



EQUALITY BODIES COUNTRY FICHE

MALTA

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1. Overview: presentation of the equality body/bodies

1.1 Historical development

1. There are two equality bodies established in national laws. The first equality body that was established was the National Commission Persons with Disability¹ established² under the Equal Opportunities (Persons with Disability) Act³. The law was enacted by Act 1 of 2000 and is the first national legislation to deal with issues of equality, albeit only on the ground of disability, and with the prohibition of discrimination from a human rights perspective outside the framework of the Constitution and of the European Convention Act⁴. The ground of disability had also been previously addressed in so far as employment through the Persons with Disability (Employment) Act⁵. This Act had not however established an equality body but only regulated the employment of persons with a disability and their vocational training and industrial rehabilitation. On the other hand, the Equal Opportunities (Persons with Disability) Act, prohibits discrimination on the ground of disability in all spheres but then proceeds to regulate the prohibition of discrimination in the field of employment, education, accessibility, provision of goods, facilities or services and accommodation.

2. The second equality body is that established under the Equality for Men and Women Act⁶ and named the National Commission for the Promotion of Equality for Men and Women⁷. This law was enacted by Act 1 of 2003 and was the first national legislation addressing gender discrimination in employment to the extent required by the EU Equality Directives. In fact, although the law itself does not purport to be a transposition exercise of the Directives, yet it was enacted at a time when Malta was updating its legislation to reflect the *acquis communautaire* and with a view of satisfying the conditions for entry within the European Union. This Act provides for a legal framework regulating the prohibition of discrimination on the basis of sex or because of family responsibilities in employment, by banks, financial institutions or insurance companies in granting facilities, in the participation of a spouses in the activities of the other spouse who is in self employment, in education and vocational guidance, and in advertising of job vacancies.

¹ Known by its acronym, KNPD

² <http://www.knpd.org/>

³ Chapter 413 of the Laws of Malta enacted by Act 1 of 2000 as amended by Legal Notice 426 of 2007; http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt413.pdf

⁴ Chapter 319 of the Laws of Malta, an act incorporating the European Convention for the Protection of Human Rights and Fundamental Freedoms; www.mjha.gov.mt

⁵ Chapter 210 of the Laws of Malta as enacted by Act II of 1969 and amended by Acts XIV of 1969, XXII of 1976, XI of 1977, XIII of 1983; and Legal Notice 411 of 2007; http://docs.justice.gov.mt/lom/legislation/english/leg/vol_5/chapt210.pdf

⁶ Chapter 456 of the Laws of Malta enacted by Act 1 of 2003, as amended by Legal Notice 427 of 2007 and Act IV of 2009; http://www.equality.gov.mt/filebank/documents/chap456_updated.pdf

⁷ Known by its acronym, NCPE



3. The remit of the National Commission for the Promotion of Equality for Men and Women was later through Legal Notice 181 of 2008⁸ strengthened. This Legal Notice purported to transpose the relevant provisions of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to goods and services and their supply. In doing so, the regulations extended the powers of the National Commission for the Promotion of Equality for Men and Women from sex discrimination in employment to also sex discrimination in the access to good and services and their supply.

4. Only a few months before this, the National Commission for the Promotion of Equality for Men and Women, without having its name changed, was also entrusted with the remit over discrimination on the basis of race and ethnic background in the access to and supply of goods and services. This was affected through the coming into force of Legal Notice 85 of 2007⁹ which essentially encompasses an Order made under the European Union Act¹⁰. The purpose of this Order was to transpose the provisions of Council Directive 2000/43/EC of 29th June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

5. Although the two Commissions above mentioned are the recognised designated equality bodies in terms of the national equality legislation, yet it is important to note that individuals are protected from discrimination on other grounds in legislation that relates to employment. In this respect, therefore one must also mention the Employment and Industrial Relations Act¹¹ which provides for protection against discrimination related to employment on the basis of gender¹² and provides victims with a measure of redress through the Industrial Tribunal. Moreover, discrimination on the six recognised grounds of discrimination according to Council Directives 2000/78/EC and 2000/43/EC is prohibited by Legal Notice 461 of 2004¹³ entitled Equal Treatment in Employment Regulations, 2004. These regulations were enacted under the Employment and Industrial Relations Act, 2002 and provide the victims with redress through the Industrial Tribunal and the ordinary civil court. It also gives the Director responsible for employment and industrial relations, that is a public officer, the competence to send a ‘written notification to the employer or any person or organisation to whom these regulations apply, of the alleged discriminatory treatment received, giving any relevant details and requesting a reply.’¹⁴ However the Director responsible for employment and industrial relations is not an equality body per se, but a government department concerned with matters of employment including conditions of employment, does not have the powers

⁸ Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008; <http://www.doi.gov.mt/EN/legalnotices/2008/08/LN%20181.pdf>

⁹ Equal Treatment of Persons Order, 2007; <http://www.doi.gov.mt/EN/legalnotices/2008/08/LN%20181.pdf>

¹⁰ European Union Act, Chapter 460 of the Laws of Malta, gives the Prime Minister or any designated Minister or Authority the power to issue an Order thereby giving effect to any acts adopted by the European Union and making them part of the domestic law of Malta; http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_14/Chapt460.PDF

¹¹ Chapter 452 of the Laws of Malta, enacted by Act XXII of 2002 as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007 and Act V of 2009; http://docs.justice.gov.mt/lom/legislation/english/leg/vol_14/chapt452.pdf

¹² Part IV, Protection against discrimination related to Employment

¹³ <http://www.doi.gov.mt/EN/legalnotices/2004/11/LN461.pdf>

¹⁴ Regulation 9 of Legal Notice 461 of 2004, Equal Treatment in Employment Regulations, 2004; <http://www.doi.gov.mt/EN/legalnotices/2004/11/LN461.pdf>



entrusted to the equality bodies by the relative EU Equality Directives. Consequently, although it is relevant to inform that protection on these grounds in employment is legally provided yet there is no equality body entrusted with jurisdiction over such matters.

6. KPND and NCPE have co-existed since their establishment. The former was established in 2000 and the latter in 2003. Each body deals with the grounds of discrimination with which it has been entrusted, and there is no formal cooperation between the two. However both have cooperated in projects wherein discrimination on all the grounds were being implemented by either of them. It has been for a number of years politically said that NCPE will be given a wider remit to obtain competence over the remaining grounds; however this has not been forthcoming. There is no indication as to whether both commissions will be retained in the future or whether these would be merged into one or whether they would work side by side through formal cooperation.

7. Both commissions were created at a time when non-governmental organisations were strongly lobbying for their creation; however the final impetus for the creation of the National Commission for the Promotion of Equality for Men and Women was the obligation to transpose the *acquis communautaire* as a condition for accession to the European Union¹⁵.

8. Both equality bodies provide a financial report to the respective Ministry seeking funding for their yearly plans. Although the relative Ministry will consider the financial report submitted to it, the equality bodies do not have any determining power in the amount that will be provided to them beyond the mentioned report. The government recurrent vote for NCPE has increased by about € 90,000 between 2004 and 2007 while in this time frame NCPE has managed to obtain more EU funds to substantiate its financial resources. In obtain EU funds, NCPE has also increased the co-financing from the government to be able to fulfil its projects. On the other hand, the budge of KNPD has remained constant at € 580,000. This is a budget which is much higher to that amount provided to NCPE by the government as part of its recurrent vote.

1.2 Presentation of Equality bodies – National Commission for the Promotion of Equality for Men and Women (NCPE)

9. The National Commission for the Promotion of Equality for Men and Women which is commonly known by its acronym NCPE was formally appointed in January 2004, within weeks from the coming into force of the enabling legislation¹⁶. The Commission members are not appointed on a full time basis and receive an honorarium which is paid from the budget allocated to the Commission by the Ministry. The current executive director, Ms Therese Bugeja may be contacted at the Commission's physical address which is Flat 4, Gattard House, National Road, Blata-1-Bajda, HMR 02, Malta or by phone on (+356) 25903850, by fax on (+356) 25903851 or on email at equality@gov.mt

¹⁵ <http://www.msp.gov.mt/ministry/content.asp?id=589>

¹⁶ Equality for Men and Women Act, Chapter 456 of the Laws of Malta which was published on the 9th December 2003; http://www.equality.gov.mt/filebank/documents/chap456_updated.pdf



10. The ‘Commissioner, with the assistance of the Commission,’ is entrusted with the following functions:

- (a) to identify, establish and update all policies directly or indirectly related to issues of equality for men and women;
- (b) to identify the needs of persons who are disadvantaged by reasons of their sex and to take such steps within its power and to propose appropriate measures in order to cater for such needs in the widest manner possible;
- (c) to monitor the implementation of national policies with respect to the promotion of equality for men and women;
- (d) to liaise between, and ensure the necessary coordination between, government departments and other agencies in the implementation of measures, services or initiatives proposed by Government or the Commission from time to time;
- (e) to keep direct and continuous contact with local and foreign bodies working in the field of equality issues, and with other groups, agencies or individuals as the need arises;
- (f) to work towards the elimination of discrimination between men and women;
- (g) to carry out general and independent investigations with a view to determine whether the provisions of this Act are being complied with;
- (h) to independently investigate complaints of a more particular or individual character to determine whether the provisions of this Act are being contravened with respect to the complainant and, where deemed appropriate, to mediate with regard to such complaints;
- (i) to inquire into and advise or make determinations in an independent manner on any matter relating to equality between men and women as may be referred to it by the Minister;
- (j) to provide independent assistance, where and as appropriate, to persons suffering from discrimination in enforcing their rights;
- (k) to keep under review the working of this Act, and where deemed required, at the request of the Minister or otherwise, submit proposals for its amendment or substitution;¹⁷

11. NCPE is expected to carry out such functions in respect of equality on the basis of sex and family responsibilities in employment¹⁸, on the basis of sex in access to and supply of goods and services¹⁹, and also in respect of discrimination on the ground of race and ethnic background in access to and supply of goods and services²⁰. In performing these functions the Commission meets regularly giving direction to the Executive Director, who is in turn entrusted with the implementation of the policies established by the Commission and the instructions given to him/her by the Commissioner, administration tasks and the supervision

¹⁷ Article 12 of the Equality for Men and Women Act, Chapter 456 of the Laws of Malta;
http://www.equality.gov.mt/filebank/documents/chap456_updated.pdf

¹⁸ Through the Equality for Men and Women Act, Chapter 456 of the Laws of Malta;
http://www.equality.gov.mt/filebank/documents/chap456_updated.pdf

¹⁹ Through Legal Notice 181 of 2008, Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008; <http://www.equality.gov.mt/page.asp?p=8656&l=1>

²⁰ Through Legal Notice 85 of 2007, the Equal Treatment of Persons Order, 2007;
<http://www.equality.gov.mt/page.asp?p=8656&l=1>



of other officers appointed by the Commission²¹. The Commission currently employs 10 employees in fixed full time employment and another 3 persons are employed under projects. Moreover, officers in fixed employed are assigned different tasks, including the persons appointed as Manager, research officer, policy development officer, project management, public relations officer, complaints and investigations officer.

