CCF) or in that part of the facility appointed for persons sentenced to that penalty. 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).

With regards to young offenders, custodial penalties at the Young Offenders Unit for Rehabilitation Services (YOURS) may be applied (Damato, 2013). The YOURS is a section of the CCF that caters for males under the age of 21. On the discretion of the concerned authorities, older youths can be kept in this section on the basis of factors that ascertain various characteristics of the offender’s personal security. Before the year 1996, young persons who
were admitted to the CCF used to be placed with adult prisoners. Not content with the situation, in 1996 the authorities introduced a project, which, for the first time, saw the establishment of a section for male youths, separate from the adult section. A specific rehabilitation program was introduced and correctional officers were specifically selected and trained in dealing with young offenders. In general, the main offences for which male youth are mostly admitted to the YOURS include armed robbery, drug possession and trafficking and criminal offences against the person (Battistino, 2006).

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).
1.3.3 Alternatives to Detention

Within this section, the different types of alternatives to detention that are made reference to within the Maltese legislation will be discussed. According to the Maltese Criminal Code (1854: article 7 as cited in Montebello, 2007) non-custodial penalties are those punishments that are “… not restrictive of personal liberty.” The non-custodial penalties that are made reference to in Maltese legislation are basically nine. 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 are applicable not just to young offenders, but for all offenders, although as already stated above, young offenders benefit from a diminishment in penalty (Montebello, 2007).

1.3.3a Historical Information

Until the introduction of the Criminal Code in 1854, the Maltese criminal justice system was deemed to be callous (Scicluna, 2008). Prior to this date, punishment was arbitrary and not in proportion to the offence committed. It was Professor Nicola Zammit (as cited in Scicluna, 2008) who first wrote that the punishment should be tailored to the offender and not the offence. The 1854 Criminal Code established a system of punishment consisting of the death sentence, life imprisonment, solitary confinement, interdiction, fine and reprimand and admonition. From this promising commencement, the system continued to develop. In 1900 Article Twenty Three was introduced, which article gave power to the court to sentence first-time offenders to incarceration with the provision of releasing them on a personal guarantee not to commit another crime within a specified time period. This article is deemed as the pioneer of the conditional discharge as we know it today (Scicluna, 2008).

In 1944, Sir Alexander Patterson (as cited in Scicluna, 2008) submitted a report to the Governor of Malta, in which he proposed the release of offenders on parole and the introduction of the probation services. According to Patterson, the Court of Magistrates was not treating juveniles in a just manner. The judiciary was judging the level of education and the social backgrounds of offenders rather than the crimes carried out and consequently there were gross incongruities in
sentences (Scicluna, 2008). Sir Paterson (1944 as cited in Scicluna, 2008) proposed the setting up of the probation system, where young offenders could be placed under the care of a probation officer, who, with the assistance of the parish priest, the parents and the village school teacher would be accountable for the supervision of the young offender. Along with probation, the utilization of orphanages or the industrial school was proposed for those youngsters who were at moral risk. Lastly, the training of wayward youths aged between fourteen and eighteen was highlighted (Paterson, 1944 as cited in Scicluna, 2008). These suggestions were not immediately considered and it was only in 1955 that Mr. Justice Guže Flores attempted to establish his own probation system.

Judge Flores decided to implement his own probation services by making use of the already existing social services. When hearing cases, he used to look into the social background of the offender and with the assistance of the police; he would contact the parish priest, to learn all the information that could shed light on the possibility of reform for the offender. In the 1950’s Malta was still a close-knit society with the parish at the heart of the village life, hence, by asking the parish priest and the police for information about the offender, Judge Flores would have been in a better position to acquire most of the needed information for sentencing purposes. When he was confident that if given a second chance, the offender would reform, Judge Flores entrusted the offender in the hands of the parish priest. Hence, the village parish priests were the first voluntary Maltese probation officers (Scicluna, 2008).

