TOWARDS THE ESTABLISHMENT OF THE HUMAN RIGHTS AND EQUALITY COMMISSION

White Paper

10 December 2014
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White Paper

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BARRIERA WHARF, VALLETTA, MALTA

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FOREWARD

We are very pleased to launch this White Paper on 10 December, International Human Rights Day. This Day brings to attention the *Universal Declaration of Human Rights* as the common standard of achievement for all peoples and all nations.

The process towards the setting up of the Human Rights and Equality Commission fits this goal of enhancing the public’s knowledge on human rights, and providing an institutional tool for their enforcement.

A scoping consultation was launched earlier this year. I thank all those who provided us with their input to this exercise. The breadth of issues raised, and the proposals made, have enriched this process and stimulated a lot of discussion between those who work in this area of policy within the ministry.

We are now presenting a White Paper which has taken into consideration the various contributions.

We look forward to the discussion on the next steps which should ensure that the change we will bring about matches the expectations on the ground.

Hon. Dr. Helena Dalli
Minister for Social Dialogue, Consumer Affairs and Civil Liberties
INTRODUCTION
This Administration has pledged to open society, to celebrate diversity, to recognise the social realities around us, to cherish Maltese identity without discrimination, to ensure equality and respect towards minority groups and above all, to safeguard the fundamental human rights and freedoms of all.\(^1\) Indeed, it was elected on a promise to strengthen the human rights and equality framework, and to set up an adequate institutional mechanism to enforce it.

On 24 February 2014, a Scoping Consultation entitled *Towards a Robust Human Rights and Equality Framework* was launched. The initial consultation clearly laid out government’s vision and its intention to strengthen the human rights and equality framework, while asking a set of questions to the public on how they believe this goal could be enacted.

Human rights and equality in Malta reflect the socio-political changes that Malta, as an independent state, experienced in the past 50 years; and as a member of the European Union for the past 10 years. The ratification of international treaties and conventions, the Constitution and the passing of laws (including the domestic transposition of European Union legislation) illustrate the understanding of human rights and equality, the protections they provide and the freedoms they allow.\(^2\)

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 European Union gender equality legislation into the domestic legal framework. Over the years, this Act was amended and additional grounds of anti-discrimination were added to NCPE’s remit. In spite of this, such amendments do not provide for all aspects of equality protections, while the piecemeal approach with which the amendments have been introduced has allowed for the establishment of a ‘hierarchy of rights’ between different grounds. Furthermore, the Commission’s powers, financial and human resources remained limited, impacting on its effectiveness.

This White Paper is written within this context, thus recognising the shifts that will continue to reinforce and put Malta as a global player when it comes to the

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\(^1\) Government Programme, *Malta Taghna Lkoll*, pp. 69 (Chapter 6)

\(^2\) See Annex 3: *Key Human Rights Conventions and Equality Directives ratified/applicable in Malta*
protections and freedoms enjoyed under established international human rights standards.

This White Paper proposes a legal framework that aims to address identified gaps in a bid to ensure that Malta has an internationally accredited Human Rights and Equality Commission that meets the obligations of both human rights standards laid out in the Paris Principles and subsequent documents, and EU equality legislation.

It is this 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. Government is thus proposing that Malta should have robust human rights and equality legislation, and an equally strong authority that enforces such legislation in conformity with the:

i. United Nations’ model of a national human rights institution (NHRI) as laid out in the Paris Principles (Annex 1) and further elaborated in the Belgrade Principles (Annex 2); and


In addition to the above, the Budget Speech 2015 announced that “[a] Directorate for Integration will also be set up to develop strategies and programmes that reach Government targets with regard to civil liberties, equality, anti-discrimination and integration of immigrants.” This development will ensure institutional enforcement through the setting up of a governmental human rights and equality arm along with the independent structure (i.e. the Human Rights and Equality Commission).

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3 Budget Document 2015, pp. 61; Budget Speech 2015, pp. 155
The setting up of the Human Rights and Equality Commission takes into consideration the legal context, social needs and aspirations of Malta. Inspired by international instruments and mechanisms, the Commission will ensure that the work carried out addresses Malta’s needs when it comes to human rights, democracy and the rule of law, and where possible contributes to global and regional human rights developments.
This section provides a brief overview of the relevant recommendations received from treaty-based bodies that Malta is party to, namely the Universal Periodic Review (UPR) and the International Covenant on Civil and Political Rights (ICCPR) Periodic Report.