12. The Commission is funded by funds allocated to it by the Minister responsible for equality from funds which Parliament would have voted to that Ministry in the annual national budget or from funds which the Ministry would have obtained from other sources. The Commission must provide an annual business and financial plan to the Minister concerned for his/her consideration, however since 2004, its first year of operation its budget has only slightly fluctuated.

13. NCPE does not form part of another body and on its establishment obtained a legal personality of its own separate from that of the Government. Its judicial representation being vested in the Commissioner.

14. The other equality body, that is the National Commission Persons with Disability²², commonly known as KNPD²³, was officially constituted on the 10th February 2000, but had been previously set up on the 3rd November 1987 by the Minister for Social Policy²⁴.

15. Ms Callus, as executive director, and the Commission may be contacted either at their office address which is at Istituto Vincenzo Bugeja, Centru Hidma Socjali, Triq Braille, Sta Venera HMR 18 Malta, or on Telephone (+356) 22788555 or Fax (+356) 22788490 or on email address amcallus@knpd.org.

16. KNPD is entrusted with the following functions:

- (a) identify, establish and update all national policies directly or indirectly related to disability issues;
- (b) identify the needs of persons with disabilities, their families and voluntary bodies working in the field of disability issues and to take all necessary steps or propose appropriate measures in order to cater for such needs as much as possible;
- (c) ensure that all government programmes concerning the affairs and interests of persons with disabilities, their families and voluntary bodies working in the field of disability issues, are implemented in accordance with national policies for disability issues;
- (d) ensure the necessary co-ordination between all government departments and agencies in implementing measures, services or initiatives proposed by government or proposed by the Commission from time to time;
- (e) keep direct and continuous contact with local and foreign bodies working in the field of disability issues, and with other groups, agencies or individuals as the need arises;

²¹ Article 13 of the Equality for Men and Women Act, Chapter 456 of the Laws of Malta;
http://www.equality.gov.mt/filebank/documents/chap456_updated.pdf

²² Article 21 of the Equal Opportunities (Persons with Disability) Act, Chapter 413 of the Laws of Malta;
http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt413.pdf

²³ www.knpd.org

²⁴ Annual Report of KNPD for the year 2009; <http://www.knpd.org/>



- (f) monitor the provision of services offered by government or its agencies or by any other person or group of persons, where the clients of such services are persons with disability;
- (g) work towards the elimination of discrimination against people with disabilities;
- (h) carry out general investigations with a view to determining whether the provisions of this Act are being complied with;
- (i) investigate such complaints as may be made to them of failure to comply with any provision of this Act in an individual case and, where it seems appropriate, conciliate in relation to such complaints;
- (j) inquire into, and make determinations on, matters referred to it by the Minister;
- (k) provide, where and as appropriate, assistance, including legal and financial assistance, to persons with disabilities in enforcing their rights;
- (l) keep under review the working of the Equal Opportunities (Persons with Disability) Act and, when deemed fit by the Commission or so required by the Minister, draw up and submit to the Minister proposals for amendments to same;
- (m) examine enactments, and (when requested to do so by the Minister) propose enactments, for the purpose of ascertaining whether the enactments or proposed enactments are or would be, inconsistent with or contrary to the objects of this Equal Opportunities (Persons with Disability) Act, and to report to the Minister the results of any such examination;
- (n) provide all such services that may be necessary or required for the Commission to attain its objectives;
- (o) collate, analyse and publish statistics related to the disability sector which, *inter alia*, indicates the national level achieved in inclusive policy.²⁵

17. The financing of the National Commission Persons with Disability is rather similar to that of the National Commission for Equality of Men and Women, whereby the former must prepare an annual business and financial plan and present the same to the Minister responsible for social policy and the Minister responsible for finance. Upon its approval the budget will be forwarded from the Ministry to the Commission. KNPD has 18 staff members.

18. The functions entrusted to both Commissions are almost identical except for the terminology used in the different Acts of Parliament. However in practice they are entrusted with the same powers and competences even if their formation, in the sense of commission composition is somewhat different. KNPD's staff members reflect inclusion of persons with disability, while NCPE's staff members do not indicate a balanced gender and racial representation of society. The budgets that have been allocated to each of these commissions is different with KNPD receiving a budget vote of twice as much as NCPE.

19. Neither of these two commissions has been given a judicial or quasi judicial function, but only an investigative function. In the same manner both are entrusted with investigating complaints of discrimination received from victims and also to initiate *ex officio* investigations. Although both are to conclude such an investigation by giving its opinion on the circumstances complained of, yet this opinion does not have a judicial character. At the same time the conclusion determined by KNPD seems to have been given more weight by the legislator than the conclusion determined by NCPE. The former is bound by the Procedure

²⁵ Article 22 of the Equal Opportunities (Persons with Disability) Act, Chapter 413 of the Laws of Malta; http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt413.pdf



for The Investigation of Complaints Regulations²⁶ to notify the parties of its conclusion and to request the parties to undertake that remedial action ‘necessary in the circumstances within a specified time limit and intimating them that in default, judicial action will be taken’. Where the parties fail to take such remedial action the Commission may proceed before the civil courts, or with the agreement of the parties may proceed with arbitration proceedings. Consequently, the Equal Opportunities (Persons with Disability) Act does not put into doubt the binding effect of the conclusion of KNPD upon the parties. However article 18(2) of the Equality for Men and Women Act²⁷ explicitly states that the findings of the Commissioner are not binding on the complainant and the person against whom the complaint is directed unless ‘they expressly declare in writing to be so bound’. Except for this, NCPE is also empowered to notify its conclusion to the parties concerned and to call upon the person against whom the complaint is directed to redress the situation. NCPE may also itself act as mediator between the parties with a view to settling the matter. Yet because of their powers to investigate complaints both Commissions cannot be said to be only promotional bodies. In fact, their functions are equally promotional as well as administrative investigators.

20. The Principles relating to the Status of National Institutions²⁸ require a national institution vested with competence to promote and protect human rights to have sufficient guarantees of independence and pluralism. In this respect it requires the composition and appointment of its members to be in accordance with a procedure which provides necessary guarantees to ensure the pluralist representation of the social forces particularly through powers which enable effective cooperation to be established with NGOs, development in philosophical and religious thought, universities and experts, Parliament and Government departments. In this regard both commissions may be said to satisfy these requirements even if in different manners. While KNPD’s commission members are in fact representative of these stakeholders, NCPE’s commission members are partly representative of these stakeholders but then NCPE in fulfilling its functions is continuously in cooperation with all stakeholders.

21. The second requirement of the Paris Principles is that the national institution is to have an infrastructure which is suited to the ‘smooth conduct of its activities’. In particular, the principles mention adequate funding to enable it to have its own staff and premises, be independent of the government and not be subject to financial control which might affect its independence. It must be said that both commissions lobby for their funding with the Ministry responsible for social welfare, in that they are to present an annual budget proposing their budget and this then is to be approved by the Minister. Moreover both commissions also look towards the government to provide them with the additional finances that they would require when seeking financing from the EU for projects and where the latter does not provide full funding. In this sense only can there arise a possibility that the commissions face financial control which may affect their independence. Otherwise, both commissions are independent in the exercise of their functions and are also provided with a distinct legal personality.

²⁶ Legal Notice 13 of 2001 as amended by Legal Notice 3 of 2002;
<http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/413/01.pdf>

²⁷ Chapter 456 of the Laws of Malta; <http://www.equality.gov.mt/page.asp?p=8656&l=1>

²⁸ The Paris Principles; www2.ohchr.org/english/law/parisprinciples.htm



22. The third requirement of the Paris Principles, that relates to the manner of appointment of the members of the commissions, may also be said to be satisfied in that both the Equal Opportunities (Persons with Disability) Act and the Equality for Men and Women Act provide clear regulations in this respect. Renewal is however subject to the approval of the Minister concerned.

23. The functions assigned to the National Commission Persons with Disability do not in any manner refer to the UN Convention on the Rights of People with Disabilities however the Commission is seen as being the watchdog of the implementation of this Convention on a national level and is known to propose measures by which and to analyse methods of and lobby for its effective implementation.

