

From: Gervais M. Cishahayo
Sent: 12 December 2014 11:10
To: Human Rights at MSDC
Subject: Re: Your reference:
http://msdc.gov.mt/en/Public_Consultations/MSDC/Documents/Scoping%20Consultation%20HREC%20Final%20EN.pdf

Dear Sir/Madam

I thank you for acknowledging my contribution to the earlier stage of this process. This email is in reply to your recent publication of public call for contributions to the consultation process towards the two legislative initiatives:

1. An *Equality Act* that will aim to meet the highest anti-discrimination and equality standards
2. A *Human Rights and Equality Commission Act* that will set up the Commission.

While so much remain to be done, this is certainly an important step in the right direction and will contribute to bring Malta domestic legislation and practice, inline with EU and international standards in the field of Human Rights.

One of the keys to the success will be the inclusive nature of the input to the process and in particular, the participation of those fringes of the Maltese society that are most vulnerable and likely victims of various forms of discrimination that this long overdue legislation seeks to address.

Above all, this important process ought not, and should not be the subject of the usual political parties controversy.

Consultation Questions

Is the approach proposed by the White Paper suitable in your view?

Yes, this is and ought to be a dynamic ongoing process, and as such it can be refined further.

Why?

The need for an overhaul of the actual NCPE has been long overdue and for the first time, concrete steps seem to be being undertaken to address a serious lacunae in the legislation that has allowed for gross acts of discrimination to go

unaddressed for a long time, so much so that there was a justified negative perception of discrimination being tolerated or even institutionalized.

What is missing?

While the global issue concerned is fairly addressed, the document/process does not clearly identify the physical and moral confines of the protagonists. Thus, it does not map out clearly the roles and extent and depth of levels of involvement of partners in this process.

What needs to be stronger?

The process needs to stress on the inclusive nature and the active participation of individuals and organizations who have been actually involved in the field of fight against discrimination, as well as the past, present and potential victims of various forms of discrimination.

No policy can yield the desired results if the process of its elaboration is done for, but without the genuine active involvement of the very same people that it seeks to address.

Hopefully, the process and the end legislation will address any actual shortcoming to the credit of all those who will be involved in the process. This will certainly contribute to enhance social peace and cohesion, if not in the immediate, but certainly in medium and long terms.

Regards
Gervais M. Cishahayo

On 9 March 2014 at 19:41, Gervais M. Cishahayo <gervais.cishahayo@gmail.com> wrote:

TO: humanrights.msdc@gov.mt

Reference:

http://msdc.gov.mt/en/Public_Consultations/MSDC/Documents/Scoping%20Consultation%20HREC%20Final%20EN.pdf

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

While Malta is by standards classified and recognized as a free and democratic state the protection and promotion of human rights as a pillar of democracy needs attention in so far as some basic rights are concerned for some recognizable categories of Maltese and non-Maltese residents.

a. Which human rights do you believe need further protection and promotion?

UN REFERENCE	United Nations-BASIC HUMAN RIGHT STATEMENT	NEED MORE PROTECTION	NEED MORE PROMOTION
Article 1	Right to Equality	YES	YES
Article 2	Freedom from Discrimination	YES	YES
Article 3	Right to Life, Liberty, Personal Security		
Article 4	Freedom from Slavery		
Article 5	Freedom from Torture and Degrading Treatment		
Article 6	Right to Recognition as a Person before the Law		
Article 7	Right to Equality before the Law	YES	YES
Article 8	Right to Remedy by Competent Tribunal	YES	YES
Article 9	Freedom from Arbitrary Arrest and Exile		
Article 10	Right to Fair Public Hearing	YES	YES
Article 11	Right to be Considered Innocent until Proven Guilty		
Article 12	Freedom from Interference with Privacy, Family, Home and Correspondence		
Article 13	Right to Free Movement in and out of the Country		
Article 14	Right to Asylum in other Countries from Persecution		

Article 15	Right to a Nationality and the Freedom to Change It		
Article 16	Right to Marriage and Family	YES	YES
Article 17	Right to Own Property		
Article 18	Freedom of Belief and Religion		
Article 19	Freedom of Opinion and Information	YES	YES
Article 20	Right of Peaceful Assembly and Association		
Article 21	Right to Participate in Government and in Free Elections	YES	YES
Article 22	Right to Social Security		
Article 23	Right to Desirable Work and to Join Trade Unions	YES	YES
Article 24	Right to Rest and Leisure		
Article 25	Right to Adequate Living Standard	YES	YES
Article 26	Right to Education		
Article 27	Right to Participate in the Cultural Life of Community		
Article 28	Right to a Social Order that Articulates this Document		
Article 29	Community Duties Essential to Free and Full Development		
Article 30	Freedom from State or Personal Interference in the above Rights		

b. How can Malta better protect and promote human rights and equality overall?

Malta can certainly do more with the adoption and implementation of a national policy and framework for implementation, evaluation and reviewing mechanisms and procedures to more effectively promote and protect human rights.

Very often, complaisance towards human abuses is a collective shortcoming tantamount to criminal complicity when people tend to tolerate as acceptable abuses that are committed against other individuals who are not considered or perceived as close enough.

1. Adopt assertive updated legally enforceable rules in line with Malta status as an EU and UN member state.
2. Create an institution with the necessary resources :

- a. Human resources: individuals who are really committed to the respect of human rights and representative of the community at large, especially they must have the trust of those individuals and communities more at risk of human rights abuses ;) and
- b. Authority and means with the powers to investigate and prosecute through legal channels:
 - i. To monitor instances of violations of human rights
 - ii. To receive complaints of individuals and communities victims of human rights abuses
 - iii. To provide effective avenues to challenge and obtain redress that must stress on the promotion of social cohesion by focusing on peaceful resolution and reconciliation rather than the confrontation through:
 1. Mediation chapter (Fair hearings of aggrieved parties and alleged perpetrators)
 2. Legal channels in case of failure of mediation

3. Create mechanisms and procedures to effectively enforce the rules through legal channels

This will contribute to strengthen human rights and thus democracy in Malta.

c. 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?

- **There are no perfect models** when it comes to the protection and promotion of human rights. Notwithstanding the fact that each country has its specific circumstances, for a government, the best way to promote human rights is to protect human rights which are universal and thus indivisible.
- **However Malta needs not to reinvent the wheel:** even though their outcome could be better in the light of events and instances of abuses that seldom filter through the media, **a number of EU countries** (eg. Belgium, The Netherlands, Germany, Scandinavian countries –Sweden, Norway, Finland- etc), with a relatively higher degree of diversity in their social fabric and make up **have more experience with established policy and institutional framework to protect and promote human rights.**
- **The importance of these state sponsored institutions and their contribution to social peace and cohesion is established and recognized by mainstream political organizations and NGOs.** In line with and in addition to the operational national legal frameworks, there is an institutional and legal framework that is clearly defined and articulated in terms of national policy that individuals and institutions can use as reference and recourse in case of violation of human rights.

Best regards,
Gervais CISHAHAYO