**Universal Periodic Review (UPR): 2013**

The UPR is a process of the UN Human Rights Council, which allows reviews of the human rights records of all UN Member States. The UPR provides an opportunity for Member States to declare actions taken to improve the human rights situation in the country, and also challenges and encourages other Member States to do more to protect the human rights of all.

Recommendations received:

i. To establish a National Human Rights Institution in full conformity with the Paris Principles;

ii. To intensify efforts against all forms of racism, racial discrimination, xenophobia and other forms of intolerance;

iii. To make further progress in strengthening the legislative and institutional framework to enhance the rights of LGBT persons and to combat discrimination against them; and

iv. To continue efforts towards promoting equal opportunities between men and women.\(^4\)

**ICCPR Periodic Report: 2014**

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

In its concluding observations on the second ICCPR periodic report of Malta, the Human Rights Committee recommends:

"The State party should establish a national human rights institution with a broad human rights mandate in full compliance with the Paris Principles."\(^5\)


OVERVIEW OF CURRENT MALTESE LEGISLATION TO COMBAT DISCRIMINATION

This section provides an overview of the key anti-discrimination provisions that are found in Maltese law.
Discrimination is defined by Article 45(3) of the Constitution of Malta as follows:

“the expression ‘discriminatory’ means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity whereby persons of such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.

The same constitutional provision further provides that no law shall be enacted which is discriminatory either in itself or in its effect. By virtue of subsection (4) of the same provision, the guarantee against non-discriminatory laws is then curtailed to the effect that it is specifically excluded in the following circumstances:

i. For the appropriation of public revenues and public funds;  
ii. With respect to persons who are not citizens of Malta;  
iii. With respect to adoption, marriage, dissolution of marriage, burial, devolution of property on death or any matter of personal law, but not in cases where the discrimination is wholly attributable to sex;  
iv. With respect to persons subjected to any disability or restriction or accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to such persons or to any other provision of the Constitution, is reasonably justified in a democratic society; and  
v. For authorising the taking of measures during a period of public emergency which are reasonably justified for the purpose of dealing with that situation.

Further to the above Constitutional provisions, various Acts intended to combat discrimination and promote equality have been enacted in Maltese law, while various other Acts contain non-discrimination provisions with regard to the services or sectors that they regulate.

**CAP 318 Social Security Act**


i. Concept of discriminatory treatment; and
Provisions contrary to the principle of equal treatment in any law, individual, or collective contracts or agreements, internal rules of undertakings or rules governing any registered organisation in terms of applicable law shall be considered null and void.

**CAP 413 Equal Opportunities (Persons with Disabilities) Act**

This Act prohibits discrimination against persons with disabilities, in relation to:

i. Employment;

ii. Education;

iii. Access to premises open to the general public, and any other property unless:
   a. Such property or facilities are designed or constructed in such a way as to render them inaccessible to a person with a disability; and
   b. The alteration of such property or facilities would be unreasonable in the circumstances;

iv. Provision of goods, facilities or services [whether on payment or not] to the public or any sector of the public and includes in particular:
   a. Access to and use of any public place;
   b. Property rights and housing;
   c. Accommodation in hotel, boarding house or similar establishment;
   d. Facilities by way of banking, insurance or for grants, loans, credit or finance;
   e. Participation in occupational and other pension schemes;
   f. Facilities for education;
   g. Facilities for entertainment, sports or recreation;
   h. Facilities for transport or travel by land, sear or air;
   i. The services of any profession or trade, or of any local or other public authority;
   j. Membership of associations, clubs or other organisations;
   k. Enjoyment of civic rights and performance of civic duties; and

v. Accommodation.

This Act establishes the test of reasonableness, which is pertinent in determining the reasonableness of any action to be undertaken by any person in the fulfilment of the provisions of this Act, including any alteration, change, and or provision of services, facilities or assistive means. An examination should be had as to whether such actions could be undertaken without unjustifiable hardship.
Finally, this Act provides for the setting up of a National Commission for Persons with Disability as well as complaints, investigation and enforcement procedures.

