

Towards the Establishment of the Human Rights and Equality Commission

UNHCR's submission to the White Paper launched on 10 December 2014 laying out the Maltese Government's approach following the scoping consultation by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties.

10 February 2015

I. Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to provide its comments to the White Paper entitled *“Towards the Establishment of the Human Rights and Equality Commission”* launched on the 10 December 2014.
2. UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees.¹ As set forth in its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.”² UNHCR’s supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 *Convention relating to the Status of Refugees* (“the 1951 Convention”)³ according to which State parties undertake to “co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention.” The same commitment is included in Article II of the 1967 *Protocol relating to the Status of Refugees* (“the 1967 Protocol”).⁴

¹ See UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html>

² *Ibid.*, para. 8(a).

³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>. See also Article 3 of the *Refugees Act* (Chapter 420) of the Laws of Malta, stating that “[t]his Act incorporates the obligations assumed by Malta under the [1951] Convention and its obligations under the [EU] Directives.” Malta acceded to the 1951 Convention on 17 June 1971, and the 1967 *Protocol Relating to the Status of Refugees* on 15 September 1971, subject to declarations and reservations.

⁴ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3ae6b3ae4.html>

3. UNHCR's supervisory responsibility is also reflected in European Union (EU) law, including by way of a general reference to the 1951 Convention in Article 78(1) of the *Treaty on the Functioning of the European Union*, as well as in Declaration 17 to the Treaty of Amsterdam, which provides that “consultations shall be established with the United Nations High Commissioner for Refugees [...] on matters relating to asylum policy”.⁵ Secondary EU legislation also emphasizes the role of UNHCR. UNHCR's supervisory responsibility is specifically articulated in Article 29 of the EU Asylum Procedures Directive⁶, Recital 22 of the EU Qualification Directive⁷ as well as Article 10(3) and 18(2)(b) and (c) of the Reception Conditions Directive.⁸

⁵ European Union: Council of the European Union, *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts*, 10 November 1997, available at: <http://www.refworld.org/docid/51c009ec4.html>

⁶ European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, L180/60, available at: <http://www.refworld.org/docid/51d29b224.html>. Article 29(1)(c) in particular obliges Member States to allow UNHCR “to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.

⁷ European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L 337; December 2011, pp 9-26, available at: <http://www.refworld.org/docid/4f197df02.html>

⁸ European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, L 180/96, available at: <http://www.refworld.org/docid/51d29db54.html>

II. Comments

4. UNHCR welcomes and supports the efforts made by the Government of Malta to further strengthen its human rights and equality framework.
5. UNHCR considers that these new developments will further improve the legal protection framework for refugees and beneficiaries of international protection in Malta.
6. In particular, UNHCR welcomes:
 - The decision to recast the *Equality for Men and Women Act* into an *Equality Act* providing for a general principle of anti-discrimination in all spheres of life, also tackling intersectional discrimination.
 - The decision to establish the Human Rights and Equality Commission with the introduction of a *Human Rights and Equality Commission Act*, which Commission shall have the power to investigate cases and provide binding opinions following the *Equality Act*.
7. UNHCR considers that the new Human Rights and Equality Commission should have the ability to institute legal proceedings in cases where it has identified a breach of human rights and/or fundamental freedoms.
8. UNHCR looks forward to making more detailed submissions on the substance of the two proposed legislative Acts when they are available for comment.