The attempt to change Flores’ experiment into a legitimately implemented instrument came following the presentation of a bill in parliament in 1957 by the then Minister of Justice Dr. Guże Cassar. Dr. Cassar stressed the need of this act for society and for the offender. He stated that it would be in the interest of society to rehabilitate offenders in order for them to become law-abiding citizens. This system was viewed as possessing two constructive points. Primarily, it allowed society to approach certain cases in a humane way, and secondly, it permitted professionals and society to improve the attitude of certain offenders. The Maltese Parliament regarded this law from a positive viewpoint and hence, the Probation of Offenders Act was enacted (Scicluna, 2008).

The first probation order was issued in 1961, and for the next three decades, probation officers were based at the Department of Social Welfare, while the training of probation officers was
social-work oriented. In 1993, the University of Malta, through the then Institute of Forensic Studies, offered for the first time a diploma specifically targeting probation service. This diploma, pegged at post-graduate level, was the precursor for the establishment of a non-governmental organisation (NGO) offering probation service. The NGO, named the Probation Services Action Team (PSAT), was set up in 1994 (PSAT, 1994) by a group of four newly qualified probation officers and a coordinator and became the sole provider for adult probation service. Juvenile Court cases were at first retained by the Social Work Department. In fact, the shift in cases issued by the Juvenile Court took place over a number of years. Since the post of probation officer did not exist within the civil service structures, the new graduates could not do the job within the civil service. Moreover, the setting up of this NGO was in line with the policy at the time that was favouring modern strategies to offer specialised services. The then Ministry of Social Development and Home Affairs started buying the services of PSAT and gradually a solid working relationship was established between this NGO and the judiciary.

In 1995, ministerial changes brought about a transformation in the status of probation service provision. The Ministry of Home Affairs was established and in early 1996, PSAT moved under the portfolio of the minister responsible for Home Affairs. The purchasing of probation service from PSAT was not in the plans of the new minister and the three probation officers left in PSAT, along with the court assigned caseload, were given the option to apply for employment within the Correctional Services Department. Since the post of probation officer was still non-existent within the government grades, the post on offer was that of social worker. Moreover, this was also an attempt to introduce an element of social work in the prison. Through this move, the Probation Service started its 11-year union with the Correctional Services Department, which replaced the Prisons Department.

Although undocumented, such a service in reality only constituted of weekly group work done by probation officers in one specific division on a roster basis, which did not last long. In fact, probation officers continued doing probation work outside prison but carrying the nomenclature of social workers within the Correctional Service Department. This arrangement was not to the satisfaction of either the social workers or the probation officers, but was being regarded only as a temporary measure. In 1997, Malta hosted the ‘International Training Workshop on Probation’, a joint collaboration between the United Nations, through the United Nations Crime and Justice
Research Unit (UNICRI) and the Commonwealth Secretariat. The newly elected Prime Minister, in his opening address, explained these changes and linked them to the efforts made to deal with issues that were proving to be problematic for the recently established Correctional Services Department. In the opening address it was said:

In 1994 government faced with an unprecedented increase in the prison population and inadequate prison facilities decided to deal with crime, punishment and treatment through a system-wide approach that would include probation as an integral part of the new Department of Correctional Services. At the same time the University of Malta started to organise diploma courses in probation. These courses... enabled the Department of Correctional Services for the very first time to recruit fully qualified probation officers... The presence of newly trained, specialised probation personnel is meant to offer the possibilities of extending alternatives for the judiciary and at the same time deal with the problems of overcrowded prisons (UNICRI, 1997).

The next step was the introduction of the post of probation officer within the civil service structure. In fact, in June 1998, a collective agreement providing for a structure for the Probation Service grades was signed by the government and the unions’ representatives (Government of Malta, 1998). The three existent probation officers were absorbed in this new structure, together with their respective caseloads. The Probation Services was recognised as a unit within the Correctional Services Department, with the Director Correctional Services heading the unit and a probation officer assigned a coordinating role. The Probation Services continued occupying premises separate from those of the prisons. The evolution of the new structure took place gradually and the post of senior probation officer was filled for the first time in 2001 and that of principal probation officer in 2010. On 25 January 2012, a new collective agreement was signed by the government and the union which became the sole representative of the workers in the Probation Class (Government of Malta, 2012). This agreement replaced the one signed in 1998.

