

‘Strengthening Human Rights through Dialogue’

Input to the Ministry for Social Dialogue,
Consumer Affairs and Civil Liberties,
February 2015



N O T E

The **Platform of Human Rights Organisations in Malta (PHROM)** is Malta's first and only network gathering all NGOs working on human rights issues. It provides members with a strong and united voice on areas of concern, having a more effective impact on policy- and decision-making. PHROM also provides capacity building on the advocacy tools and skills needed to undertake target-oriented human rights activities.

For more information on PHROM:

Visit: www.humanrightsplatform.org.mt

Contact us: +356 2010 6295
info@humanrightsplatform.org.mt

To date, PHROM's Member Organisations are:

aditus foundation (EC Secretariat¹), African Media Association Malta, Amputees4Amputees, Breaking Limits, Deaf People Association (Malta), Din l-Art Helwa (EC), Inspire Foundation Malta, Integra Foundation, Jesuit Refugee Service – Malta, Kunsill Studenti Universitarji, Libya Foundation for Rehabilitation, Malta Gay Rights Movement (EC), Malta Humanist Association, Organisation for Friendship in Diversity, PRISMS, Richmond Foundation (EC), Troupe 18:45, UpBeat Music House, Victim Support Malta (EC), We Are, Why Not?, YMCA Homeless.

The views expressed in this document do not necessarily represent the views of all PHROM's Member Organisations.

¹ EC is PHROM's Executive Committee.

I N T R O D U C T I O N

The **Platform of Human Rights Organisations in Malta (PHROM)** is happy to contribute comments to the consultation process launched on 10th December 2014 by the Ministry of Social Dialogue, Consumer Affairs and Civil Liberties entitled '*Towards the Establishment of the Human Rights and Equality Commission: White Paper*'².

For the preparation of this input, PHROM assessed the *White Paper* in detail and analysed the proposals relating to the **Equality Act** and **Human Rights and Equality Commission (HREC)**. PHROM has also read through the feedback from civil society and individuals from the Consultation's first phase³.

E Q U A L I T Y A C T

Whilst applauding the attention and importance given to building a comprehensive **Equality Act**, with the laudable aim of combating discrimination on all grounds and in all spheres of life, we nonetheless believe that human rights are not given the required attention. PHROM therefore recommends a much broader and inclusive **Human Rights Act**, emulating the consolidating role and intentions of the proposed **Equality Act** but incorporating within its reach all national human rights provisions.

This exercise would entail an assessment of existing provisions, with a view to their update, as well as of national, regional and international jurisprudence injecting human rights standards with their capacity to remain alive, relevant and adaptable to contemporary and future scenarios. This important instrument should also reiterate the universality and indivisibility of all fundamental human rights by ensuring inclusion and enforcement of first, second and third generation rights.

² Details of this Consultation process are available here: http://socialdialogue.gov.mt/en/Public_Consultations/MSDC/Pages/Consultations/HumanRights.aspx

³ Entitled '*Scoping Consultation*', also available at the above site.

As part of this exercise of broadening the national understanding of human rights, Malta should also revise its position vis-à-vis a number of important international instruments, for example:

- a) *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;*
- b) *The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;*
- c) *The International Convention on the Protection of the Rights of All Migrants Workers and Members of Families;*
- d) *The Convention Relating to the Status of Stateless Persons;*
- e) *The Convention on the Reduction of Statelessness;*
- f) *The International Convention against Apartheid in Sports;*
- g) *Amendments to articles 17(7) and 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
- h) *International Convention on the Suppression and Punishment of the Crime of Apartheid;*
- i) *Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination.*

PHROM further proposes that Malta's position in relation to human rights instruments, including to specific reservations, should be shared and discussed with relevant civil society organisations in order to further engage such organisations in Malta's overall human rights environment, promote increased transparency and social dialogue and ensure that such decisions are based on a comprehensive understanding of provisions and implications.

In relation to the above considerations, PHROM urges Malta to revive the dormant process of Constitutional revision as the key process in determining Malta's human rights landscape.

More specifically, PHROM welcomes the proposal to unite and consolidate all existing equality measures in one single instrument and to present this in a user-friendly language. PHROM further emphasises the need to engage in serious public information and education effort. Whilst this need is also acknowledged in the *White Paper*, PHROM wishes to emphasise that such efforts should not be limited to younger generations, the general public or most professional spheres

Discussions with our Member Organisations have identified the importance of guaranteeing at least a minimum level of understanding and appreciation of core human rights principles across the public service. With the inclusion of the right to good administration clearly contained within the *EU Fundamental Rights Charter*, and also as part of general principles of EU law, it is imperative that the entire public sector is adequately familiar with the human rights legal and policy framework within which they are authorised to operate.

PHROM and our Member Organisations, on the basis of resource availability, are willing to contributing to this education process by offering input on training content, methodologies, training delivery, and on-going assessments.

PHROM also welcomes the proposal to revise and update the concept and definition of discrimination, although details of this revised concept and definition are as yet unclear. PHROM urges a definition encompassing direct and indirect discrimination, together with one that equally applies to the public and private spheres. We also recommend endorsement of the EU Commission note on the inclusion of police and judicial services within the definition of 'provision of services' for the purposes of anti-discrimination legislation⁴.