**CAP 452   Employment and Industrial Relations Act**

*S.L. 452.95 Equal Treatment in Employment Regulations* give effect to the relevant provisions of Directives 76/207/EEC, 2000/78/EC, 2000/43/EC, 2002/73/EC and 2006/54/EC; apply to all persons as regards both the public and private sectors including service with the Government.

i. Concept of discriminatory treatment;
ii. Prohibition of discrimination on grounds of sex;
iii. Difference in treatment on occupational requirements; and
iv. Reasonable Accommodation.

Employers shall provide reasonable accommodation for persons with disabilities. In particular, employers shall take appropriate measures to enable a person with a disability to have access to, participate, or advance in employment, or to undergo training unless such measures would impose a disproportionate burden on the employer:

Provided that this burden is not disproportionate when it is sufficiently remedied by measures existing within the framework of the national disability policy.

v. Difference of treatment on grounds of age.

**CAP 456   Equality for Men and Women Act**

This Act prohibits discrimination on grounds of sex, family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, or gender identity:

i. In employment;
ii. Discrimination by banking/financial institutions in the grant of their facilities; and
iii. Discrimination by any educational establishment in the provision of/access to educational support, selection and implementation of the curricula and assessment of students in vocational training or guidance.

This Act also provides for the unlawfulness of sexual harassment by a person against any other persons, as well as for the unlawfulness of discriminatory advertisement. It also provides for the setting up of a National Commission for the Promotion of Equality for Men and Women.


**CAP 460 European Union Act**


i. Non-discrimination by persons: no person, establishment or entity, whether in the private or public sector and including public bodies, shall discriminate against any other person in relation to:
   a) Social protection, including social security and healthcare;
   b) Social advantages;
   c) Education;
   d) Access to and supply of goods and services which are available to the public, including housing; and
   e) Access to any other service as may be designated by law for the purposes of this regulation;

ii. Non-discrimination by banks or financial institutions or insurance companies: in the granting of any facility in respect of the establishment, equipment or in the launching or extension of any business or the launching or extension of any form of self employment or the insurance of that business or the person in self employment; and

iii. Advertisements.


i. Prohibition of discrimination in relation to establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity or occupation; and

ii. Proceedings following an allegation; and right of action before the competent court.
SCOPING CONSULTATION AND OTHER INPUT FROM RELEVANT STAKEHOLDERS

An initial scoping consultation was carried out to collect input from the general public, civil society organisations, trade unions, business organisations, political parties, governmental institutions and all others that wished to contribute towards this process.
On 24 February 2014, an online consultation was launched on www.socialdialogue.gov.mt/humanrights. A wide publicity campaign on printed and online media ensued.

![Static banner used on online media](image)

**Fig. 1** Static banner used on online media

The consultation questions were:

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?

The online consultation was open until 28 March 2014, and the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC) received 15 submissions as follows:
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<tr>
<th>Type of Submission</th>
<th>No. of Submissions</th>
<th>Name</th>
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| Individuals                       | 5                  | 1. Alessandro Giuliano  
2. Deborah Attard  
3. Gervais M. Cishahayo  
4. Joseph Licari  
5. Ruth Baldacchino |
| Civil society organisations        | 5                  | 1. Aditus Foundation, Jesuit Refugee Service Malta, Integra Foundation, SOS Malta, Richmond Foundation  
2. Il-Kunsill Nazzjonali tal-Ilsien Malti  
3. Malta Gay Rights Movement  
4. Malta Girl Guides  
5. The People for Change Foundation |
| Academic institutions              | 1                  | 1. Human Rights Programme, Faculty of Laws, University of Malta |
| National institutions              | 2                  | 1. National Commission for the Promotion of Equality (NCPE)  
2. Office of the Ombudsman⁶ |
| International institutions         | 2                  | 1. European Network of National Human Rights Institutions (ENNHRI)  
2. United Nations High Commissioner for Refugees (UNHCR) (Malta) |

Moreover, 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); and the Department of Gender Studies (Faculty for Social Wellbeing).

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.

**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;

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).

The detailed identified issues were grouped in clusters and are presented in Annex 5.