In 2002, the Probation Act was revised to include more alternatives to incarceration (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 and the Combination Order 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: article 21). This amendment does not apply to cases issued by the Juvenile Court.

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). This gave a role to the probation officer within the prison for the first time, a role clearly defined in the Act itself.

1.3.2b Non-custodial sentences

i) Interdiction

As stated in the Maltese Criminal Code (1854: Article 10), interdiction can either be general or special. General interdiction disqualifies the person sentenced for any public office or employment, generally, whereas special interdiction disqualifies the person sentenced from holding some particular public office or employment or from the exercise of any particular profession, art, trade or right. Either type of interdiction may be for life or for a stated time period, and whether temporary or for life, may upon the application of the individual sentenced to such a penalty and on good grounds being displayed to the satisfaction of the court by which the punishment was awarded, be discontinued at any time by order of the same court. Any person sentenced to interdiction who infringes any obligations arising from that penalty, he/she shall upon conviction be liable to incarceration for a term not exceeding three months and to a fine (multa) (Criminal Code, 1854: article 10 as cited in Montebello, 2007).

ii) 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 of a fine (multa) is that of €1,164.69, while the minimum is that of €23.29. Moreover, it is remarked that where the maximum of a fine (multa) prescribed in the Criminal Code or in any other law is less than €23.29, the maximum shall be €23.29 and the minimum shall be €11.65. 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 (multa) 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: article 11).

iii) Fine (Ammenda)

Within the Criminal Code (1854: article 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 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).

*iv) Reprimand*

The reprimand is an admonition (Criminal Code, 1854: article 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*).

*v) 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 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).

*vi) 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: article 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: articles 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 stop 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 re-offenders), or it my impose on the offender a fine (ammenda) not exceeding €232.94 (Criminal Code, 1854: article 28G).

vii) Probation Order

According to the Probation Act (2002: article 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: article 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: article 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: article 7).

viii) 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: article 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: articles 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: articles 11-14).

**ix) 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).

It must be noted that the Probation Act (2002: article 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).

1.3.4 *Interventions pertaining to young persons under a criminal provision*
1.3.4a The Probation Services - The Department of Probation and Parole

The Probation Services is a crucial element of the criminal justice system, including the juvenile justice system, and functions in collaboration with the judiciary, the police and various agencies non-governmental organizations and government departments, amongst others (PSJ-OPM, 2014a). The legal basis of probation in Malta derives from the Probation Act of 2002, which establishes the work and the organization of probation officers (Scicluna, 2008).

The Directorate of Probation and Parole was set up in January of 2012. In the year 2011, the objectives of the Probation Services were revised in preparation for the implementation of the novel functions to be devolved with the coming into force of the Restorative Justice Act. The impact of the new legislation on the Probation Services were twofold: (1) on an administrative level, the Probation Services were to be separate and distinct from the Correctional Services and (2) on a legislative level, the department was to assume the responsibilities of the parole and victim support in addition to the probation services (PSJ-OPM, 2014a).

The Probation Services address the need of adult and young offenders when demanded by the court at the pre-sentencing stage via the PSR, SIR and the POS. At the post-sentencing stage, the services offered include the CSO, Combination Order, Probation Order and the Suspended Sentence Supervision Order. Each of these has been discussed above. The selection of beneficiaries for the service does not depend on the Department itself, but who benefits from the services provided by this Department is at the discretion of the court (Scicluna, 2008).

The Department’s database demonstrates that offenders come into contact with probation officers for various offences. These offences include drug possession, person offences such as physical assault and domestic violence, sexual offences such as prostitution and corruption of minors, property offences, including illicit entry, vehicle theft and the defilement of public and private property, falsification of documents, money laundering and forgery and internet crime. This service caters for both male and female offenders. Throughout the course of interaction with the offender, the probation officer may also come into contact with the families, employers and immediate peer groups of the offender (PSJ-OPM, 2014a).
The Director of Probation is accountable for the organisation, the administration and the supervision of the service. On the other hand, probation officers have the duty to conduct home visits and/or request that offenders visit them at the probation office, to plan, monitor and help the probationer, to see to it that probationers lead a law-abiding life, to raise awareness in the offender about the victim, to report to the court from time to time on the overall well-being of the offender, to help probationers in widening their social and educational endeavours, to help the offender in finding a suitable job, to keep detailed records of any person under their care and to write periodical reports to the director on probationers (Probation Act, 2002; Scicluna, 2008).