1.3 Contextual issues

24. It has, since its establishment in 2004, been expected that the National Commission for the Promotion of Equality for Men and Women be granted a remit over all the recognised grounds of discrimination under EU Directives²⁹. This is the expectance of NGOs and other stakeholders based also on political speech. Yet despite this expectance, the commission has only been granted functions to work in all spheres (that is, employment and access to and supply of goods and services) only on the ground of sex. The only extension to its remit took place consequent to Legal Notice 85 of 2007³⁰ and only limited to discrimination on the basis of race or ethnic background in the access to and supply of goods and services. In this manner the Commission does not have any remit on the grounds of age, sexual orientation, or religion in any sphere and does not have any remit on the ground of race or ethnic origin in the sphere of employment. Although NCPE still raises awareness on the prohibition of discrimination on all these grounds and in any sphere, yet it is hampered in effectively addressing situations of discrimination. This position diminishes the potential of NCPE which although it has through projects shown itself to be capable of addressing different grounds of discrimination and although NGOs recognise its possibilities, NCPE is not empowered to take these other grounds on board.

25. A lack of structured equality mainstreaming, at least within governmental departments and ministries, also diminishes the potential of these equality commissions as this perpetuates stereotypes within governmental institutions thereby impacting the private sector. Refusal, hesitation and an uncooperative attitude by certain sectors, even public sectors, to be trained on equality issues by the equality bodies also diminishes the commissions' potential.

26. The budgets for both commissions have not been reduced and therefore so far there does not seem to be a direct effect on the finances of these commissions. However one cannot exclude that requests to increase the budget or the number of employees within the commissions may have been rejected.

²⁹ For example the National Action Plan on Social Inclusion continuously refers to the National Commission for the Promotion of Equality for Men and Women as the National Commission for the Promotion of Equality; http://www.msp.gov.mt/documents/msp/nap_inc_2008_2010.pdf;

³⁰ Equal Treatment of Persons Order, 2007; <http://www.equality.gov.mt/page.asp?p=8656&l=1>





2. Organisation, Structure and resources

2.1 Resources - NCPE Staff & Budget

27. The National Commission for the Promotion of Equality for Men and Women has 10 persons in full time employment. These represent 7 women and 3 men, including the executive director but excluding the commission members. The financing of NCPE comes from three different areas: government recurrent vote, funds by the EU for co-funded projects and co-financing by the Maltese Government. In this regard NCPE has received the following finances:

<u>Year</u>	<u>Government Recurrent Vote</u>	<u>Funds by the EU as co-funding for projects</u>	<u>Co-financing by the Maltese government</u>	<u>Total</u>
	€	€	€	€
2004	167,000	-	-	167,000
2005	174,000	190,243	61,066	425,309
2006	233,000	396,351	126,487	755,838
2007	256,000	602,510	218,165	1,076,675
2008 ³¹	256,000	1,377,150 ³²		1,633,150

28. Information as published in the NCPE's annual reports does not indicate the allocation of these finances according to functions but only in relation to a few divisions related to operational and maintenance expenses, such as professional services, office services, travel, repair & upkeep, and information services. Professional Services incorporate the expenses incurred in hiring professional service providers; office services cover the cost of supplies required for the everyday running of the office and information services incorporate the cost incurred in hosting the NCPE website, organisation of seminars, conferences and advertising. Furthermore, indication as to the how the funds are used is only provided in respect of the government recurrent vote and not in respect of the EU funds obtained for projects. The use of the government recurrent vote is hereafter considered, however it seems that EU funds are used mainly to promote awareness, provide training, hold campaigns and produce equality tools, while the government recurrent vote is utilised mainly to focus on expenses related to administration or structure. Stakeholders have indicated that the small budget provided to NCPE in the government recurrent vote cannot do justice to all the functions that NCPE has been provided with at law. NGOs are aware that were it not for the EU funds, NCPE would not be in a position to effectively promote equality. A few stakeholders identify the low government recurrent vote towards NCPE as equality not being a priority to the government while others consider this to be the consequence of low national financial resources.

³¹ The annual report for 2009 has as yet not been tabled before Parliament nor presented by NCPE. Consequently no information is provided for 2009.

³² Annual Report 2008, page 34. It is not clear whether this amount included the co-financing percentage provided by the government. <http://www.equality.gov.mt/page.asp?p=8655&l=1>



29. In this respect it is clear that since 2004 to 2008 almost a quarter of the budget is used for travelling of members of NCPE. This includes travelling to meetings, training, project participation and other actions taken with international or regional bodies. In 2004 this amounted to 26% of the budget; in 2005 this amounted to 6%; in 2006 it amounted to 13%; for 2007 the budget used for travelling amounted to 21% and for 2008 29% of the budget was used.

30. Information services do not take up a sizeable part of NCPE's budget. In 2004 10% of the budget was used for this purpose; in 2005 a meagre 2% is said to have been used for this purpose; in 2006 12% was used on information services; in 2007 6% was used and in 2008 6% was utilised in this regard.

31. Professional and Office services however are indicated as taking up the major share of the finances. In 2004 27% of the budget was spent on professional services, and 28% on office services; in 2005 only 3% was spent on professional services and no indication on the amount used for office services; for the year 2006 36% of the budget was used on professional services and 24% for office services; in 2007 45% was used for professional services and 13% for office services while for the year 2008 24% was used for professional services and 20% for office services.

32. It must be said that the data provided in the annual report of 2005 is extracted differently in that the percentages provided are not distinguished between staff salaries and honoraria on the one hand and operational and maintenance expenses on the other. In this respect therefore, in interpreting the data for 2005 one is to keep this lack of distinction in mind. When considering the financial overview provided in the national reports of NCPE for the years 2004 to 2008³³ it becomes clear that almost three fourths of the monetary vote allocated to NCPE by the government is spent on staff salaries and honoraria. In this respect for the year 2004 72% of the total budget related to salaries and honoraria, 25% was used for maintenance and operational expenses and the remaining 3% for equipment. For the year 2005, 74% was used for salaries and honoraria, 24% for operational and maintenance costs, and 2% for office utilities. In the year 2006 78% was taken for salaries and honoraria, 20% for maintenance and operational expenses and the remaining 2% for equipment. For the year 2007, 79% of the funds allocated to NCPE were used for salaries and honoraria and 21% for maintenance and operational expenses. From the budget allocated for 2008 85% was used for salaries and honoraria and 15% for maintenance and operational expenses.

33. Having considered the annual reports published by NCPE for the years from 2004 to 2008, it seems that NCPE experienced a reduction in the budget allocated to it only for the third quarter of the financial year of 2004. In this period NCPE experienced a reduction of 4% of its budget. No reason or explanation is provided for in the report to explain this reduction.

34. The functions that are assigned to NCPE are immense in their potential and consequently also in the resources they require for each function to be given equal and adequate attention throughout any given time. For example, NCPE is to provide its assistance to government on any matter related to equality including national obligations, European

³³ <http://www.equality.gov.mt/page.asp?p=8655&l=1>



Union obligations and other obligations arising from international or regional conventions. At the same time it is also to assist individuals in Malta, raise awareness, investigate complaints, initiate complaints *ex officio* and also under take research and publish reports. Staff members are actually assigned on different functions, such as research, complaints and assistance, projects, and administration. However the limited number of members of staff cannot be considered sufficient for NCPE to come close to fulfilling its utmost potential.

35. It is in fact, only a question of financial and human resources since with the current limited finances and staff members NCPE has still managed to attain the implementation of projects and the fulfilment of its functions within the limits of resources, but has reached out not only to stakeholders but also to actual and potential victims. For example, one aspect of its functions that has lagged behind is that of assistance in the sense of providing legal assistance to victims to bring court proceedings. This has been due to lack of financial resource. Stakeholders have criticised this since court proceedings are viewed as a means in pushing forward equality through the attainment of court judgments which are thought to set examples.

36. The members of the Commission and the Commissioner are only appointed on a part-time basis to the extent that they receive only an honorarium. While this may itself not be an obstacle since the main function of the commission members is to provide direction to NCPE which is then implemented by the executive director, yet the commission is not provided with an equality expert for guidance and advice. Moreover, the law puts upon the Commissioner a higher level of responsibilities and more functions, placing for example upon him/her the responsibility of investigations. In this respect more resources are required to assist the Commissioner in the carrying out of these functions.

2.2 Resources - KNPD Staff & Budget

37. The National Commission Persons with Disability employs 18 members of staff on a full time basis. These are besides the Chairperson and the members of the commission as above mentioned. KNPD's annual reports do not include a financial overview and indication as to how these budgets have been used in the fulfilment of their functions. The only indication available is that the commission has received a stable monetary vote of €580,000 for each year from 2004 to 2007. Of these the amount of € 90,000 is annually allocated to tasks concerning equal treatment. Moreover, KNPD's main source of income is from governmental bodies.

2.2 Governance within the equality bodies

38. The National Commission for the Promotion of Equality for Men and Women is composed of a chairperson and 6 other members, at least 3 of whom are to be women. The chairperson is called as the Commissioner for the Promotion of Equality and is appointed, as are the other members, by the Prime Minister upon the advice of the Minister responsible for equality. The current Commissioner is Dr Janet Mifsud who is a senior lecturer at the Department of Clinical Pharmacology and Therapeutics of the University of Malta³⁴. She has occupied the office of Commissioner since 2004 having had her term renewed on three

³⁴ <http://www.equality.gov.mt/page.asp?p=8646&l=1>



occasions. In fact every member of the Commission is to hold office for a term of 2 years and may be re-appointed at the end of their term of office. The other members currently on the Commission are Ms Grace Attard, a teacher by profession and has been heavily involved in the National Council of Women for a number of years; Ms Therese Bugeja, a lecturer at the University of Malta in nursing at the Institute of Health Care and currently occupying the office of executive director of the Commission; Mr Joseph Farrugia, the Director General of the Malta Employers' Association; Mr Mario Mallia, a headmaster of a school and also the Deputy Chairperson of Alternattiva Demokratika which is a national political party; Notary Myriam Spiteri Debono, a notary by profession and Dr Vanni Xuereb, a lawyer by profession and currently also the Chairman of the Malta-EU Steering Action Committee.³⁵

39. While members of the commission receive an honorarium, staff members receive an established salary. Decisions related to staff salaries are not entirely within the discretion of the Commissioner, executive director or members of the commission as any such decision becomes effective only after approval from the Ministry is obtained. Decisions related to promotion of staff members or their evaluation or appointment also require approval from the Ministry. In as much as approval from Ministry is required for the commission to employ persons, this is also required in cases where the commission takes decisions related to downsizing the organisation. Moreover while NCPE retains discretion to shift between budgets for personnel and running costs, or between this and investments yet this can only be done within the conditions set by the Ministry or even with prior approval. On the other hand, NCPE indicates that it does not have the possibility to take loans for investment but can shift its budget over the course of a couple of years as long as this is according to the conditions set by the Ministry or even with prior approval.