**Setup of the Human Rights and Equality Commission (HREC)**

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. Alan Miller, Chair of ENNHRI stressed that “it is important, when planning for the establishment of a NHRI, to put into place arrangements that are most likely to be in full compliance with the Paris Principles”, with the following essential 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.
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 NHRI should be able to provide adequate remedies in cases of discrimination and human rights violations. Thus, 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. It was also suggested that such a system should ensure the provision of legal aid to the complainants and amongst other things, include the support of existing individual and/or organisational services and expertise, and grant organisations the right to appear on behalf of victims or without the need for victim status.

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. The Netherlands Institute of Human Rights was launched in Utrecht in October 2012, following an intensive period of preparation led by the Dutch Equal Treatment Commission (ETC). The Institute, as the successor of the ETC and its works, has received a wider human rights remit, going beyond equal treatment and non-discrimination issues. The Danish Human Rights Institute is both a NHRI and a national equality body in relation to race, ethnicity and gender; when it comes to disability, their role is to promote and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities. The Danish Institute work both within Denmark by advising the government, parliament, ministries and public authorities on human rights, and internationally with states, independent organisations and the corporate sector.

Public discourse very often does not embrace the rights based approach and the natural and cultural environments are rarely described as fundamental human rights, with the legal and political implications such a positioning entails. 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. The setting up of the HREC and the inclusion of human rights
education will address this gap. Moreover, easier online access to information, relevant judgments and documentation, procedures to obtain redress, the possibility to apply for legal aid would bring human rights and equality structures closer to the people.

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. Malta should sign and ratify key international and regional human rights instruments, and act as advocate for further signatures and ratifications. The NHRI should review Malta’s current reservations in relation to key instruments, such as Convention to Eliminate All Forms of Discrimination Against Women (CEDAW).

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 UDHR, 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, and such model could take a larger role in geopolitical matters to challenge one-dimensional views about Malta.
To achieve the human rights framework outlined in this paper, in line both with Government’s position and the responses received towards the Scoping Consultation two main legislative initiatives are being proposed:

The first is the recasting of the *Equality for Men and Woman Act* into an *Equality Act* providing for a general principle of anti-discrimination in all spheres of life, also tackling intersectional discrimination.

The second is the adoption of a new Act establishing the Human Rights and Equality Commission entitled *The Human Rights and Equality Commission Act*. 
CAP 456 *Equality for Men and Women Act (EMWA)*, adopted slightly more than 10 years ago, no longer serves the purpose for which it was adopted. Back then, government had limited itself to minimum EU standards on gender equality and fulfil the equality body obligations found within that framework.

Over the years, new grounds were added to that law, and the scope of the National Commission for the Promotion of Equality was widened. However, following risks of infringement procedures by the European Commission against Malta, aspects related to this Act were included under CAP 460 *European Union Act*, without any link to EMWA. This process further fragmented the equality legal framework both through the establishment of a ‘hierarchy of grounds’, and unnecessary divisions between complementary provisions.

In view of the above, the recasting of CAP 456 into an *Equality Act* will ensure that all existing equality provisions stay and are mainstreamed for all grounds.

The second legislative initiative, The *Human Rights and Equality Commission Act*, will establish the Human Rights and Equality Commission (HREC). The Commission will have the power to investigate cases and provide binding opinions following the Equality Act. It will also be empowered to monitoring the implementation of the human rights provisions found in Maltese law and international human rights treaties ratified by Malta, and issue reports, opinions and propose legislative changes as it deems fit.
PROPOSED EQUALITY ACT

The *Equality Act* will aim to meet the highest anti-discrimination and equality standards. In this regard, inspiration will be derived from international treaties, EU anti-discrimination directives and national laws.
The Act should contain:

i. A general provision against discrimination;
ii. Positive equality duties and obligations;
iii. A revised list of grounds of anti-discrimination to ensure that all basis of discrimination are adequately included;
iv. Provisions tackling intersectional discrimination;

v. Provisions covering all spheres of life;
vi. Provisions that allow:
   a. NGOs to submit cases on behalf of victims;
   b. Class action; and
   c. Cases of discrimination to be processed without the need of an individual victim;

vii. Provisions that allow for dissuasive sanctions in cases of proven discrimination; and

The text of the law itself should be simple to understand and providing legal certainty to all involved, thus serving as an educational tool in itself.

