



GOVERNMENT OF MALTA

*Towards a Robust Human Rights and Equality  
Framework*

Submissions Report

*September 2014*

*Ministry for Social Dialogue, Consumer Affairs and Civil Liberties  
Barriera Wharf, Valletta VLT 1971, Malta*

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# Executive Summary

## Introduction and overview

This document provides an overview of the submissions received from this consultation and sets the Government's next steps on this matter.

### *A brief introduction about the subject*

The Maltese government was elected with a promise to strengthen the human rights and equality framework and to set up an adequate institutional mechanism to enforce it.

Ten years ago, the [National Commission for the Promotion of Equality](#) (NCPE) was set up following the adoption of the [Equality for Men and Women Act](#), which transposed EU gender equality legislation into the domestic legal framework.

Over the years, the NCPE's remit was widened through amendments to that Act. Amongst the improvements, various grounds of anti-discrimination were added to the NCPE's remit. Nonetheless, the said improvements did not go far enough. Additionally, the Commission's powers and resources remained limited, and thus its impact was contained.

It is the government's belief that both the current legislative and infrastructural frameworks require reinforcement, as they fall short of providing Malta with the human rights and equality mechanism that it deserves. We believe that we should have robust human rights and equality legislation, and an equally strong institution that enforces such legislation that is in conformity both with the United Nations' model of a national human rights institution (NHRI) laid out in the [Paris Principles](#), and European Union's equality body model laid out in EU equality directives, namely the [Race Equality Directive](#), the [Gender Goods and Services Directive](#) and the [Gender 'Recast' Directive](#).

### *Launch of public consultation and its objectives*

On 24<sup>th</sup> February 2014, an online consultation was launched by the Government on [www.msdc.gov.mt/humanrights](http://www.msdc.gov.mt/humanrights) with the aim to collect input from the general public, civil society organisations, trade unions, business organisations, political parties, governmental institutions and all others that would like to contribute towards this process.

### *Consultation questions*

This consultation sought views by asking the following questions:

- Do you think that human rights and equality are sufficiently protected and promoted in Malta,
- If not,:
  - Which human rights do you believe need further protection and promotion?
  - How can Malta better protect and promote human rights and equality overall?
  - 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?

## Responses to the consultation and process used to seek stakeholder views

### *Public consultation timeframe and methods used*

The online consultation was open until 28<sup>th</sup> March 2014 following a wide publicity campaign on printed and online media. The consultation document and the reply form were available online, and responses were accepted electronically and on paper. In total the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC) received 15 submissions from individuals, civil society organisations, academic institutions, national and international institutions. A list of respondents can be found at Annex A.

### *Meetings with Stakeholders*

As part of the consultation process, seven international meetings were held with representatives of the Council of Europe Commissioner of Human Rights; the European Union Agency for Fundamental Rights; the European Network of National Human Rights Institutions; the European Network of Equality Bodies; the Danish Institute for Human Rights; the Netherlands Institute for Human Rights; and the Swedish Equality Ombudsman. Locally, meetings were also held with representatives of the Office of the Ombudsman; the Human Rights Programme (Faculty of Laws); the Department of Gender Studies (Faculty for Social Wellbeing).

The following section is a summary of the consultation responses received. We would like to thank all those who took the time to respond to the consultation and participate in stakeholder meetings around the consultation exercise.

## Summary of responses

### *Results of feedback received*

Not one organisation or individual stated that human rights and equality are sufficiently protected at the current moment, and all participants in this exercise made various proposals for improvement.

The respondents identified several gaps in their submissions regarding human rights protection and implementation. Submissions also included recommendations that address these gaps. In summary they consisted of the following:

- i. Institutional changes through the setting up of an NHRI and other institutional committees and arrangements;
- ii. Constitutional amendments;
- iii. Legislative amendments; and
- iv. Other measures (such as human rights education; access to information and an effective complaints mechanism; measures that ensure greater equality on a number of grounds; human rights legislation codified in one document; an Equality Act; regular training and more).

