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


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. As set forth in its Statute, UNHCR fulfils its international protection mandate by, inter alia, “promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.” 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”) 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”).

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2 Ibid., para. 8(a).
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”. Secondary EU legislation also emphasizes the role of UNHCR. UNHCR’s supervisory responsibility is specifically articulated in Article 29 of the EU Asylum Procedures Directive, Recital 22 of the EU Qualification Directive as well as Article 10(3) and 18(2)(b) and (c) of the Reception Conditions Directive.

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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.