Furthermore, no single right or protection that currently exists in Maltese law will be rolled back.

Models of Best Practice

Sweden’s Discrimination Act (SFS 2008:567):
http://www.government.se/sb/d/3926/a/118187


United Kingdom’s Equality Act 2010:

Process towards adoption of the Act

Government will prepare a draft Bill and will present it during a seminar to the relevant stakeholders, for consultation. Subsequently, a final Bill will be presented in Parliament for its first reading and launched for public consultation once again.
PROPOSED LEGISLATIVE FRAMEWORK FOR THE HUMAN RIGHTS AND EQUALITY COMMISSION

National human rights institutions and equality bodies play a significant and pro-active role in the legal enforcement of human rights and equality provisions, promotion of the value of human rights and equality in society and provision of assistance to victims of discrimination. Compliance with the Paris Principles ensures that Malta meets the minimum international standards in this sector.
The Human Rights and Equality Commission (HREC) will have the task to address human rights issues and violations; monitor and advise on human rights priorities in Malta; focus on potential and occurring systematic violations of human rights; and contribute to prevent those violations.\footnote{Principles relating to the status of National Institutions (The Paris Principles), UN Doc. A/RES/48/134 (1993).}

The HREC will seek to improve the human rights situation in Malta and will help to create a society:

- In which the observance of human rights is assured for all;
- With a culture of awareness and respect for human rights; and
- In which everyone can participate with freedom and dignity, free from any prejudice or discrimination and develop their full potential.

The Paris Principles (Annex 1) recommended that states should establish their independent national institutions to:

- Promote and protect human rights;
- Advise governments on human rights compliance, promotion and protection;
- Review human rights legislation and ensure their harmonisation with international human rights instruments and their effective implementation;
- Prepare human rights reports as required by UN bodies and committees, regional institutions and necessary to express an independent opinion on a subject; and
- Receive and investigate complaints from the public.

Since 1993, many human rights institutions / commissions were set up around the world and they play a significant role in the protection and promotion of human rights. The effectiveness and impact of such institution relies on what it is allowed to do and how it is perceived by those it is expected to serve.

**Accessibility**

HREC should make an effort to be accessible by raising public awareness of its role and the services it provides in simple and accessible terms. This means that staff should have adequate language skills, including interpreters that can communicate and assist people who are deaf/hard of hearing and/or blind/visually impaired; reports and publications should be published in the working languages and the
complaints procedures should allow complainants to communicate in their own colloquial speech.

Collaborations

The HREC should act as an institution that establishes the highest human standards in Malta, and thus be responsible to create spaces for different stakeholders, within and outside government and other institutions, and civil society organisations, to identifying and channelling relevant discussions. This collaboration is vital for a human rights institution that aims to be effective in the role it plays and the work it carries out. For the HREC to remain independent and effective, it also must be financially sound to do so. The HREC will manage its own budget that is allocated independently from government finances. Such structure would ensure the Commission’s effectiveness and autonomy that are two of the strongest pillars of an internationally-accredited national human rights institution. The autonomous framework of the HREC remains one of the most essential conditions that would allow the HREC “to flourish and be effective in the long term”\textsuperscript{8}.

Upon evaluation the performance of a number of national human rights institutions around the world, the International Council on Human Rights had the following recommendations to make for such structures to become more effective and relevant. The Human Rights and Equality Commission should:

i. Have its role clearly defined in relation to government and judicial institutions and in relation to civil society and vulnerable groups / communities;

ii. Adopt a strategic programme-led approach as opposed to a complaints-led approach;

iii. Encourage consultation and participation;

iv. Ensure that its management and staff are qualified, committed, representative and independent;

v. Address economic, social and cultural rights;

vi. Be and/or become more accessible; and

vii. Evaluate its performance in a consistent manner.

Establishment

The proposed Human Rights and Equality Commission will be established by the *Human Rights and Equality Commission Act*, as an autonomous authority with a mandate to:

i. Protect and promote human rights in Malta;
ii. Look at horizontal relations to monitor compliance with Maltese equality and equal treatment laws, which include a complaints mechanism.

The HREC will act as a legal successor to the National Commission for the Promotion of Equality (NCPE).