40. Although the staff members of NCPE have gained a wide experience in the field of equality, yet the staff members generally do not reflect the diversity of society. Staff is made up predominantly of female employees, 7 females to 3 males and all are Caucasian and of Maltese residence. This is also reflected in the staff members taken on board for definite contracts which are related to the implementation of projects. In fact, although NCPE has 10 staff members in full time employment, there is on the other hand a good turnover of persons on definite contracts related to projects.

41. The background of members of staff and commission at NCPE is rather diverse with persons having technical training, medical training, business administration, legal training, training in behavioural sciences, political sciences, languages and administrative financial training.

42. Decisions related to actions to be taken by NCPE and those related to policy and direction are taken by the members of the Commission on a majority vote. Issues related to the day to day management of the members of staff and the implementation of the policies and directions set by the Commission are entrusted to the executive director for implementation who is assisted by a Manager and secretary. Where the Commission or the executive director and members of staff require legal assistance the Commission retains a lawyer on a services contract for this purpose and legal advice is obtained in this regard.

³⁵ <http://www.equality.gov.mt/page.asp?p=8652&l=1>



43. The National Commission Persons with Disability is made up of not less than 14 members, all appointed by the Prime Minister upon the advice of the Minister responsible for social policy. 7 of these members are to be appointed from ‘amongst such persons appearing to the Prime Minister to best represent the Ministries responsible for Social Policy, Labour, Health, Education, Housing and Economic Planning’. The other 7 members are to be appointed from among those who represent voluntary organisations working in the field of disability issues. Furthermore, at least ½ of the total number of members shall be persons with a physical disability or family members of persons with a mental disability and if possible they must be gender balanced.

44. The Commission has its own legal personality and its legal and judicial representation vests in the Chairperson or his/her deputy. Unlike the Commission for the Promotion of Equality for Men and Women, there is no person appointed as Commissioner but only as Chairperson. However members are similarly appointed for a term of 2 years and may be re-appointed at the end of their term of office. The members of KNPD as at December 2009 were as follows: Mr Joseph M. Camilleri, chairman; Ms Rita Borg, vice chairperson; Mr George Borg representing the Ministry of Education, Youth and Employment; Dr Victoria Farrugia Sant’Angelo representing the Ministry of Social Policy; Mr Alfred Camilleri representing the Ministry of Finance; Ms Mary Rose Attard representing the Ministry for Gozo; Dr Marie Alexander representing the University of Malta; Fr Martin Micallef representing the Archdiocese of Malta, Mr Olav Attard, Ms Tessa Anastasi, Mr Ronald Galea, Ms Marchita Mangiafico and Mr Joseph Stafrace all from the voluntary sector. The seat of the Local Councils Association is vacant. Mr Alfred Bezzina acted as Executive Director between October to December 2009 however following his resignation, the newly appointed Executive Director is Ms Anna Maria Callus.

45. Of the 18 members of staff in full time employment 4 substantially work on equal treatment. The professional background of staff members is predominantly of a political science or public administration nature. The composition of KNPD may be said to reflect the diversity of society in that related to age, sex and types of impairment so that members of the commission and also of staff have different impairments, over half are females and about a quarter of the staff and commission members are over 55 years of age.

46. KNPD has indicated that they are free to shift between budgets for personnel and running costs without conditions or prior approval of the Ministry. But they are unable to shift between budgets for personnel or running costs on the one hand and investments on the other hand. Nor can it take loans for investments. Shifting of its budget over the course of a couple of years is allowed within conditions set by the Ministry or even with prior approval of the Ministry. The majority of KNPD’s staff members are in fact members of a workers’ union, the Union Haddiema Maghqudin³⁶, and salaries are determined according to the salary scales agreed in a staff collective agreement. Consequently, decisions on conditions for promotions and personnel evaluation are taken freely without requiring approval from the Ministry. However decisions related to the way of appointment personnel and also in relation to criteria of downsizing the organisation require approval from the Ministry.

³⁶ http://www.knpd.org/pubs/pdf/07annualreport_e.pdf



47. Within KNPD as a Commission decisions are taken by majority vote. The Commission sets policies and provides direction, which is then implemented by the executive director. The Commission is also assisted by a legal advisor.

48. The recommendations made by the European Commission against Racism and Intolerance, Recommendation 2, may be said to be somewhat satisfied by both commissions. Doubts arise on principle 5.1 which requires that the specialised bodies be provided with sufficient funds to carry out their functions effectively and that the funding be subject to approval of parliament. In this respect, it has been noted that NCPE has not provided legal assistance to victims and has not instituted proceedings. This is said to be due to lack of resources. Moreover, it heavily depends on funding for projects for it to be able to give effect to most of its functions such as awareness raising and research. This would indicate that the government annual vote may be somewhat insufficient. Furthermore, the money voted to NCPE is determined first by the Minister for social welfare and is approved in parliament not as being specifically for NCPE but as being part of the Ministry responsible for social welfare. As for KNPD, the same may be said for the need to have its budget voted for in parliament. It seems from their published annual reports that they do not rely on project funding to that extent as NCPE does and consequently their funding may be more sufficient for their purposes.

49. Both commissions have some interference especially when the ECRI Recommendation also necessitates the bodies to be able to appoint their own staff and manage their resources. Both NCPE and KNPD have indicated that they require prior approval from the Ministry in the case of appointment of personnel and decisions concerning the downsizing of the organisation. Both have also indicated that they may shift budget over a course of a number of years only within conditions set by the Minister or with prior approval. Another factor that needs to be noted is that often the commissions depend for co-financing of projects on government funding and it is not known whether this brings with it a self restraint in the design of the projects or an actual restriction.

2.3 Accessibility

50. Both KNPD and NCPE have undertaken extensive awareness raising³⁷ campaigns which have included the publication of materials aimed at different sectors of society and which have been widely disseminated. One could in fact mention that NCPE has also gone to the extent of publishing a leaflet on gender equality which was disseminated widely in households and places of employment. It has also published and disseminated manuals for employers and providers of services; provides a sample anti discrimination policy that may be made use of by any employer and service provider and is often involved in designing these policies for private persons upon request. NCPE has sought to reach out to all categories of society through its projects, thereby addressing children, teachers and educators, employers, employees, service providers, non-governmental organisations, trade unions and other stakeholders. It also reaches out to other stakeholders by inviting and consulting other

³⁷ It is however to be noted that these campaigns and activities were only possible through the EU funds that NCPE has obtained, and which were co-financed by the government. This could not have been attained if NCPE had to rely on the government recurrent vote.



stakeholders before preparing action plans³⁸ and also invites other stakeholders to participate in projects together with NCPE³⁹. The Commissioner, executive director and other members of staff regularly participate in TV and radio programmes and this complements the use of other means of awareness raising such as the use of posters, street activities, and leaflets.

51. In this respect, one can state that NCPE reaches out to the sectors in society where victims may be found thereby providing information on the assistance the Commission may provide. Specific members of staff, 2 in fact, are then specifically designated to receive requests for information and to assist any person who gets in contact with NCPE. Initial contact may be made by phone, email, in writing or by attending at their offices. It is only investigations that require a written complaint. However even in this respect, its designated members of staff assist the victim to prepare such a written complaint. Communication with NCPE and also presenting a complaint and the investigation procedure itself does not require the victim to have legal assistance.

52. KNPD have also sought to promote awareness of their functions and availability to assist victims through similar mediums as mentioned above for NCPE. For example KNPD has addressed particular sectors through the publication of guidelines⁴⁰, while it addresses the general public through awareness raising campaigns that include promotional materials and leaflets which explain legal rights, measures of redress and also the functions of the commission and how victims may seek assistance. KNPD may be in a better position than NCPE to identify possible victims and to address them specifically thereby enhancing their empowerment to seek assistance. This comment is being made since a register of persons with disability does exist and also since KNPD manages a system of registration for special identity card holders. In fact, KNPD publishes a six monthly magazine which is written in Maltese and sent out to all holders of this identity card⁴¹. One of its publications which is seen as beneficial to victims is a publication issued by KNPD which lists all the services and benefits that are available to persons with disability in Malta providing also contact information and information on procedure⁴². KNPD provides its publications and promotional materials also in formats which are accessible to those who may suffer from visual impairment.

53. In a survey carried out by the Organisation for the Promotion of Human Rights⁴³ as commissioned by the National Commission for the Promotion of Equality for Men and Women⁴⁴ participants were asked questions that indicate their level of familiarity with the measures of redress available to them. The answers also shed light on how well known the NCPE's functions are with the public. When asked to indicate whether they would speak about an experience of discrimination with others 73.1 % indicated that they would do so. However 13.3% said they would keep it to themselves while another 13.6% did not reply.