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; however it greatly relies 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.

It is also worthwhile to briefly discuss the probation procedure. As already stated above, the Department of Probation receives all its clientele from the courts. Once the order arrives at the Department, the case is assigned to a probation officer, by a senior probation officer. Prior to doing this, the senior probation officer takes note of the probation officers’ aptitudes, together with their caseload. This makes certain that the work being carried out is adequate. Following that, the probation officer who has been assigned with the case, sends for the offender, and during the first session an intake form is filled that gathers personal information about the offender. Moreover, consent forms are signed by the probationer, whereby the probationer gives his/her consent to the probation officer to give and gather relevant information regarding him/her from other professionals and/or agencies/departments. In cases of probationers that are minors, the signed consent of the parents and/or legal guardians is also required. Moreover, the
probationer would also be giving his/her consent to be referred to any service that the probation officer deems necessary. Each probationer is assessed depending on the requirements and orders of the court (Scicluna, 2008). Recently probation officers in Malta have recently started utilizing the Level of Service Inventory–Revised risk assessment tool (LSI-R), which enables them to eventually draw up a care plan for the offenders focusing on needs and risks.

Throughout their work with probationers, probation officers utilise a combination of motivational interviewing and strength-based therapy. By joining these two therapeutic models together, offenders are encouraged to change by commencing from their positive points and then moving on to focusing on their weak points. As a general guideline, probation officers meet up with offenders around once a week or once every two weeks, according to the case, during the initial six months and then reduce meetings to a monthly basis. The purpose behind these meetings is to evaluate the offender’s progress and to assist the offender in living a life free from crime. Home visits are also included as part of an offender’s supervision, and are conducted periodically by probation officers. Such visits allow probation officers to better evaluate the family and surrounding situations of a probationer.

In the case of a CSO or combination order, the probation officer has the responsibility of devising the community work. The procedure of this service has been devised in a manner that placement providers provide their own monitoring, whereas the probation officer conducts surprise field visits at the place where the offender is performing the community work, and maintains regular contact with the service provider (Scicluna, 2008). Moreover, regular supervised urine testing of offenders is held at the probation office, to check whether the probationer is making use of any illicit substance. The department of Probation and Parole, in collaboration with the non-governmental organization Mid-Dlam Ghad-Dawl is also delivering a life skills accreditation course to its clients, with a special focus on young offenders, which focuses on subjects such as employment, attitudes, relationships and so 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).

It must be noted, however, that limitations apply to the probation officer in so far as the persons who are provided with the chance to reintegrate themselves once again in society may refrain from respecting the conditions of the order as imposed by the court or is not cooperating with the probation officer. In this case, the probation officer has no other alternative but to report that person to the court (Farrugia, 2006). It must also be noted that probation officers do not follow any persons who approach them on a voluntary basis. Furthermore, probationers who finish the operative term of a community sanction can no longer be supervised by a probation officer and usually clients who require further assistance are referred to social work agencies (Scicluna, 2008).

1.3.4b Residential Services

There exist 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.

Since the closing down of the Juvenile Section within Mount Carmel Hospital (MCH), the Young Persons’ Unit (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).

1.3.4c Homes

The Conservatorio Vincenzo Bugeja (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 that 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).

1.3.4d 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 as cited in Farrugia, 2011) 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 programme was terminated (Muscat Azzopardi, 2006).

1.3.4e Residential Drug Addiction Programmes
As already stated above, an offender’s admittance into a residential addiction programme 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 Programme known as ‘Komunita Santa Marija’. This programme is an intensive, long-term residential programme providing a structured, communal living environment. 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, which provides assistance to homeless persons having a drug problem. Apart from providing an environment 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 programme which is highly structured. Caritas has also developed a residential rehabilitation programme for female drug abusers, where female clients follow the same structured programme as the one offered at the San Blas Therapeutic Community. Finally, the OASI Foundation provides another residential programme 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 real fact targeted to cater for the needs of adults. The main reason behind this is that eligibility criteria for residential programmes 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 programmes. 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 have emphasized the need to introduce specialised services for minor drug abusers (NAO, 2013).