A common recommendation in most of the submissions referred to the need to set up an independent National Human Rights Institution (NHRI) in accordance with the Paris Principles, which has the mandate, resources and authority to act as Malta's focal point on human rights issues.

### *Setup of the Human Rights and Equality Commission (HREC) – Further details*

Having reviewed the submissions on the setting up of a Human Rights and Equality Commission, the following provides an overview of the feedback received.

Alan Miller, Chair of European Network of National Human Rights Institutions (ENNHRI) stressed the importance to putting into place arrangements that are most likely to be in full compliance with the Paris Principles, when planning for the establishment of an NHRI by highlighting the following requirements:

1. A broad mandate, both to promote and protect human rights, set out in the constitution or primary legislation;
2. Formal and functional independence from government, including for the spending of its budget;
3. A clear and transparent selection and appointment process for members, who should be representative of society; and
4. Adequate resources to carry out its mandate.

Consultation submissions also pointed out that the NHRI should engage with the UN system, and thus would need to be adequately accredited by the International Co-ordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights.

The structure should have a uniform and efficient complaints mechanism for all persons that cover all spheres of life, and it should be empowered to adopt various courses of action dependent of several elements. The NHRI should have the mandate to provide technical input to the Government, particularly in the contexts of law or policy-making.

Reference is made to both the Netherlands Institute of Human Rights and the Danish Institute for Human Rights as models of best practice.

The HREC should raise awareness to encourage efforts to ensure that national discourses adopted by political figures are respectful of core human rights values.

Public awareness of all rights: There is a lack of public awareness as to what rights individuals actually enjoy, where to find help if one believes their rights to have been breached and the repercussions in the event that a human rights action proves unsuccessful. Thus setting up of the HREC and the inclusion of human rights education should address this gap.

International and institutional functions: Human rights elements are at times absent from bilateral or multilateral discussions. This is of particular relevance in those diplomatic contexts involving states the behaviour of which, either at home and/or overseas involved the repeated and consistent denial of basic fundamental freedoms either with regard to their entire nations or to specific minority groups. There is a need to establish a public, inclusive and ongoing process of consultation with civil society and stakeholders on Malta's relationship with the UN treaty monitoring bodies and other human rights mechanisms, such as the UPR.

Human Rights Education: A number of submissions recommended or made reference to human rights education, as an effective agent of moral education. Human rights should be mainstreamed into all educational curricula at any level: issues relating to human rights, such as Universal Declaration of Human Rights, diversity, equality, human dignity and human rights development, may be highlighted through different subjects, in an age-appropriate manner. Efforts should be made to carry out capacity-building exercises in human rights and related policy, financial, legal and operational implications for persons working within the public service/sector to ensure confirming law and policy formulation.

The Paris Principles frame minimum standards for an NHRI. However, such framework must be informed by 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 HREC but also defines and establish social, political, legal and cultural principles as part of the new Commission's strategic approach. An intersectional approach acknowledges that there are systems and structures of inequalities and rather than approaching grounds of discrimination individually and independently, such an approach allows a multi-faceted and interdisciplinary approach to human rights.

The HREC needs to look at developing intersectional frameworks with alternative approaches to legislation and policy change, thus allowing the HREC to approach human rights and equality from beyond the human rights discourse and the legal approach. Such approach would make the HREC a responsibility-sharing entity with value-added actions when it comes to bringing about social justice in Malta.

## Implementation

The Ministry for Social Dialogue, Consumer Affairs and Civil Liberties intend to launch a White Paper on the setting up of a Human Rights and Equality Commission on 10 December 2014.

Recommendations from the White Paper and the ensuing consultation will be then considered to further develop the required legislative changes towards the setting up of the Human Rights and Equality Commission and Equality Act.

Subject to Parliamentary approval, we intend to implement these decisions within the first half of 2015, with the aim of any legislative changes coming into force during the second half of 2015.

## Contact Details

If you have any questions regarding this response, please contact [humanrights.msdc@gov.mt](mailto:humanrights.msdc@gov.mt)

## Detailed overview of responses

The following section provide a brief summary of the initial proposals and the responses received, before setting out the final decision that has been made.