³⁸ As indicated by the National Commission for the Promotion of Equality for Men and Women in the questionnaire provided to it and also at the meeting held with its officers within the framework of this report.

³⁹ MOSAIC – One in Diversity Project; <http://www.mosaic.gov.mt/home?l=1>

⁴⁰ Access for All, Design Guidelines; <http://www.knpd.org/>

⁴¹ <http://www.knpd.org/> ; by following the link to Publications; Magazine is entitled: Indaq (meaning equal)

⁴² Servizzi u Beneficċji għall-Persuni b'Dizabilità, ISBN 978-99909-71-40-8; <http://www.knpd.org/> found in homepage

⁴³ <http://www.ophrmalta.eu/>

⁴⁴ <http://www.voiceforall.gov.mt/>



From those who indicated that they would keep it to themselves 12.6% said they fear exposure, while on similar levels they would also fear embarrassment, bullying, and being judged.

54. Asked who they would approach for help a predominant majority indicated they would approach a family member. In this regard the response indicated as follows: 51.6% would approach a family member for help, 27.9% would approach a counsellor, 23.9% would approach a priest or Appogg⁴⁵, 18.7% would use a helpline and 17.5% would approach a lawyer. Only 5.17% indicated that they would approach NCPE for help. This was on the same level as NGOs, Union or public officer. The response indicates that participants view discriminatory treatment as a social issue with the underlying legal rights and also rights of redress being seen as somewhat secondary. The causes for this were not analysed in the mentioned study however it is to be noted that the equality legislation and equality bodies in Malta are in fact within the remit of the Ministry responsible for social welfare. On the other hand, the Eurobarometer 2009, entitled Discrimination in the EU 2009, indicated that 21% of respondents would report their case to NCPE should they become victims of discrimination or harassment.

55. There has not been any similar national survey in relation to the National Commission Persons with Disability. However, KNPd may in fact have an advantage over NCPE in making itself known since KNPd actually provide a special identity card to persons with disability, thereby putting the pool of persons who are at most risk of discrimination already in contact with the Commission.

56. Due to the small size of the country the commissions do not have regional or local offices. Despite this both commissions reach out in the localities through the local councils. When one considers that both Commissions may be contacted electronically or even telephonically, it would lead one to conclude that physical obstacles to access the services of the commissions is negligent.

Visibility of both Commissions is not hampered in any way and this is carried out not only through TV and radio but also through conferences, publications, training, campaigns and similar activities. However there is no formal requirement to specifically take into account persons with disabilities. The only area which specifically addresses visibility and accessibility for persons with disabilities is the area of inclusive education. In this regard, national policies were in fact drawn and specific educational services have been made available by the Ministry of Education for the effective implementation of these policies⁴⁶.

2.4 Support benefiting equality bodies

57. The support that may be identified as being of benefit to both the commissions relates mainly to financial support. In this regard, one needs to mention the closed calls for project funding issued by the European Commission and the government's pledge of co-financing such projects. Without this possibility both commissions would not be in a position to undertake these projects, which at times include activities which reflect the functions assigned

⁴⁵ Appogg is the national social welfare agency for children and families in need;

<http://www.appogg.gov.mt/>

⁴⁶ <http://www.knpd.org/> following the link to education



to these commissions by law. Other support that is of benefit to the commissions is the relaying of information related to the commissions and their work by NGOs and also the referral of victims by NGOs to the Commissions.

58. The equality bodies have tapped into funds under the EU Progress Initiative, the European Social Fund Initiative, the Community Framework Fund, the Lifelong Learning Programme Initiatives and also through the Maltese National Commission for UNESCO. Financial support has also been obtained through the funds supporting initiatives for the designated focus given for particular years, such as the 2007 – European Year of Equal Opportunities for All. The main thrust of the projects funded in through these mediums has been to promote awareness, provide training to the public and private sectors and also to social partners and NGOs, to undertake research and design tools that help equality in practice.

59. For example, NCPE has in 2009 implemented two projects named Voice for All⁴⁷ and Living Equality⁴⁸. Both projects have continued to provoke debate, question stereotypes and traditional thought, and promote equality through mediums that raise awareness and also through training. Tools promoting equality issues such as manuals for employers have been designed and disseminated to stakeholders through the funds obtained for these projects. In this manner, NCPE has sought to reach out to employers and victims, general public, social partners and NGOs by raising awareness, provide training and also disseminate tools. The impact of these projects has not been formally assessed however these activities have provoked thought processes by providing information on equality and also toolkits. In targeting a varied audience the projects have also ensured that debate is stimulated in different sectors. Projects implemented by NCPE have helped in bringing about an awareness of what the acceptable norms are and what the targets should be. However further training and education is required to bring about the mentality change required.

60. KNPD have, for example, implemented two projects entitled ‘Accss for All – Success for All’ and ‘Mobility and Orientation for Blind and Visually Impaired Persons’⁴⁹. The former project has ensured promotion, awareness raising, training and the publication of tools, the aim of which have all focused on attaining equality for persons with disability. The latter has focused on one type of disability and sought to empower those experiencing this disability through training and tools. In this respect, KNPD also can be said to have used such financial support to promote equality for persons experiencing disability and to train stakeholders and employers in this respect. They have also targeted the persons experiencing disability and there sought to empower them towards seeking redress or towards a more independent lifestyle. As in the case of NCPE, these projects have not been formally assessed for impact however stakeholders have indicated that equality on the ground of disability has gained more track than any other ground in Malta both due to the projects and activities undertaken by KNPD and also stakeholders have in the meetings scheduled with them also indicated that it is generally felt that there is more political willingness to address this ground than others.

3. Compliance, impact and Effectiveness

⁴⁷ <http://www.voiceforall.gov.mt/>

⁴⁸ <http://www.equality.gov.mt/page.asp?p=8782&l=1>

⁴⁹ <http://www.knpd.org/>



3.1 Compliance with directives 2000/43/EC⁵⁰, 2004/113/EC⁵¹ and 2006/54/EC⁵²

61. The protection from discrimination incorporated in Directive 2000/43/EC may be said to be only partially incorporated in the functions and jurisdiction on racial discrimination entrusted to the National Commission for the Promotion of Equality for Men and Women. In this respect, NCPE has been provided with the jurisdiction to act on discrimination on the ground of race and ethnic origin in all spheres except in employment and vocation guidance, working conditions and membership of workers organisations. Although the Equal Treatment of Persons Order, 2007⁵³ purports to ‘implement the provisions of the Directive’⁵⁴ yet the scope of protection covered by this Order only relates to discrimination 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.⁵⁵ Consequently the equality body is left without competence to consider complaints in relation to employment or to work in this sphere. This sphere is only assigned to the Department of Industrial and Employment Relations⁵⁶ and in an indirect manner since it provides the Industrial Tribunal established under the Industrial and Employment Relations Act⁵⁷ jurisdiction to determine allegations instituted by workers against their employers on issues related to racial discrimination. The regulations only provide the Director of the Department with the power to request a report from the employer on any allegation or complaint received by the Director.

62. The discrimination that is prohibited by Legal Notice 85 of 2007 and Legal Notice 461 of 2004 refers to direct and indirect discrimination, harassment and instruction to discriminate. The exception related to the genuine and determining occupational requirements and also the shift in the burden of proof rule are also transposed under both Legal Notices. Victimisation is also specifically provided in Legal Notice 85 of 2007 thereby giving NCPE jurisdiction to address it. However victimisation is not indicated in Legal Notice 461 of 2004.

63. On the other hand, the principle of equal treatment between men and women in the access to and supply of goods and services⁵⁸ have been transposed into national law through Legal Notice 181 of 2008 entitled, Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008⁵⁹. This Legal Notice prohibits discriminatory treatment of

⁵³ Legal Notice 85 of 2007; <http://www.equality.gov.mt/page.asp?p=8656&l=1>

⁵⁴ Section 3 of Legal Notice 85 of 2007; <http://www.equality.gov.mt/page.asp?p=8656&l=1>

⁵⁵ Section 4 of Legal Notice 85 of 2007; <http://www.equality.gov.mt/page.asp?p=8656&l=1>

⁵⁶ <http://www.msp.gov.mt/services/subpages/content.asp?id=2073>

⁵⁷ <http://www.doi.gov.mt/EN/legalnotices/2004/default5.asp>

⁵⁸ Council Directive 2004/113/EC of 13th December 2004

⁵⁹ http://www.doi.gov.mt/EN/legalnotices/2008/default_1.asp



persons on the grounds of sex, including discriminatory treatment related to pregnancy or maternity, by addressing direct and indirect discrimination, harassment and sexual harassment, instruction to discriminate and also victimisation.

64. The principle of equal opportunities and equal treatment of men and women in matters of employment and occupation as enshrined in the Council Directive 2006/54/EC is reflected in national law through the Equality for Men and Women Act⁶⁰ which in fact establishes the National Commission for the Promotion of Equality for Men and Women and also through the Industrial and Employment Relations Act⁶¹ which provides the Industrial Tribunal with competence to adjudicate disputes related to employment which include allegations of discrimination. For the purposes of this report however it is only NCPE that may be considered since it is this commission that is recognised as an equality body.

65. In this respect, the Commission is empowered to work on direct and indirect discrimination and sexual harassment based on sex or because of family responsibilities in the field of employment, in advertising, in the provision of banking and insurance facilities in respect of the establishment, equipment or launch or extension of any business or self employment, in the participation of a spouse in the activities of a self employed partner, in education and vocational guidance.

66. However the general framework for equal treatment in employment and occupation as enshrined in Council Directive 2000/78/EC of 27th November 2000 was predominantly transposed through legislation which does not concern the National Commission for the Promotion of Equality for Men and Women, but concerns the Department of Industrial and Employment Relations. In fact Legal Notice 461 of 2004 enacted under the Employment and Industrial Relations Act, 2002 as a parent Act, and entitled Equal Treatment in Employment Regulations, 2004 purport to give effect to the relevant provisions of Council Directive 2000/78/EC and 2000/43/EC⁶².