1.3.4f Non-residential services

It is perceived that the Juvenile Court has a significant role to fulfil and since it is one of the structures that juvenile offenders may be brought before, 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 provide a more holistic approach to such young offenders (Vella, 2006). 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 seek and receive the necessary assistance and/or support from a specific agency or department on a non-residential basis (Probation Act, 2002: articles 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.

i) 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: article 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 convicted for possessions of drugs and almost 47% are convicted for theft, with the majority of it being drug-
related (Scicluna, 2008). The same bodies mentioned above, that is, Caritas, Sedqa and OASIn are the main providers of the non-residential service to drug abusers in Malta and Gozo.

Sedqa provides this type of services in two manners. The Substance Misuse Outpatient Unit provides a service pertaining to 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, during which 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 programme 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 commitments. The same type of evening programme is also provided by Caritas (NAO, 2013). Probation officers would maintain constant contact with the agencies’ staff to check on the progress of the client. They 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.

ii) 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 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 are 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).

iii) Social Work Services
The Children, Young Persons and Support Services provide a variety of services for children and adolescents who are going through some forms 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. The Youth in Focus Service is an example of such a service. It 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).

iv) 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 an 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 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).

v) 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 Żgħażagħ, 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).

1.3.5 Post-Release Phase

1.3.5a Prison Leave

Section 61 of the Prison Regulations (1995) stipulates that prison leave may be granted to an inmate by the Director of prison under certain conditions that may be determined by the Director. Prison leave may be granted in the following circumstances. Primarily, such leave may be granted for a timeframe of not more than twelve hours on the occasion of the birth, marriage, or other special family occasion of a child or grandchild of the prisoner or on a special family occasion. Secondly, prison leave may also be granted on compassionate grounds for a period deemed by the Director to be enough to attend to the religious service and burial in cases of death of a near relative and/or on compassionate grounds to visit a near relative who is seriously ill. Thirdly, it is also stipulated that such leave may be granted to an inmate for periods of not more than eight hours daily, for fifteen days, to enable the inmate to perform community work (Prison Regulations, 1995: section 61).

Moreover, the Director may grant prison leave for periods as may be needed for inmates to receive treatment and rehabilitation from a drug addiction in a therapeutic facility or community outside the prison (Prison Regulations, 1995: section 61). To be able eligible for this, inmates must be in the final two years of their sentence of imprisonment (Scicluna, 2008). According to the NAO (2013) report, inmates who are identified by the Prison Substance Abuse Assessment Bard as having a drug problem are referred to the Substance Abuse Therapeutic Unit (SATU), Caritas or Sedqa. SATU is a service run by the government and forms part of CCF. The aim of SATU, which was set up in 1995, was that of providing an in-house drug rehabilitation service to inmates having a drug problem. However, this service is currently not in operation. Caritas runs the program known as the Prison Inmates Program, which is a a residential rehabilitation
programme that specifically caters for prisoners with a drug addiction. Although this programme is run by Caritas, it is financed by the Corradino Correctional Facility. A defining element of this programme is that clients are not permitted to abandon it unless they want to return back to prison and continue serving their sentence there. Here again, it must be noted that none of these programmes are specifically tailored for minors (NAO, 2013).

The Prison Regulations (1995: section 61) also stipulate that with regards to young inmates, leave may be granted in order for these inmates to be able to spend a part or the whole of their imprisonment sentence in a young offenders’ rehabilitation institution or in a similar facility as approved by the Minister. During the three months prior to their release, inmates can be temporarily released from prison for not more than eight hours daily, for a period of fifteen days, to engage in employment or to receive training. Leave may also be granted for educational purposes, that is, to enable the prisoner to undertake courses or training in certain educational facilities (Prison Regulations, 1995: section 61).