### **Overview and Main Outcomes from the Consultation Submissions**

The respondents identified several gaps in their submissions regarding human rights protection and implementation. Submissions also included recommendations that address these gaps. In summary they consisted of the following:

- i. Institutional changes through the setting up of an NHRI and other institutional committees and arrangements;
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### **Main Outcomes from the Consultation Submissions**

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The detailed identified issues were grouped in clusters as follows:

#### **1. Need for Harmonisation and Enhancement of Equality Legislation**

- i. Limited protection against discrimination due to the fragmentation in the manner Malta has chosen to approach anti-discrimination has led to a situation where the current framework is deficient in various areas.
- ii. The current framework does not cover all the grounds of discrimination in all sectors of activity, leaving groups of people unprotected from discrimination, harassment and related offences or leaving specific areas unregulated in this regard.
- iii. The levels of protection afforded in the legal norms vary in accordance with the nature, effectiveness and procedures of the redress mechanisms established within the norms. The equality bodies adopt non-identical definitions of the term 'discrimination', leading to the incongruous situation of decisions based on non-harmonised approaches to the term itself. Lack of harmonisation also results in lack of clarity as to which equality body or procedure is competent to deal with specific issues.
- iv. A single codified Act on Equality that would provide for the promotion of equality.

## **2. Protection and Promotion of the Human Rights of Different Groups in Society**

- i. Rights of children;
- ii. Rights of persons with disabilities;
- iii. Rights of LGBTI persons, including:
  - a. Further recognition of LGBTI families to include equal access to reproductive health services (irrespective of the individuals' sexual orientation and gender identity);
  - b. Gender identity: taking all necessary measures to respect and recognise each person's gender identity, and ensure access to health services for trans persons;
  - c. Education and young people: develop policies to protect LGBTI students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion (including bullying and harassment). Trans and intersex students are recognised and treated respectfully. Education methods, curricula and resources should reflect diversity of genders and sexualities; and
  - d. Employment and access to goods and services equality: mainstreaming equality in public service (including LGBTI equality). Promotion of equality in employment and services;
- iv. Rights of migrants and asylum-seekers
  - a. Detention Policy: to review the policy of detention ensuring that Malta's policy and practice is in compliance with international law standards and Malta's human rights obligations;
  - b. Statelessness: to develop a specific statelessness determination procedure and a protection status for stateless persons;
  - c. Right to fair trial and/or hearing: absence of fair trial and/or hearing when applying for refugee status in Malta; no access to information by applicants during the assessment procedures; broad categories at the discretion of authorities; no duty to provide reasons for refusal and no basis for appeal; no access to free legal aid. These require the need to amend relevant legislation so asylum-seekers are provided with more information and assisted in the assessment procedures with decisions being subjected to judicial review.

## **3. Ensuring Equality by Including 'New' Grounds in Equality Legislation**

- i. Gender and sexuality, which includes the grounds of gender, sex, sexual orientation, gender identity, gender expression and sex characteristics.
  - a. Gender equality: discrepancies between the treatment of women and men at law still linger in the national legal system, Malta still has reservations to CEDAW's Optional Protocol and there's lack of short-term protection orders in case of domestic violence. A number of legal amendments are required and CEDAW should be fully incorporated in domestic legislation.
- ii. Race and ethnicity
- iii. Age
- iv. Disability
- v. Nationality
- vi. Class: address social class inequalities or include social class in the matrix of analysis when discussing human rights and equality.
- vii. Language

- a. To consider including language as one of the protection grounds, and as a consequence include language as a ground under the complaints mechanism;
- b. To further develop the pedagogy in the national language with the aim to help and increase children's learning experience;
- c. To invest for an increase in the use of the Lingwa tas-Sinjali Maltija (Maltese Sign Language) in official meetings and broadcasting channels for deaf and hard of hearing persons;
- d. To consider including more languages in relevant public communications to help with the integration of migrant and foreign communities.