67. This indicates that the NCPE has not to date been empowered to work on discrimination based on race, sexual orientation, age, disability and religion in the sphere of employment but has been empowered to work on discrimination based on sex in employment and in the provision and access to goods and services, and also on discrimination based on race and ethnic origin in relation to the access to and supply of goods and services. The proposed Directive aimed at implementing the principle of equal treatment irrespective of religion, disability, age or sexual orientation outside the labour market will therefore greatly extend the jurisdiction of the NCPE. However, since NCPE has also through projects been addressing discrimination on these grounds, albeit more in terms of training and awareness raising, it would not seem that NCPE would face insurmountable difficulties should its remit be extended to comply with the draft proposed Directive. However, it will require an increase in its financial and human resources, and also an internal restructuring to ensure effective execution of its extended jurisdiction.

⁶⁰ Chapter 456 of the Laws of Malta; <http://www.equality.gov.mt/page.asp?p=8656&l=1>

⁶¹ Chapter 452 of the Laws of Malta; <http://www.msp.gov.mt/services/subpages/content.asp?id=2050>

⁶² Regulation 1(2) of the Equal Treatment in Employment Regulations, 200, Legal Notice 461 of 2004; <http://docs.justice.gov.mt/lom/Legislation/English/SubLeg/452/95.pdf>



68. On the other hand, the law establishing the KNPD is more all-encompassing when considering discrimination on the ground of disability and consequently gives KNPD wider and over-reaching jurisdiction in this respect. Chapter 413 of the Laws of Malta protects from discrimination on the ground of disability in general and consequently in all spheres, but then addresses specific areas in more detail. The areas to which it gives particular attention are employment covering ‘procedures relative to applications for employment; the hiring, promotion or dismissal of employees; employee compensation; job training; and any other terms, conditions and privileges related to employment. The law also provides for the requirement of reasonable accommodation upon the employer. It also specifically regulates the requiring of medical assessments by the employer. Under the heading of employment Chapter 413 also prohibits discrimination by trade unions and employment agencies.

69. In essence therefore the above mentioned national laws have identified NCPE as the designated equality body and in this respect there is compliance with the Directives in what relates to the required structure. However as an established equality body NCPE only deals with gender equality in employment, in access to and supply of goods and services and with racial equality in access to and supply of goods and services. Protection from discrimination in relation to other grounds in employment is assigned to the Department of Industrial and Employment Relations which is not an equality body as such, but is the national government department dealing with employment.

70. In the field of education Chapter 413 of the Laws of Malta prohibits discrimination in access to and also in the conditions of educational services and consequently also prohibits the refusal of a student with a disability from mainstreamed educational institutions unless that institution would require to implement services or facilities the provision of which would ‘impose unjustifiable hardship on the educational institution or authority’.⁶³ . to discrimination a number of areas. Access to premises is dealt with by addressing discrimination not only towards the person with disability but also his/her family members and requires those premises which are open to the public to provide adequate accessibility. The provision of goods, facilities and services is also addressed in this law and in this respect the goods, facilities and services therein identified as being included are: (a) access to and use of any place which members of the public or a section of the public are permitted to enter; (b) the provision of property rights and of housing; (c) accommodation in a 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, sea 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 duties⁶⁴. Accommodation is dealt with extensively and discrimination towards persons with disability or their family members is prohibited for any of the following actions: (a) by refusing the application of such other person for accommodation; or (b) in the terms or conditions on which the accommodation is offered to such other person; or (c) by deferring the application of such other person for accommodation or by according to such other person a lower order of precedence in any list of applicants for that accommodation; or (d) by denying such other person access, or limiting the access of such other person, to any benefit associated with accommodation occupied by such other

⁶³ Article 11(3)

⁶⁴ Article 13(2)



person; or (e) by evicting such other person from any accommodation that is occupied by such other person; or (f) by subjecting such other person to any other detriment in relation to accommodation occupied by such other person; or (g) by refusing to permit such other person to make reasonable alterations to accommodation occupied by such other person if - (i) such other person has undertaken to restore at his own expense the accommodation to its condition before alteration on leaving the accommodation and the action required to restore the accommodation to its condition before alteration, is, in fact, practicable; (ii) the alteration does not involve the alteration of premises occupied by other persons. Furthermore this applies to cases where the accommodation is required for the residence of the provider of the accommodation or his/her near relative and where the accommodation provided does not cater for more than 4 persons. An exemption is also granted on the basis of 'unjustifiable hardship'.

71. It is also interesting to note that Chapter 413 of the Laws of Malta already caters for the use of disability in insurance coverage and this is allowed if it is based on actuarial or statistical data which is reasonably relevant to the assessment of risk, but stops short of imposing the requirement of publication of such data as is imposed in the case of the factor of sex used by insurance providers in the assessment of risk. Although Chapter 413 already regulates areas which are only being proposed in the draft Directive in a manner which seems consonant with what is being proposed, yet one cannot exclude that the final draft exposes some conflict and this would necessitate an amendment of Chapter 413 of the Laws of Malta. However, it would not seem that the proposed Directive would pose any insurmountable difficulties for KNPD, since the Commission is already dealing with the spheres indicated in the proposed draft.

72. KNPD is established as the designated equality body for the ground of disability in line with the EU Directives. The functions assigned to it in fact go beyond those indicated in the relative Directives since they cover issues of accessibility, access and supply of goods and services.

3.2 Powers

73. Article 13 of Directive 2000/43/EC, Article 12 of directive 2004/113/EC and Article 20 of Directive 2006/54/EC require Member States to provide the designated equality bodies with a number of functions. In general these articles require the equality body to promote, analyse, monitor and support equal treatment on the ground of sex, race and ethnic background in all spheres. In this respect, NCPE is entrusted with these functions in terms of article 12 of the Equality for Men and Women Act, section 10 of the Equal Treatment of Persons Order, 2007⁶⁵ and regulation 9 of the Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008⁶⁶.

74. The mentioned Directives also oblige Member States to give the equality body specific functions which include (a) providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, (b) conducting independent surveys concerning discrimination and (c) publishing independent reports and making recommendations in any issue relating to such discrimination. These three functions are

⁶⁵ <http://www.equality.gov.mt/page.asp?p=8656&l=1>

⁶⁶ Legal Notice 181 of 2008; <http://www.equality.gov.mt/page.asp?p=8656&l=1>



specifically provided for in regulation 9 (a), (b) and (c) of the Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008⁶⁷ and consequently in relation to discrimination on the basis of sex in access to and supply of goods and services. However when one considers the Equality for Men and Women Act⁶⁸, and consequently sex discrimination within employment, it seems that article 12 provides specifically for independent assistance in paragraph (j), but does not specifically indicate the function of taking and publishing independent surveys, reports and recommendations. Although these functions fall within other general functions that are assigned to it, yet there is no specific mention of these functions per se. However paragraph (i) may be considered to satisfy these requisites in providing for the function of: “(i) to inquire into and advise or make determinations in an independent manner on any matter relating to equality between men and women as may be referred to it by the Minister.”

75. There are two functions which are assigned to NCPE and which may be said to go beyond the requirements of the Directives in so far as these specify the functions of the designated equality body. The first of these is found in article 12 (d) of the Equality for Men and Women Act which requires the equality body to “liaise between, and ensure the necessary coordination between, government departments and other agencies in the implementation of measures, services or initiatives proposed by government of the Commission from time to time”. This function in theory places NCPE in a position whereby it is put in direct contact with government departments and agencies and places it in a position whereby it coordinates and consequently reviews the application of the principle of equal treatment in the work undertaken by government departments and agencies. However, if one considers that NCPE receives a number of complaints against government departments and agencies alleging discriminatory treatment⁶⁹, it is doubtful how effective the implementation of this function is.

76. Another important function that has been assigned to NCPE is the function of independent investigations, either *ex officio* or upon receipt of a complaint. This function is provided for in the following manner:

“(g) to carry out general and independent investigations with a view to determine whether the provisions of this Act are being complied with;
(h) to independently investigate complaints of a more particular or individual character to determine whether the provisions of this Act are being contravened with respect to the complainant and, where deemed appropriate, to mediate with regard to such complaints;”

77. By providing the Commissioner with this function, it gives NCPE an important tool by which it can assist victims, investigate discrimination and bring this to the attention of the relative authorities, and also provides the commission with a high profile confirming it as the national body on issues of equal treatment. However it is to be noted that NCPE is only empowered to use its functions in respect of sex discrimination in all spheres and racial discrimination only in access to and supply of goods and services.

⁶⁷ Legal Notice 181 of 2008; <http://www.equality.gov.mt/page.asp?p=8656&l=1>

⁶⁸ Chapter 456 of the Laws of Malta; <http://www.equality.gov.mt/page.asp?p=8656&l=1>

⁶⁹ Annual Report, 2008 and 2009; <http://www.equality.gov.mt/page.asp?p=8655&l=1>



78. Article 18(4) of the Equality for Men and Women Act provides the Minister with the power to enact regulations whereby the Commission may itself refer a matter of discrimination to the competent civil court or to the Industrial Tribunal for redress. However these regulations have not as yet been enacted.

79. When considering the functions of the National Commission Persons with Disability it may be said that article 22 of the Equal Opportunities (Persons with Disability) Act⁷⁰ provides KNPDP with the same functions as those assigned to NCPE. Consequently, it is empowered through the functions of promotion, analysis, monitoring and support of victims on the disability discrimination. The other specific functions of assistance to victims, undertaking and publication of surveys, reports and recommendations are also provided for, albeit not in a specific manner.