Compositions, appointment process, tenure and functions

i. The NCPE will be transformed from an equality body with limited powers, into a fully fledged human rights and equality commission;
ii. The new Commission will no longer fall under a Ministry, but will instead be directly responsible to Parliament;
iii. The financial and political independence of HREC will be guaranteed by law;
iv. The HREC will cover both the full range of human rights (international conventions and domestic law), and equality (EU law and domestic law);
v. Its Commission will be enlarged and a mechanism will be put in place to ensure wider representation of society;
vi. Approval of the Members of the Commission will become the prerogative of Parliament;
vii. As the Executive Director too will play a key role, her/his approval will also be a prerogative of Parliament;
viii. The HREC will be vested with the ability to issue opinions on human rights and equality matters, make legislative and policy proposals, and where necessary criticise the government or its entities;
ix. The HREC will be vested with the ability to perform human rights and equality investigations as it deems necessary;
x. The complaints mechanism will be widened and will no longer rely exclusively on cases brought forward by individual victims; and
xi. The HREC will be encouraged to work closely with civil society, ideally through the setting up of a space that serves as their forum within the HREC’s structure.
General competencies and responsibilities

i. Produces analyses and research on human rights issues;
ii. Carries out specific projects to promote equal treatment and advises those who may have been discriminated against;
iii. Maps out human rights challenges in Malta as well as yearly improvements in the area through an annual report; and
iv. Collaborates and co-operates with existing institutions the functions of which are safeguarding specific rights, such as the National Commission for Persons with Disability (KNPD) and the Commissioner for Children.9

Models of best practice towards the setting up of the HREC

The Danish Institute for Human Rights
The Netherlands Institute for Human Rights
The Scottish Human Rights Commission

Process towards adoption of the Act

Government will prepare a draft Bill and will present it during a seminar to the relevant stakeholders, for consultation. Subsequently, a final Bill will be presented in Parliament for its first reading and launched for public consultation once again.

9 Extract from Consultation Document submitted by the Human Rights Programme Committee at the Faculty of Laws, University of Malta.
CONSULTATION PROCESS

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

What is missing? What needs to be stronger?

Please send your input by 10 February 2015 through one of the following channels:

*Online form:* www.socialdialogue.gov.mt/humanrights

*By email:* humanrights.msdc@gov.mt

*By post:* HREC Consultation
Ministry for Social Dialogue, Consumer Affairs and Civil Liberties
Barriera Wharf
Valletta VLT 1971
SOURCES


ANNEX 1

Principles relating to the Status of National Institutions
(The Paris Principles)

Adopted by General Assembly resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

   (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

   (ii) Any situation of violation of human rights which it decides to take up;

   (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

**Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
(b) Trends in philosophical or religious thought;
(c) Universities and qualified experts;
(d) Parliament;
(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution’s membership is ensured.

**Methods of operation**

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

**Additional principles concerning the status of commissions with quasi-jurisdictional competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.
Belgrade Principles on the relationship between National Human Rights Institutions and Parliaments

(Belgrade, Serbia 22-23 February 2012)

The 2012 International Seminar on the relationship between National Human Rights Institutions (NHRIs) and Parliaments, organised by the Office of the United Nations High Commissioner for Human Rights, the International Coordinating Committee of National Institutions for the promotion and protection of human rights, the National Assembly and the Protector of Citizens of the Republic of Serbia, with the support of the United Nations Country Team in the Republic of Serbia,

In accordance with the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations General Assembly Resolutions 63/169 and 65/207 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, 63/172 and 64/161 on National Human Rights Institutions for the promotion and protection of human rights and the Human Rights Council Resolution 17/9 on National Human Rights Institutions for the promotion and protection of human rights.

Recognising that the principles relating to the status of national institutions (the Paris Principles, adopted by United Nations General Assembly Resolution 48/134) state that NHRIs shall establish an “effective cooperation” with the Parliaments,

Noting that NHRIs and Parliaments have much to gain from each other in performing their responsibilities for the promotion and protection of human rights,

And recalling the need to identify areas for strengthened interaction between NHRIs and Parliaments bearing in mind that the different institutional models of NHRIs should be respected,

Adopts the following principles aimed at providing guidance on how the interaction and cooperation between NHRIs and Parliament should be developed:

10 The Conference was attended by experts from NHRIs, Parliaments and Universities from Ecuador, Ghana, India, Jordan, Kenya, Mexico, New Zealand, Portugal, Serbia and the United Kingdom
I. Parliament’s role in establishing a National Human Rights Institution (NHRI) and securing its functioning, independence and accountability

A) Founding Law

1) Parliaments while deliberating the draft legislation for the establishment of a national human rights institution should consult widely with relevant stakeholders.