1.3.5b Amnesty

In Malta, two kinds of amnesties can be granted – the general amnesty and the individual pardon. The former form of amnesty is granted via the recommendation of the Prime Minister on the occasion of an important event (Scicluna, 2008). In Malta, in 2013, an amnesty was granted to prisoners to mark the general election (Times of Malta, 2013). It must be noted that general amnesties do not necessarily apply to all inmates since some crime categories may be kept out. On the other hand, individual pardons are granted following a miscarriage of justice or for humanitarian purposes. An inmate asking for a presidential pardon has to submit a petition to the President of Malta, who in turn asks for the opinion of the Minister. The Attorney General, the courts, the police and the correctional services are asked to provide their viewpoints on the granting of such an amnesty. In very serious crimes, such as trafficking of drugs or multiple homicides, the ultimate recommendation to the President has to be made by the full Cabinet of Ministers (Scicluna, 2008).
1.3.5c Parole

In 2012 there was the introduction of the Restorative Justice Act, which was intended to make space for 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, as well as a parole clerk, who is employed by the Corradino Correctional Facility (Restorative Justice Act, 2012: articles 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: articles 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 the 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: article 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 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: articles 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: article 14-15).

1.3.5d Remission

The Restorative Justice Act (2012: article 21) stipulates that offenders may be awarded remission of sentence on the grounds of performance at work, at training, during educational and rehabilitation programs and the offenders’ general overall behaviour. The Remission Board is accountable for deciding on the awarding, forfeiture and awarding back of remission days forfeited of inmates serving a term of more than one month imprisonment. It is also stipulated that remission does not apply to an inmate serving a term of life imprisonment. Moreover, the remission earned shall not exceed one third of the total imprisonment sentence and any period
during which the offender was kept in custody prior to conviction for the offence for which he/she was incarcerated. Remission may be forfeited in cases such as causing disturbance within the prison, testing positive for illegal substances, attempting to escape from prison and/or drug possession, amongst others. Inmates who infringe prison regulations on three instances will not be awarded back any remission days forfeited. Finally, the Act also stipulates that inmates awarded remission may be required to fulfil conditions as may be specified by the Board. Such conditions may consist of following rehabilitation and/or restorative justice programmes and/or the performance of community work (Restorative Justice Act, 2012, articles 22-24). The system of remission is the same for both adult and young inmates.
2. Conditions of Imprisonment

Admission

Upon admission, the child is first taken to the admission office where the general information and other legal details are collected. A photo of the child is also taken for records purposes. Following that, the child is taken for the medical check-up. A very basic check-up is carried out and a urine sample is collected in order to test for prior drug misuse. This information is logged in the medical file and is accessed only by the medical personnel. Following this check-up, the child is accompanied to the section in which children and young adults under the age of 21 years are housed. There, the child is explained the procedures of the section and contact is made with the parents or legal guardians. On the first visit, the parents are then asked to sign a form authorizing the prison authorities to administer medical treatment if necessary, and also entitling the person in charge of the section to authorize medical treatment and/or hospitalization especially in cases of medical emergencies. In all cases, the parents are contacted right away just the same.

Allocation and accommodation

At present, CoRRS is not located in dedicated premises specifically built for children and young persons in detention. This presents some opportunities as well as obstacles. The structure of the section looks like an old small school, with big windows and classrooms surrounding a small central courtyard. This environment has psychologically helped the inmates because they feel that they are not in a prison. On the other hand, the fact that the current premises have two dormitories of ten inmates each keeps creating problems relating mainly to privacy. The inmates do not have enough space as a single cell would afford, and they have to display their pictures in front of other inmates with whom they might not have a good relationship. Additionally, sharing dorms with inmates coming from different cultures and with different standards of personal hygiene has also at times been a cause of concern.
In terms of accessibility, the current premises are difficult to reach if one does not drive. In order to overcome this problem, the officers hand out a paper to the children explaining the bus routes to take, and on which bus stops to stop. Then two officers take the service car and pick the relatives from the last bus stage. Relatives are also provided with the number of the division so that if something happens to them or they get lost on the way, they can contact the section immediately. In this way, the visit of the inmate with the parents is always secured.