80. KNPDP is also provided with the function of undertaking investigations and of coordination of public departments and agencies in the same manner as NCPE. However the set-up of KNPDP's Commission is different to that of NCPE. While the members of NCPE are independent members appointed independently of their employment, some members of KNPDP are appointed on the commission as representatives of government agencies and departments.

81. Through regulation 6 of the Procedure for the Investigation of Complaints Regulations⁷¹, KNPDP is specifically empowered to request the court by instituting proceedings against any person against whom it has concluded that he/she has committed discrimination on the basis of disability, to undertake all necessary remedial action.

82. Neither of the equality bodies have set criteria for selecting which powers to use on which issue, and normally this is taken by both to depend on the discrimination being addressed and falls within the discretion of the Commissions together with the executive director. However once a complaint is received or a victim approaches the commissions with a complaint, then both commissions will initiate investigations.

83. The respective legislative provisions⁷² provide both NCPE and KNPDP with the function of keeping 'direct and continuous contact with local and foreign bodies working in the field of (disability)(equality) issues, and with other groups, agencies or individuals as the need arises.' Essentially this provides the equality bodies with the power to liaise with others but not clearly to exchange information. Although both equality bodies are known to exchange information and to reply to questionnaires and requests for information on a regular basis, it is not known whether the information given out requires prior approval from the Ministry or not.

84. The functions assigned to NCPE and KNPDP respectively are in line with the requirements of the EU Directives, however one is to consider this as providing the bare

⁷⁰ Chapter 413 of the Laws of Malta; <http://www.msp.gov.mt/services/subpages/content.asp?id=2050>

⁷¹ http://www.knpd.org/pubs/pdf/eoaregulations_e.pdf

⁷² Article 22(e) of Chapter 413 of the Laws of Malta;

<http://www.msp.gov.mt/services/subpages/content.asp?id=2050>; and Article 12(1)(e) of Chapter 456 of the Laws of Malta; www.equality.gov.mt



minimum required. In this respect for example both bodies do not have the power to provide decisions that are binding on parties to a complaint or to order redress.

3.3 Independence

85. Both NCPE and KNPD are *de iure* independent from the government and the enabling laws provide them with a separate and distinct legal personality.⁷³ There is no evidence to indicate that the Commissions lack *de facto* independence but certain issues may need to be reviewed to guarantee their *de facto* independence. For instance, both depend for their financial resources on the parent Ministry and they are not allocated a budget specifically for them in the annual budget approved by Parliament but are expected to take a share of the budget allocated to their parent Ministry. Even in seeking EU funds for projects they depend on the State for co-funding. Only in the case of KNPD, 7 out of 14 members appointed on the National Commission Persons with Disability are from ‘*among such persons appearing to the Prime Minister to best represent the Ministries responsible for Social Policy, Labour, Health, Education, Housing and Economic Planning.*’; thereby having direct input of government ministries on the commission itself. It may also not necessarily be inductive to strengthen the commissions’ independence where persons nominated as members of the equality bodies or employed with the equality bodies are then appointed as government representatives on regional, international or European bodies or at meetings⁷⁴. While it may be understandable for a State to obtain expert advice from these equality bodies it would seem to put any such person appointed to represent the government’s position rather than to advise the government in a conflicting situation tarnishing one’s image of independence.

86. NCPE has also indicated that it requires approval of the mother ministry in deciding on employees’ salaries, establishing conditions for promotion, and in downsizing the organisation. It does not however require approval to evaluate personnel and to appoint personnel. While it can shift its budget for personnel and running costs without any conditions or prior approval from the ministry, yet it can only shift between budget for personnel/running costs to investments, and shift its budget over a course of a couple of years within the conditions and upon prior approval of the ministry. At the same time it has indicated that the ministry is not involved in the decision-making process related to independent assistance and no restrictions are imposed upon it in this respect. Except that one may note that NCPE does not provide legal or social assistance to victims due to lack of financial resources. There is no interference or review of its conclusions in investigations or of the surveys, reports and recommendations that it provides. Setting budgetary priorities lies entirely within the discretion of NCPE without interference from the Ministry. In this regard also, no goals and measurable targets are set to NCPE by the mother ministry, albeit however that the individual objectives for the director of the organisation are specified in his/her document of employment without measurable targets. Organisational, non financial decisions and strategies are consequently established by the commission itself and reports to the mother

⁷³ Article 12(2) of the Equality for Men and Women Act, and article 23 of the Equal Opportunities (Persons with Disability) Act

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<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aaa/09b1e2784f35c242c1256ef3003462c4?OpenDocument>; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/430/18/PDF/N0443018.pdf?OpenElement>; <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=458>;



ministry once a year. Its annual report is then tabled by the Minister before parliament. Although NCPE is not as such evaluated by parliament, yet its work may be the focus of parliamentary questions or parliamentary debates especially in relation to its annual reports. In so far as projects, NCPE adopts the strategy of outsourcing the evaluation of the project to third parties. Although there are no awards provided to the organisation for the achievement of its goals, its employees may be subject to performance bonuses. Objectively and in law there do not seem to be any sanctions imposed for bad results or failure to achieve goals by the commission. However this may very well reflect the re-appointment of a member on the commission.

87. However in making decisions and setting policies and strategies NCPE has indicated that the following stakeholders are taken into account: parliament, government, parent ministry, ministry of finance, other ministries, the EU, courts, political parties, NGOs, media, and public opinion; while it takes into considering clients, consultants, advisory board and government board to a large extent. It is also to be noted that NCPE has indicated that strategically and in certain situations it shares the same views as parliament, government ministries including the parent ministry and that of finance, the EU, courts, political parties, clients, NGOs, media and public opinion. At the same time a change of government, public political speeches, mediatised scandal related to equal treatment, reorganisation, and conflict with opposing stakeholders are indicated as having some influence on its decision making processes related to its core tasks. NCPE also indicated that it has formal contact with an elected authority such as the minister or an administrative unit of the ministry at least once a month.

88. KNPD has indicated a somewhat different position to that of NCPE. In fact it has indicated that it may establish conditions for promotions and evaluate personnel without any interference from the parent ministry with salary scales being bound by a staff collective agreement since the majority of the employees are in fact members of a workers' union. N However it may only take decisions concerning the way of appointing personnel and in downsizing after approval from the minister is obtained. In offering independent assistance to victims, deliver its conclusions following investigations and undertaking surveys and report and making recommendations KNPD indicates that it is free from any involvement of the parent ministry which does not set any restrictions. Organisation of the financial budget allocated to it depending on its tasks is also carried out by KNPD without interference of the parent ministry and in this manner may allocate personnel and financial resources to the different tasks assigned to it. Although the individual objectives for the director of the organisation are not set out in the document of his/her employment, yet subsidy documents do indicate the goals of the organisation without establishing measurable targets.

89. In this respect therefore KNPD sets its own organisational goals without interference and only presents an annual report about its work to the parent minister, who is then obliged to table this report before parliament. This too makes it possible for parliamentary debate to be initiated on KNPD's work, however evaluation of the achievement of its goals is essentially carried out by the organisation itself, there being no rewards or sanctions in this respect. It is not known however whether employees are subject to a performance bonus.

90. KNPD has formal contact with the minister or with an administrative unit of the parent ministry at least once a week and in making its decisions on policies regarding assistance to



victims, conduct of surveys and issuing of recommendations it considers the following to some extent: parliament, government, parent minister, minister of finance and other ministries, the EU, courts, political parties, clients NGOs, media and public opinion. However in describing its relationship with stakeholders it considers to share the same views in certain situations with parliament, government, parent minister and other ministries, the EU, courts, clients, NGOs, media and the governing board of the organisation. At the same time a change in government, or board members, political speeches and mediatised scandals related to equal treatment, conflict with opposing stakeholders and court decisions have some influence on its decision making processes with regard to its core tasks. However a high influence in this regard is played by the change of director, and board chairperson, amended or new legislation, and reorganisation.

3.4 Ability to fulfil tasks

The ability of both Commissions to fulfil their tasks has been discussed with stakeholders as emanating from professional background and competence of its members and employees, its resources (financial and human), and their performance so far.

The professional background of the members of both commissions indicates a somewhat lack of members with expertise in equality and non-discrimination. KNPD is characterised by members with an economics/business administration, medical, political science/public administration and education background. NCPE is characterised by persons with medical training and education background, having however 2 members who do have a legal background with one practicing as a notary and the other being the director of the Malta European Steering Action Committee. An issue that has been raised by stakeholders is related to the qualifications of persons nominated on the Commissions who are not always perceived by NGOs as having sufficient knowledge or experience in the field of non-discrimination. This is seen as an obstacle to their ability in identifying needs and in designing plans to address these needs. At the same time, in the case of both commissions, members of staff come predominantly from social sciences yet lacking a background in legal training or human rights training. This is often addressed by the provision of training for their employees.

It is felt that these issues of competence have so far brought about a situation whereby both bodies have demonstrated an ability to implement projects and to fulfil their tasks under those projects, but have only been able to promote awareness and sensitise persons on the issues involved, rather than assist victims effectively. In this respect, stakeholders have noted the low number of judicial proceedings on non-discrimination as indicative of a lack of ability to fulfil tasks. KNPD has been indicated by stakeholders to have been more able to fulfil its task of assisting victims than NCPE, however this could be due to the lack of public information that NCPE provides in respect of investigations that it undertakes. In this regard, stakeholders have commented that they view the Commissions (more so NCPE) as more able promoters of equality and disseminators of information rather than assistants in seeking redress. Stakeholders have commented that the cause for this could be the manner in which they are set up whereby neither KNPD nor NCPE have powers of ordering redress. Stakeholder have however indicated an eagerness to be represented in the equality bodies either by having a consultative role or even through more formal and frequent meetings and reciprocal assistance.



