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Towards a Robust Human Rights & Equality Framework: Scoping Consultation

To whom it may concern,

Herewith, please find a brief contribution to the call for consultation in relation to a Human Rights and Equality Framework. I acknowledge that the scope of this consultation is to seek opinions, and thus the need to have brief points about several complex concepts and issues, but (hopefully) these would help having a more in-depth discussion on the development of a Human Rights and Equality Commission (or similar).

I start by referring to the need to having a clear and critical perspective that I felt should be taken into consideration when developing this framework, and then briefly attempt to mention a few areas that, in my opinion, require urgent recognition and protection.

Please note that I am submitting this document in my personal capacity.

Perspective and approach

The Paris Principles outline the framework within which a national human rights institution (NHRI) should operate, laying the minimum conditions for an NHRI.

However, this framework needs to be informed by guiding political and legal principles that would not only allow the new framework to promote and protect human rights, to act independently from the Government, and to implement operational aspects of the new Human Rights and Equality Commission (HREC). More importantly, social, political, legal and cultural principles should be defined and established as part of the new Framework's strategic approach. Identifying gaps in human rights protection and promotion is important, yet it is the guiding perspective that will eventually influence the outcome of this Commission's work.¹

I believe in the possibility and the importance of incorporating a critical perspective into the strategies adopted by the new Commission so for example, critical assessments of any 'progressive political or legal projects' should be welcome.² It is my belief that human rights and equality strategies are

¹ I use "Framework" and "Commission" interchangeably in this document to refer to the new entity that will

² I take Davina Cooper's perspective on the term "progressive" and use "progressive" and "radical" interchangeably (in my work) to refer to a left legal practice that displays a commitment to transforming normative and modernist ways of knowing and being in and through politics, law and other practices. Progressive and radical projects are those, as Cooper writes, that "transform key institutions, structures and practices in pursuit of counter-norms sutured to a more equal or, to the extent this differs, a less hierarchical society" (p.9).

Cooper, Davina. (2004). *Challenging diversity: Rethinking equality and the value of difference*. Cambridge: Cambridge University Press.

themselves ‘discursive’ and productive sites of knowledge, and therefore those involved must continually be open to criticism of the form, content and potential effects of their methods (Karaian, 2009)³.

Due to historical and cultural contexts, political movements developed and evolved at different paces, and this is no different in Malta. This combined with other hierarchies of privilege and power led to creating hierarchies of differences and inequalities.

Back in 1990, Kimberle Crenshaw challenged legal analysis and offered a framework of “intersectionalities” that suggested a link between sexism and racism, and more factors such as class. The ‘**intersectional approach**’ has been developed since then and several human rights and equality organisations have been taking this perspective to approach systems and structures of inequalities. An intersectional approach argues that our unique lived experiences make for cumulative, hybrid and extraordinary oppression, and this cannot be tackled if it is approached by looking at single axes of inequality. This is exactly what has been happening in many countries, including Malta, hence my recommendation to adopt such an intersectional approach for this renewed Commission. We looked at gender on its own, disability on its own, sexual orientation on its own, etc. and as a result, we ended up with a hierarchy of “discrimination grounds”, with each ground fighting for its space to be seen and heard. We need to level this situation, treating and promoting all human rights equally and I believe that such a structure would help in doing so. An intersectional approach would also allow interdisciplinary approaches to human rights and equality, by not limited the analysis and practices to the legal aspects only. Limiting the monitoring of human rights and equality to a legal analysis would limit the scope and outcome of the Commission’s work too.

For example, we might have increased protections and promoted women’s rights yet not so much has been said and done regarding women with disability, or lesbians with disability, or black lesbians with disability, or LGBT people living in poverty, and so on and so forth. The intersectionalities are infinite and, therefore, such unique complexities require an approach that addresses rather than dismissing them.

We need a framework that moves away from a ‘politics of separatism’ to a ‘politics of coalitions’. Separating ‘grounds’ and/or ‘issues’ have produced essentialist structures that “force us into unsatisfactory choices that we need not make” (Phelan, 1997)⁴, and these include non-representational and unrealistic initiatives and legal arguments. The new/revised Framework should reject this separatism; one that acknowledges the fundamental and permanent differences but makes common action impossible, and thus should be avoided (Anzaldúa,

³ Karaian, Lara. (2009). The troubled relationship of feminist and queer legal theory to strategic essentialism: Theory/praxis, queer porn and Canadian anti-discrimination law. In Fineman, Martha Albertson, Jack E. Jackson and Adam P. Romero. (Eds.). *Feminist and Queer Legal Theory: Intimate encounters, uncomfortable conversations*. Surrey and Burlington, VT: Ashgate Publishing, pp. 375-394.

⁴ Phelan, Shane. (1997). *Playing with fire: Queer politics, queer theories*. New York: Routledge.

1990)⁵. Some have argued that those in favour of such ‘political separatism’ should focus on the need for a moment of separation to build and reinforce threatened identities. Ultimately, these separatisms should not be treated as the final solution, but rather as part of a movement toward general social change.

I acknowledge that such essential identities are embedded in laws, however I can see that the guiding political perspective could help increase our understanding of these same concepts and identities, that would consequently help broaden the concept of equality within Maltese law. It would also help with increasing the effectiveness of such a framework from a strategic point of view, and in a context where resources may be limited.