#### **4. Effectiveness of Human Rights Action**

It was suggested that a Human Rights Parliamentary Committee be set up modelled on the UK Joint Select Committee on Human Rights and tasked with scrutinizing proposed legislation to ensure conformity with human rights and fundamental freedoms; monitoring judgments noting ECtHR judgments given against Malta and advising House of Representatives; noting ECtHR judgments against other States which may affect the national legal system and advising House of Representatives accordingly.

#### **5. Adoption of Relevant Human Rights Strategies**

- i. Integration: to develop, adopt and implement a national integration policy working towards meaningful integration of all persons in all spheres of life in Malta.
- ii. Human Rights: to develop a National Action Plan on human rights and democracy, prioritising the HREC work.

#### **6. Enhanced Dialogue with Civil Society**

Strengthen civil society participation in government's processes regarding policy formulation and service provision. There is a need to working on a coalitional basis with civil society groups, as opposed to identity-based groups.

#### **7. Other Recommendations**

- i. Human Trafficking: to amend existing legislation making support and protection available, accessible and not conditional on the will and ability of the trafficked person to collaborate with the authorities. To make any legal amendments and given any policy direction to ensure that trafficked persons are not punished for acts committed as a result of their having been trafficked.
- ii. Right to Effective Remedy: despite having adopted established a number of judicial, semi- or quasi-judicial and administrative entities with mandates to provide effective remedies to persons claiming violations of their rights, gaps within many of these entities result in these remedies not actually being effective in terms of the requirements of human rights law.
- iii. Sex Worker Rights: recognition and legal protection of sex workers by using an intersectional approach that looks at the complexities and multi-dimensionality of sex workers' lives.
- iv. Sexual Health and Reproductive Health Rights: this was particularly called for in relation to women and girls. The silence and invisibility of discourses that are positive and inclusive of sexual and reproductive health rights is conducive to endless 'social problems', including increase in STIs and incidence of HIV/AIDS. There is a need to build capacity through information, training and sensitisation work.

## Conclusion and way forward

We intend to using the outcomes of this consultation for the following actions:

- Launch of White Paper *Towards the Establishment of the Human Rights and Equality Commission*
- Public Consultation on the White Paper
- Report on consultation submissions
- Legislative proposals for a Human Rights and Equality Commission and an Equality Act
- Parliamentary approval of legislative changes

## Annex A: List of respondents

Type of Submission	No. of Submissions	Name
<b>Individuals</b>	<b>5</b>	<ol style="list-style-type: none"> <li>1. Alessandro Giuliano</li> <li>2. Deborah Attard</li> <li>3. Gervais M. Cishahayo</li> <li>4. Joseph Licari</li> <li>5. Ruth Baldacchino</li> </ol>
<b>Civil society organisations</b>	<b>5</b>	<ol style="list-style-type: none"> <li>1. Aditus Foundation, Jesuit Refugee Service Malta, Integra Foundation, SOS Malta, Richmond Foundation</li> <li>2. Il-Kunsill Nazzjonali tal-Ilsien Malti</li> <li>3. Malta Gay Rights Movement</li> <li>4. Malta Girl Guides</li> <li>5. The People for Change Foundation</li> </ol>
<b>Academic institutions</b>	<b>1</b>	<ol style="list-style-type: none"> <li>1. Human Rights Programme, Faculty of Laws, University of Malta</li> </ol>
<b>National institutions</b>	<b>2</b>	<ol style="list-style-type: none"> <li>1. National Commission for the Promotion of Equality (NCPE)</li> <li>2. Office of the Ombudsman<sup>1</sup></li> </ol>
<b>International institutions</b>	<b>2</b>	<ol style="list-style-type: none"> <li>1. European Network of National Human Rights Institutions (ENNHRI)</li> <li>2. United Nations Commissioner for Human Rights (Malta)</li> </ol>

<sup>1</sup> The Office of the Parliamentary Ombudsman. (2013). *The setting up of a National Human Rights Institution*. Valletta: Office of the Ombudsman.