2) Parliaments should develop a legal framework for the NHRI which secures its independence and its direct accountability to Parliament, in compliance with the Principles related to national institutions (Paris Principles) and taking into account the General Observations of the International Coordinating Committee of national institutions for the promotion and protection of human rights (ICC) and best practices.

3) Parliaments should have the exclusive competence to legislate for the establishment of a NHRI and for any amendments to the founding law.

4) Parliaments, during the consideration and adoption of possible amendments to the founding law of a NHRI, should scrutinise such proposed amendments with a view to ensuring the independence and effective functioning of such institution, and carry out consultation with the members of NHRIs and with other stakeholders such as civil society organisations.

5) Parliaments should keep the implementation of the founding law under review.

B) Financial independence

6) Parliaments should ensure the financial independence of NHRIs by including in the founding law the relevant provisions.

7) NHRIs should submit to Parliaments a Strategic Plan and/or an Annual Programme of activities. Parliaments should take into account the Strategic Plan and/or Annual Programme of activities submitted by the NHRI while discussing budget proposals to ensure financial independence of the institution.

8) Parliaments should invite the members of NHRIs to debate the Strategic Plan and/or its annual programme of activities in relation to the annual budget.

9) Parliaments should ensure that NHRIs have sufficient resources to perform the functions assigned to them by the founding law.

C) Appointment and dismissal process

10) Parliaments should clearly lay down in the founding law a transparent selection and appointment process, as well as for the dismissal of the members of NHRIs in case of such an eventuality, involving civil society where appropriate.
11) Parliaments should ensure the openness and transparency of the appointment process.

12) Parliaments should secure the independence of a NHRI by incorporating in the founding law a provision on immunity for actions taken in an official capacity.

13) Parliaments should clearly lay down in the founding law that where there is a vacancy in the composition of the membership of a NHRI, that vacancy must be filled within a reasonable time. After expiration of the tenure of office of a member of a NHRI, such member should continue in office until the successor takes office.

D) Reporting

14) NHRIs should report directly to Parliament.

15) NHRIs should submit to Parliament an annual report on activities, along with a summary of its accounts, and also report on the human rights situation in the country and on any other issue that is related to human rights.

16) Parliaments should receive, review and respond to NHRI reports and ensure that they debate the priorities of the NHRI and should seek opportunities to debate the most significant reports of the NHRI promptly.

17) Parliaments should develop a principled framework for debating the activities of NHRIs consistent with respect for their independence.

18) Parliaments should hold open discussions on the recommendations issued by NHRIs.

19) Parliaments should seek information from the relevant public authorities on the extent to which the relevant public authorities have considered and responded to NHRIs recommendations.

II. Forms of co-operation between Parliaments and NHRIs

20) NHRIs and Parliaments should agree the basis for cooperation, including by establishing a formal framework to discuss human rights issues of common interest.

21) Parliaments should identify or establish an appropriate parliamentary committee which will be the NHRI’s main point of contact within Parliament.

22) NHRIs should develop a strong working relationship with the relevant specialised Parliamentary committee including, if appropriate, through a memorandum of understanding. NHRIs and parliamentary committees should also develop formalized relationships where relevant to their work.
23) Members of the relevant specialised parliamentary committee and the NHRI should meet regularly and maintain a constant dialogue, in order to strengthen the interchange of information and identify areas of possible collaboration in the protection and promotion of human rights.

24) Parliaments should ensure participation of NHRIIs and seek their expert advice in relation to human rights during meetings and proceedings of various parliamentary committees.

25) NHRIIs should advise and/or make recommendations to Parliaments on issues related to human rights, including the State’s international human rights obligations.

26) NHRIIs may provide information and advice to Parliaments to assist in the exercise of their oversight and scrutiny functions.