**Hygiene, clothing and bedding**

All residents have access to their own personal clothing which they can place in designated lockers. These lockers and bed-side tables all have locks with keys that are kept by the inmates themselves. When there are inmates who do not have access to their own personal clothing (such as children who have come from refugee centers), then the prison administration seeks assistance from NGOs that offer services to the inmates, such as Prison Fellowship and Mid-Dlam Ghad-Dawl.

All inmates are required to wash on a daily basis, and they can wash their clothes two days a week. Inmates have also access to their own personal and clothes detergents, but the facility also provides a certain amount of soap for free so that inmates can use in the washing machine. Personal hygiene items such as body soap and shampoos can also be bought from the inmates’ tuck-shop.

**Health and nutrition**

All residents are reviewed as frequently as required by the medical and psychiatric professionals. A nurse is available on the premises from 07:00hrs till 20:30hrs and all medication is administered by these nurses in the presence of officers. Moreover, whenever an inmate needs to see a doctor, the nurses call the medical practitioner allocated for the section and he comes and sees them upon request. However, when inmates when to see a psychiatrist, the referral is made through the doctor, not the nurse.
In respect of the diet that is on offer at the section, all inmates get to eat a breakfast (sandwiches and sometimes an egg, coffee and tea), lunch and dinner. All religious or nutritional requirements are respected, and at times, special food is provided also to inmates who are following special diets because of their training regime. In fact, all menus of the section are approved by the medical practitioner, and guidance is sought by the same in case of special dietary requirements.

As a final note in respect to the medical provision in the division, whenever there are inmates who are diabetic or who are on a methadone reduction regime, they are provided with all the medical attention needed in order to ensure that their health is safeguarded.

**Legal advice and information**

All inmates have access to legal aide, which is secured through court proceedings usually during the first court summons. Additionally, children who are refugees fall under a care order, which means that they have also the assistance of a social worker that follows them before, during and also after they are released from the correctional facility.

**Contact with the outside world**

Convicted children are allowed 90 minutes of contact with family and friends once a week. If still pending trial, children have additional 3 no-contact visits of 15 minutes each per week. All inmates have access to half an hour of phone calls every day, save when there are extraordinary circumstances in which children are allowed more calls. Inmates are also allowed to write and receive one letter a week. This does not include birthday cards or other such celebratory cards during other specific times of the year, such as during Christmas.
All children at CoRRS can purchase any newspaper and they have access to all news available on the cable TV in the common room. Additionally, children can also have their own personal TV which has to be kept on their bedside table. No inmate is allowed internet access.

All children are subject to the prison leave regulations that are available for all the correctional facility. Special leave on compassionate grounds is also available, and this covers all family related occasions in which there is a wedding, a baptism or a funeral. However, special regulations and conditions in respect of eligibility and length of prison leave apply.

**Center regime, discipline and punishment**

Section 74 of the Prison Regulations 1995, details the offences against discipline that an inmate can commit. Any such offences are reported by correctional staff in an appropriate form, detailing the time, date and details of the disciplinary infringement. A note notifying the inmate of the details of the report is signed by the reporting officer and the inmate, and then attached to each report. A report without such note cannot proceed to the disciplinary board.

The disciplinary board is composed of 3 high ranking officers, one of which is the person in charge of CoRRS. The report is read and the inmate is asked his version of facts. If needs be, the reporting officer is also called to the sitting. Following this, the disciplinary board agrees on a sanction which can range from acquittal of charges to loss of privileges, cell confinement and loss of remission. When the disciplinary punishment is read out to the inmate, and he has lost more than 28 days remission on any one charge, then he can appeal from the sentence. In such cases, the punishment is postponed and the case is brought forward in front of the Appeals Tribunal which is a separate Board made up of people with a legal background.

No inmate at CoRRS is kept for more than 3 days in constant isolation (this meaning they have 1 hour of recreation time out of their cell each day). Records are kept not only of the disciplinary infringement committed, and the punishment received, but also of the dates in which the punishment was effected.
Education, exercise and recreation

Given the lack of outdoor recreational space at the new section, inmates are allowed at least one hour of yard time each day. When the day’s schedule permits, inmates are allowed more yard time. Inmates have also access to the indoor gym and common room, the latter of which is equipped with a billiard table and table soccer.