Consultation Questions

Do you think that human rights and equality are sufficiently protected and promoted in Malta? If not:

Despite advances in certain areas of human rights protections, sections of the population and/or several human rights issues are still either not adequately recognised and protected, or simply not recognised by law at all. The points below are not exhaustive but illustrate some of the most urgent issues that we need to address in this country.

Which human rights do you believe need further protection and promotion? How can Malta better protect and promote human rights and equality overall?

- a. **Equality and Anti-discrimination legislation** that is intersectional and inclusive.
- b. **Sexual and reproductive rights**, especially in relation to women and girls. The lack of discussion about sexual and reproductive rights is a grave concern not only for women but for all; the silence and invisibility of discourses that are positive and inclusive of sexual and reproductive rights is conducive to endless ‘social problems’, including increase in STIs and incidence of HIV/AIDS. There is a need for building the capacity through dissemination of information, trainings, seminars and sensitisation relation to sexual and reproductive rights and related issues.
- c. Recognition and legal protection of **sex workers**. Using an intersectional approach would mean that we look at the complexities and multi-dimensionality of sex workers’ lives, and not simply rush to adopt models – such as the so-called Swedish model - that put sex workers’ lives in jeopardy.
- d. **Transgender / Trans* people**: with the aim to stop trans* pathologisation, priority should be given to the Gender Identity Law that would allow trans people to change their identification documents without the requirement of

⁵ Anzaldúa, Gloria. (Ed.) (1990). *Making face, making soul/hacienda caras: Creative and critical perspectives by feminists of color*. San Francisco: Aunt Lute Books.

surgical procedure and without the need to be assessed. Healthcare services, educational systems and correctional facilities should also be inclusive and accessible to the needs of trans* people.

- e. **Intersex / Inter* people:** with the aim to stop the pathologisation and medicalization of inter* people, there is an urgent need to address and stop the medical treatments and mutilating surgeries performed on intersex children and adolescents. These treatments are breaching several human rights and continue to reinforce that intersex is a disorder.
 - i. Increase the time limit for registrations of a birth, which currently adds pressure on parents and doctors to take rushed decisions to assign a sex to a newborn.
 - ii. Have anti-discrimination legislation that is inclusive of inter* people.
 - iii. Similar to the previous point, healthcare services should work towards becoming inclusive and recognise that intersex people have a right to their bodily autonomy and integrity.
 - iv. Work on the recognition of trans* and inter* people should also aim to reach out and include trans* and inter* people in the Commission's work.
- f. Further work that would allow the possibility of having a third option of a **'gender neutral' marker** on our identification documents for those adults who do not identify or do not wish to identify with either gender.
- g. Increased recognition and protection of **migrants**, migrant workers and their families and migrant communities in Malta; whilst acknowledging the complexities of migrants' lives in different spheres of their lives.
- h. **Racial** injustices and inequalities should not be limited to a laws and policies on migration and integration.
- i. Address **social class (and racial)** inequalities or include social class in the matrix of analysis when discussing human rights and equality. We rarely discuss class and its impact on cultural values, priorities, funding and capacity building. Class justice intersects with any human rights and equality issue.
- j. Maximising the potential of a Human Rights and Equality Framework by having a **National Action Plan** that strategically prioritises its work, and ensuring that there is a specific budget allocated to it.
- k. Ensuring the availability and accessibility of **human rights education (HRE)**, including education on equality issues from a human rights perspective, to everyone throughout the educational system. HRE should be made obligatory in teacher training (at University), to public service officers at all levels (within the Education Directorates) and all schoolteachers. Whilst the National Curriculum Framework includes some aspects of equality and human rights issues, this is not applied systematically across all the system and does not include HRE in its entirety.

1. Working on a **coalitional basis** with civil society groups, as opposed to an identity-based (that reinforces minoritarian views about human rights and equality issues).

Are there any models that you would propose that government should consider looking at in terms of legislation, institutional frameworks or both? If yes, what is especially good about such models?

I believe there are NHRI models that Malta can aspire to have, however I would be cautious about reproducing more of the same (as opposed to developing a structure that reflects the needs of and is effective in the local context whilst abiding with the established principles, such as the Paris Principles).

The new Human Rights and Equality Commission needs to look into developing intersectional frameworks with alternative approaches to legislation and policy change: an approach that attempts to understand how multiple forces work together and interact to reinforce conditions of inequality and social exclusion.

An intersectional discourse would allow this Commission to approach human rights and equality issues from beyond the human rights discourse and the legal approach only. Such approach would project the Commission as a responsibility-sharing entity with value-added actions when it comes to bringing about social justice in Malta.

In conclusion, Malta can take a larger role in geopolitical matters to challenge one-dimensional views about the country. Moreover, when we don't talk enough about colonisation, occupation, globalisation, etc. we are failing to insert a human rights perspective into new realms and we are not building a diverse idea and agenda of what it means to be free and equal. That reinforces privileged positions, where most appear more middle class, cisgender, white and able-bodied. We are not directly addressing religion in a public way and offering alternative voices to that authority. We talk about religion so little when in many instances, it is ONLY the religious voice that stood in many people's way to be recognised and be treated equally. I believe Malta is in a position to change things, locally and abroad too. A Human Rights and Equality Commission that works from an intersectional approach and a coalitional basis would create a stronger position on human rights and equality issues in Malta but also establishes a voice to Malta as a leader in human rights matters.

It goes unsaid that much more can be said on this, and I look forward to seeing a human rights and equality framework that is effective, inclusive and accessible to us all.

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