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Comments / Kummenti: **IOM contribution to the Consultation on Bills**

- Equality Act, Human Rights and Equality Commission Act -

The International Organization for Migration (IOM) welcomes the efforts and the progress of the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties in constructing a robust and comprehensive human rights and equality legal framework in Malta. As a follow-up to the publication of the White Paper "Towards the Establishment of the Human Rights and Equality Commission" and its contribution herein, IOM declares its content to participate in the last round of public consultation in order to provide its comments on the outcome of the initiatives taken so far, namely the two proposed Bills towards an Equality Act and a Human Rights and Equality Commission Act.

(A) Equality Act

IOM notes that nationality is conceived as part of "race, colour or ethnic origin", according to the definition of the latter (article 2), and is thus implicitly considered a discriminatory ground. Nevertheless, express reference to nationality as a protected characteristic would stress the importance of the prohibition of any discrimination on this ground.

Accordingly, it is of absolute importance that the list of protected characteristics is non-exhaustive and open to all other possible grounds of discrimination. This should be specifically mentioned in the definition of "protected characteristics" (article 2).

Furthermore, in the previous round of public consultation on the White Paper, IOM brought forward the constitutional provision excluding the application of the principle of non-discrimination to non-citizens and suggested to narrow it down, at least, to specific exceptional cases. Yet, the proposed Bill specifies that it does not apply to the "conditions relating to entry into and residence of persons who are not Maltese nationals in Malta and to any treatment which arises from the legal status of these individuals concerned" (article 27 para. 3). Provided that discrimination against non-nationals is a specific problem in the Maltese context, IOM is of the view that the latter should be elaborated upon and explain the specific circumstances where the legal status of non-nationals implies different treatment (e.g. vote).

(B) Human Rights and Equality Commission Act

As underlined in the contribution of IOM to the White Paper, the Human Rights and Equality Commission should ask the Government to assume responsibility for and to redress the consequences of any action or lack of action that infringes human rights. Thus, IOM notes with satisfaction that instead of "criticising" the Government (White Paper, page 29, no. viii), the powers of the Commission are extended to "requiring the cessation or prevention of any infringement...", "to order

interim measures...” and to “impose fines, periodic penalty payment or any other penalty...”, as currently stated in the proposed Bill (Part III, Powers of the Commission, no. iii, iv and vii).

The establishment of the Commission with such powers is central to the basis of human rights and equality in the Maltese law and practice. However, it is not the sole feature that secures the respect, the protection and the promotion of human rights in a democratic society. To this end, co-operation with other organisations is invaluable. In fact, the proposed Human Rights and Equality Commission Act refers to the collaboration with governmental, non-governmental and other organisations, i.e. trade unions, social and professional organisations (Part III, Functions of the Commission, no. ix, x and xiv), as well as with experts (Part IV, Experts), whereas International Organisations are still absent from that list. Thus, IOM reintroduces its previous suggestion to include International Organisations among the partners and resources of the Commission and confirms its willingness to provide its expertise when needed in the performance of the tasks and duties of the Commission.

(C) General issues

IOM remains concerned about the fact that the two proposed Bills are too generic about human trafficking and discrimination against migrant workers. The nature, consequences and dynamic presence of these issues in the Maltese context make it imperative that both Bills dwell upon them.

In particular, human trafficking is a multifaceted phenomenon which demands a multidisciplinary response, close coordination among the various agencies involved and a strong legal framework, aiming at prevention, protection and prosecution. This issue has become one of the priorities of the Maltese Government, as demonstrated by its efforts to enhance and strengthen the national counter-trafficking policy. The emphasis should be put expressively on the protection of the victim and to his/her provision with remedies, in order to avoid re-victimisation.

Besides, one of the human rights challenges that Malta faces revolves around the issue of discrimination of migrants in employment, regarding both the access to the labour market and the working conditions.

Migrants and refugees are confronted with discriminatory and unethical practices, ranging from low payments and unethical recruitment to exploitation and abuse of their rights, which are often not or underreported.

With regards to the Equality Act:

It is regarded as a positive development that the scope of the Equality Act covers the employment field (article 5, para. c-f) and makes specific reference in relation to access to employment (article 5, para. 3c) and discrimination in employment (article 9), as well as to related issues, i.e. equal pay for equal work (article 10), associations (article 11) and employment agencies (article 12), self-employment (article 13) and the spouses of self-employed (article 14). ! It is under these circumstances that migrants experience discrimination and unequal treatment, which in its extreme form may arise to exploitation and also human

trafficking. This fact should be highlighted in the proposed Bill by referring to migrants as a specifically vulnerable group regarding discrimination in employment; by mentioning the danger of human trafficking;

by considering the danger of victimisation of victims of human trafficking or migrants (with reference

to article 6 para. 5). The latter suggestions could be included in article 9 (employment), article 22 (duties of employer) or/and article 23 (right of action) and would both protect the victims and facilitate the prosecution of the perpetrators.

With regards to the Human Rights and Equality Commission Act:

IOM considers that the establishment of the Commission and the setup of a new complaints mechanism present a unique opportunity to address more effectively human trafficking and discrimination against migrant workers, in particular! with regards to access to justice and protection on the part of the victims.

Thus, the Bill should stress the fact that it offers protection to victims of trafficking and migrant workers, for instance by referring to them specifically as vulnerable groups, along with the ones already listed, i.e. children, migrants, refugees and persons with disabilities (Part III, Functions of the Commission, no. ix).

Specific reference could also be made to the victims as withholders of the right to lodge a complaint (Part III, Complaints, no. 1) or as persons on behalf of whom a legal entity can lodge a complaint (Part III, Complaints, no. 4) and to the phenomena of human trafficking and labour discrimination as issues of general concern (Part III, Complaints, no. 5).