⁴ These are considered non-economic services by the EU Commission. See *Services of general interest, including social services of general interest: a new European commitment*, COMM 725 (2007) of 20 November 2007.

It is also positive to note the proposal to revise the list of discrimination grounds. For the sake of legal clarity and also to enable a flexible and adaptable approach, PHROM recommends adoption of the language used in Article 21 of the *EU Fundamental Rights Charter*, coupled with the addition of ‘gender identity’ in order to reflect recent Maltese Constitutional developments. Furthermore, as highlighted by several PHROM Member Organisations during the ‘*Scoping Consultation*’, the **Equality Act** should recognise and provide enforcement for intersectional discrimination.

With regard to the proposed redress mechanism to be contained within the **Equality Act** PHROM welcomes the ideas that would allow NGOs or other similar entities (e.g. trade unions and other civil society organisations) to submit complaints on behalf of victims, and for a discrimination complaint to be brought without the need for a victim. These would certainly enhance the mechanism’s protective and preventive potential for those individuals/communities encountering challenges in presenting complaints out of fear, lack of understanding or other constraints.

On the basis of input from our Member Organisations, we also recommend that the details of the redress mechanism be clearly stipulated in the law. These details should include timelines, procedural guarantees, available remedies, costs, legal aid possibilities and, where relevant, access to interpreters.

HUMAN RIGHTS AND EQUALITY COMMISSION

PHROM welcomes the proposal to establish a **Human Rights and Equality Commission** (HREC) as a National Human Rights Institution (NHRI) in accordance with internationally recognised principles and standards. As Malta’s only national network of human rights non-governmental organisations, PHROM is keen to actively engage with this organisation in order to further the strengthening of human rights in Malta on the basis of on-going, real and effective dialogue between the **HREC** and civil society organisations.

We feel we cannot stress enough the importance of the body's real and perceived independence and transparency. These core principles must be guaranteed at all stages and in all process, including recruitment, financing, policy positions, activities, publications, etc. Importantly, PHROM stresses the central role played by the **HREC's** governing and management bodies in being key to ensuring the organisation's effectiveness, public perception and overall respect of its activities. As such, the individuals occupying these roles should be recruited/appointed in as transparent a manner as possible and in a way that ensures decision-making is in the capable hands of Malta's most qualified and experienced experts in relevant fields.

PHROM notes the *White Paper* reference to **HREC's** relationship with existing entities. To ensure further human rights consolidation, PHROM strongly recommends the establishment – formally or informally – of a dialogue process between the **HREC** and other similar national institutions such as the Office of the Ombudsman, the National Commission Persons with Disabilities, the Department of Industrial and Employment Relations and the Judiciary. For too long, Malta's human rights enforcers have largely been acting independently and in an uncoordinated manner. The establishment of an NHRI will be the opportunity to further enhance coordination and cooperation through the inclusion of a dialogue mechanism that could also include the adoption of joint statements, organisation of joint activities, etc.

In relation to the **HREC's** specific mandate and range of activities, we further recommend that the **HREC** is given the power to undertake own initiative research and studies as well as on-site monitoring visits. These would require the **HREC** to enjoy full powers to access locations and interview/question individuals.

We also strongly urge the **HREC** to undertake a regular review of Malta's human rights performance on the basis of either national indicators⁵ or of public surveys. PHROM

⁵ See for example the models proposed by the UN Office of the High Commissioner for Human Rights, available at <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>.

and our Member Organisations are very willing to explore cooperation possibilities as these are also activities of interest to our Platform.

OTHER SPECIFIC COMMENTS

- As also highlighted by some PHROM Member Organisations in the *Scoping Consultation*, the *White Paper's* spirit should be mainstreamed across all levels of public administration. In particular, PHROM stresses the need to ensure a rights-based approach to Malta's relations with other States. It is imperative that Malta does not ignore, or appear to ignore the human rights violations occurring outside of Malta, particularly when such violations occur at the hand or with the consent of States engaging in bilateral relations with Malta or with the European Union.
- Furthermore, PHROM is keen to see Malta promote its good human rights practices and developments so as to bring about change and advancement in neighbouring States and/or regions.
- The *White Paper's* page 9 refers to two important international human rights mechanisms as providing relevant input to Malta's human rights environment: the Universal Periodic Review 2013 and the ICCPR Periodic Report (2014). Whilst PHROM welcomes these references, we are keen to note that Malta's relationship with all the United Nations human rights mechanisms needs to be dramatically improved so as to give full effect to these mechanisms and bring Malta in line with its international obligations. In particular, PHROM recommends:
 - An in-depth analysis of all Concluding Observations and Recommendations made by these mechanisms to Malta so as to identify the themes and issues requiring attention and action. PHROM and our Member Organisations are happy to contribute to this process;

- Giving full attention to the mechanisms' General Comments highlighting the process to be followed when preparing state reports to the relevant Conventions including pre-drafting dialogue with civil society organisations, publicity of the relevant sessions and of Concluding Observations and Recommendations.
- As a long-term approach, PHROM recommends implementation of a Lessons Learnt Exercise in order to map the level of effectiveness of measures adopted by Malta in recent decades to combat gender-based discrimination. Together with providing useful input on the specific discrimination ground, PHROM believes this exercise will provide the Ministry with a results-based approach in assessing the most effective national measures required to combat discrimination on other grounds. PHROM and our Member Organisations would be interested in contributing to this exercise.