In terms of educational provision, efforts are being directed at providing inmates not only with formal educational opportunities based on expressed needs, but also with non-formal educational opportunities such as music and art classes.

Freedom of thought and sexual self-perception

The section has never encountered problems with freedom of expression. As yet, no specific protocols are set in place.

Conscience and religion

Inmates are allowed to follow and practice their religious ideology and normally the section fosters respect towards belief systems that are different from the mainstream religion. The majority of the current inmates are currently Muslim or Roman Catholic, but we also had inmates who were Jehovah Witnesses. The section has only forbidden the freedom of expression of one resident who claimed to be a Satanist.

Minors’ and young adults’ property

Inmates are allowed to bring in a variety of personal items which they can use whilst at CoRRS. These include clothes, books, and electronic equipment such as a TV, DVD player and PlayStation. Inmates can also bring in a laptop for educational purposes. Inmates are also guided
Following admission, inmates can purchase their own foodstuff, cigarettes/tobacco and personal hygiene items. Every week they are handed out a list of items supplied at the tuck-shop and also a statement of the balance they have in their account. In this way, they can purchase items and have them delivered to the section the next day. These items are meant to be for one’s personal use, but if an inmate wants to give or borrow something to/from another inmate, authorization from the correctional staff has to be granted. Kindly note that finding items registered on one inmate, in possession of another inmate, without the proper authorization will lead to a disciplinary infringement.

**Release of minors**

The release protocol from the correctional facility is the same for all inmates. However, in the case of children and young adults, some children do not have a home to go to or cannot go back to their former place of residence. In this respect, upon admission, social workers from CCF as well as social workers from the local social support agencies, work together in order to ascertain the best placement of the inmate upon release. Many times, the courts are also party to these arrangements so that even the court sentences reflect the best interests of the child.

In respect of drug rehabilitation programmes, CCF has specific protocols in place that ensure that inmates with a drug problem are sent to rehab following a series of assessments carried out by professional staff. These assessments are discussed within a multidisciplinary board made up also of representatives from the different available programmes. Thus a thorough understanding of the needs of the inmate even within the rehabilitation setting is garnered, and decisions are then taken in light of this knowledge.

**Foreign nationals and ethnic minorities**

Currently, around 60 per cent of juvenile inmates are foreign nationals, consisting of Sub-
Saharan immigrants and one Libyan national. The majority of them have been incarcerated because of crimes related to riots and other disturbances in detention centers. They are not treated any differently from Maltese inmates, and are not discriminated against in any way. They have support from NGO’s such as the JRS (Jesuit Refugee Services) and AWAS (Agency for the Welfare of Asylum Seekers), which offer legal and psychological support. There is an issue with a number of minors (under 16) who are under a care order and who are currently residing at the CCF.

**Order, security, weapons, use of force, searching, instruments of restraint and controls**

No correctional officer, except the special squad, is allowed to carry any weapons. Protocols outlining the use of arms by the squad team are in place. Correctional officers are trained to use the minimum force needed to restrain inmates, especially when they are running the risk of hurting themselves or others.

As a measure of security, correctional officers at CoRRS run strip searches on all inmates who have for some reason or other been out of the division (for example, they have been to court, or to hospital for some check-up). Otherwise, the norm is to run rub-down searches on the inmates. Even visitors coming in to see their relatives at CoRRS are run through a pat-down search, and on special occasions, when we suspect that they might be trying to smuggle something in that is against the rules, then a strip search is carried out on the suspect. In such an instance, two officers of the same sex as the person being searched, have to be present for the search.

**Requests and complaints**

At CoRRs all inmates are free to approach the management or the officers with their complaints. However if they want to take their complaints a step further, they can ask for the Director of Correctional Services or else for the representatives of the Prison Board of Visitors, who are an independent board reporting directly to the ministry.
Management and staff

CoRRS is managed by one officer who has studied psychology, probation studies and management. However, the officers are as yet untrained in matters specifically relating to young offenders. They have only undergone the initial training provided to all trainees upon recruitment.

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