III. Cooperation between Parliaments and NHRIIs in relation to legislation

27) NHRIIs should be consulted by Parliaments on the content and applicability of a proposed new law with respect to ensuring human rights norms and principles are reflected therein.

28) Parliaments should involve NHRIIs in the legislative processes, including by inviting them to give evidence and advice about the human rights compatibility of proposed laws and policies.

29) NHRIIs should make proposals of amendments to legislation where necessary, in order to harmonize domestic legislation with both national and international human rights standards.

30) NHRIIs should work with Parliaments to promote human rights by legislating to implement human rights obligations, recommendations of treaty bodies and human rights judgments of courts.

31) NHRIIs should work with Parliaments to develop effective human rights impact assessment processes of proposed laws and policies.

IV. Co-operation between NHRIIs and Parliaments in relation to International human rights mechanisms

32) Parliaments should seek to be involved in the process of ratification of international human rights treaties and should consult NHRIIs in this process of ratification, and in monitoring the State’s compliance with all of its international human rights obligations.
33) NHRIs should give opinions to Parliaments on proposed reservations or interpretative declarations, on the adequacy of the State’s implementation of human rights obligations and on its compliance with those obligations.

34) Parliaments and NHRIs should co-operate to ensure that the international treaty bodies are provided with all relevant information about the State’s compliance with those obligations and to follow up recommendations of the treaty bodies.

35) NHRIs should regularly inform Parliaments about the various recommendations made to the State by regional and international human rights mechanisms, including the Universal Periodic Review, the treaty bodies and the Special Procedure mandate holders.

36) Parliaments and NHRIs should jointly develop a strategy to follow up systematically the recommendations made by regional and international human rights mechanisms.

V. Co-operation between NHRIs and Parliaments in the education, training and awareness raising of human rights

37) NHRIs and Parliaments should work together to encourage the development of a culture of respect for human rights.

38) NHRIs and Parliaments should work together to encourage that education and training about human rights is sufficiently incorporated in schools, universities and other relevant contexts including vocational, professional and judicial training in accordance with relevant international standards.

39) NHRIs and Parliaments should work together to improve their mutual capacity on human rights and parliamentary processes.

40) NHRIs, Parliaments and all Parliamentarians should seek to work together in public awareness, education campaigns and encourage mutual participation in conferences, events and activities organized for the promotion of human rights.

VI. Monitoring the Executive’s response to Court and other judicial and administrative bodies’ judgements concerning human rights

41) Parliaments and NHRIs as appropriate should co-operate in monitoring the Executive’s response to Judgments of Courts (national and, where appropriate, regional and international) and other administrative tribunals or bodies regarding issues related to human rights.

11 In relation to the United Nations Declaration on Human Rights Education and Training
42) NHRIs should monitor judgements against the state concerning human rights, by domestic, regional or international courts, and where necessary, make recommendations to Parliament about the appropriate changes to law or policy.

43) Parliaments should give proper consideration to NHRIs recommendations about the response to human rights judgements.

44) Parliaments and NHRIs as appropriate should encourage the Executive to respond to human rights judgements expeditiously and effectively, so as to achieve full compliance with human rights standards.
ANNEX 3

Key Human Rights Conventions and Equality Directive ratified/applicable in Malta

United Nations
International Convention on the Elimination of All Forms of Racial Discrimination (1971)
International Covenant on Civil and Political Rights (1990)
Optional Protocol to the ICCPR (1990)
Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty: (1994)
International Covenant on Economic, Social and Cultural Rights (1990)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (1990)
Optional Protocol to the CAT (2003)
Convention on the Rights of the Child (1990)
Optional Protocol to the CRC on the involvement of children in armed conflict (2002)
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (2010)
Optional Protocol to the CRPD (2012)

Council of Europe
European Social Charter (1988)
Council of Europe Convention on preventing and combating violence against women and domestic violence (2014)

European Union
Race Equality Directive (Dir 2000/43/EC)
Gender ‘Recast’ Directive (Directive 2006/54/EC)
Framework Decision 2008/913/JHA on Racism and Xenophobia
# ANNEX 4

## A. Grounds of Non-Discrimination in Key International Documents

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## B. Grounds of Non-Discrimination in Maltese Legislation

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ANNEX 5

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;
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).

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 a 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 Extending the 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 European Court of Human Rights (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 multidimensionality 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.