NCPE's and KNPD's financial and human resources are perceived as being two of the major obstacles for the Commissions to become enabled to fulfil their tasks. Stakeholders have indicated that Commissions are not adequately financed. This was more pronounced in the case of NCPE than for KNPD and NGOs recognise the benefits that the Commissions have reaped from EU funding. In fact, NGOs have criticised their dependence on such funding for the implementation of promotional and research work. Yet this criticism was more levied toward the national budgeting system rather than at the Commissions *per se*. Stakeholders also view the low honorariums provided to the Commissioner and the Commission members as negative since this is viewed as lack of incentive for those appointed.

91. Past action undertaken by the Commissions has indicated that they have on occasions been able to fulfil their tasks even though not to such an extent as stakeholders or the Commissioners themselves would have wished. Their heavy reliance on the recurrent government vote makes it difficult for them to employ persons to assist them in their tasks since unless salaries are paid by project funds, then it would be the recurrent vote that would be needed to pay salaries. In both cases, the salaries take up quite a chunk of these funds; in the case of NCPE about 90%. However when the Commissions obtained funds to implement projects they have implemented these efficiently and where necessary also contracted experts to assist them in this regard. It is through these funds that research and studies have been undertaken by the Commissions, in the case of NCPE often by contracting others or employing persons for this purpose.

92. KNPD has been rather able in informing persons in contact with disability of their rights and services that are available to them through a number of informative publications such as the Equal Opportunities Information Booklet, and the Services and Benefits booklet. It has also ably established itself as a consultant in development projects whereby without its approval a development would not receive the required development permits. In this regard, KNPD has been instrumental in obtaining physical accessibility and this was also ensured through the Access for All Design Guidelines that it has published. It has also taken initiative in obtaining an independent living for persons with disability through its lobby for inclusive education, services in relation to purchase and registration of vehicles by persons experiencing disability and the promotion of independent living.

3.5 Impact

93. The impact of both equality bodies may be assessed on the basis of their annual reports and the work reported therein. In the National Commission Persons with Equality Opportunities (Persons with Disability) Act for 2008-2009⁷⁵ the chairperson reported that KNPD had investigated a total of 285 complaints, 172 of which were presented during the year under review. In fact the year under review showed an increase of 76% in the number of new complaints received. Complaints were mainly focused on employment, education and topped by access and the provision of goods and services. However complaints related to accommodation and insurance 'remained very low'; the reason for this as provided in the report purports to be the low demand for such services. KNPD is also effective in instituting

⁷⁵ http://www.knpd.org/rpts_ann.shtml by following link to annual reports



proceedings against service providers; the annual report indicates that it had initiated arbitration proceedings against a private company and also indicated that three cases were pending before court. The latter three deal with lack of adequate access in a government health centre and another in a private bank. The third deals with the administration of medicine to students with disability in schools. The report interestingly notes that more complaints were lodged against public entities than against private entities.

94. The report also indicates that the commission gives particular focus to the educational aspect of the enabling law and consequently implements ‘several consultation sessions’ with those ‘who work directly in this sector, which include persons with disability, families, organisations and professionals, as well as persons and entities who have certain obligations with regard to this law, such as employers, service providers, and educational entities among others.’ KNPD also has direct impact on development permits since the development of buildings which are open to the public and which are of major use requires the Malta Environment and Planning Authority to forward any such development plans to KNPD for the latter to verify whether they conform with the guidelines that KNPD itself has published in this regard. Moreover, the Malta Environment and Planning Authority requires developers to obtain a certificate from KNPD indicating that the finished building is in line with these guidelines prior to the issue of a Compliance Certificate which then entitled the developers to apply for water and electricity supplies. KNPD has also been provided with a seat on the Malta Council for Economic and Social Development⁷⁶. This is considered an important council in designing policy and KNPD’s participation at this level provides it with a good opportunity of influencing and mainstreaming policy. KNPD also reports to be lobbying strongly for the enactment of legislation protecting the rights of persons with disability who cannot represent themselves and indicate that they have also held meetings to influence this development with the Permanent Secretary of the parent ministry as well as with the Office of the Attorney General. In the annual pre-budget consultation KNPD provides concrete recommendations related to the national budget. KNPD also seeks to influence the support services provided by the national Employment and Training Corporation with the Chairperson of KNPD being actually appointed as one of the directors of the Corporation. In this regard, it may be said that KNPD has an opportunity of influencing a number of sectors, which opportunity is strengthened also by the appointment of persons from KNPD on other official bodies. This provides for specific measures through which KNPD’s impact is enhanced and rendered more effective.

95. The last annual report published by NCPE is that for the year 2008⁷⁷. Although the style of the report is somewhat different to that published by KNPD, as it provides a list of the activities undertaken without necessarily indicating the action taken by NCPE or the achievement obtained through that action, yet it too is indicative of the impact that NCPE may have had. No statistics are provided for the number of complaints received or determined however the report indicates that a steady number of complaints are received by NCPE. The report does not provide an analysis of all the conclusions reached but only of a few. These already indicate that investigations deal with a variety of issues that fall under its remit. Moreover the report also speaks of requests for information and assistance. Once again the report does not provide a detailed analysis of these requests and only provides a list of issues that was dealt with in such requests. This too is indicative of the impact that NCPE has on

⁷⁶ Malta Council for Economic and Social Development; <http://www.mcesd.org.mt/mcesd/home.aspx>

⁷⁷ http://www.equality.gov.mt/filebank/documents/Annual%20Report%202008_EN%20Final.pdf



actual and possible victims of discrimination as well as on employers and service providers who also seek information and assistance in implementing an equality policy or in resolving equality issues in their work. NCPE uses training to any stakeholder, including employers and service providers, as one of its main ways of having an impact. In 2008, it reached out by way of training to equality committees within government ministries, legal professionals, secondary school children, general public, NGOs, private companies, human resource managers, trade unions, government departments, public officials, teachers and persons involved in the education system.

96. NCPE's annual report and also in the meeting held with representatives of the equality body, indicate that they provide their independent recommendations on an on-going basis not only to government ministries and departments but also to the private sector. This is done through direct requests received by NCPE and also where NCPE takes the initiative and provides such bodies with its research and recommendations. NCPE implements a number of projects throughout the year which aim at bringing about a cultural change, educating and empowering person in equality and also addressing current policies. These projects are one of the main instruments by which NCPE seeks to impact attitudes. The annual report of 2008 also points out that due to its impact, the government has issued a circular requiring all government departments and agencies to carry out a mainstreaming exercise of their policies and services and to bring these in line with national law. Another tool through which NCPE has sought to impact government departments is the formation of equality committees in each government department who are empowered to identify and address equality issues that arise at their place of work.

97. Stakeholders recognise the limits imposed on the equality bodies by financial and human resources and are generally satisfied with the activities carried out by the equality bodies. At times stakeholders also feel that the equality bodies are restricted in the force with which the equality bodies could promote the principle of equal treatment due to the relationship which stakeholders perceive the equality bodies to have with government departments. At the same time, stakeholders also perceive that the equality bodies, more so NCPE rather than KNPD, and not due to its capabilities but only to the grounds of discrimination that it is empowered to deal with, is hampered by lack of political will to provide more effective protection. In this regard for example stakeholders question why NCPE has not as yet been provided with a remit to cover all the grounds of discrimination or why NCPE has been provided with a remit over racial discrimination in access to and supply to goods and services but not in the field of employment. However stakeholders are satisfied with the consultation or information gathering meetings that are undertaken by the equality bodies, but would rather see a more formal structure in this regard.

98. During the meetings held with stakeholders in the preparation of this report, it has been indicated that they perceive KNPD to have been more effective in promoting and bringing about equality on the basis of disability than NCPE on the ground of gender and especially in relation to racial or ethnic origin. In fact, it is felt that NCPE has not been effective in relation to racial discrimination and stakeholders have questioned the very limited action that it has so far taken in relation to racial discrimination. Stakeholders indicate that while NCPE has implemented a number of activities and projects on gender discrimination at the same time it has not been as vociferous as NGOs would have preferred in correcting public perception and in taking a stand on public policy or government action. A few stakeholders have indicated



that they consider NCPE to be over cautious and that it has not managed to establish itself as an authority as much as KNPD is seen to have done so.

99. Stakeholders have indicated that NCPE's work has helped in bringing about a cultural change making the general public more aware of what the acceptable norms in this respect are today. It is felt that it has had more impact on the general public than on those in decisive positions such as the judiciary, adjudicators and politicians. Its impact is perceived to have focused on education and sensitisation of members of the general public and of training of public officers. Yet with regard to the public officers stakeholders have commented that training of public officers is insufficient as this is not then backed up by clear internal direction that equality is priority principle from the part of the employer.

100. On the other hand, as indicated above NGOs feel that KNPD has been instrumental in bringing about culture change in respect of persons with disability. Although they recognise that misconceptions and discriminatory attitudes remain, yet NGOs stated that the public is generally aware of what amounts to discrimination on the ground of disability and are less willing to accept it than with racial or gender discrimination. They have however expressed concern in relation to KNPD since there is a perception that some NGOs working against discrimination on the ground of disability do not recognise KNPD as the national authority. The meetings held with stakeholders indicate that those working in this field are numerous and cooperation is not always established. This is seen as an obstacle for KNPD.

Comments that were made in respect of both Commissions include that stakeholders would like to see more expertise being obtained by the Commissions, with persons appointed on such bodies to be appointed on the basis of merit through a transparent process rather than through political appointments. In relation to NCPE more so than in relation to KNPD, stakeholders have expressed concern over its 'independence' from the government and would like to see it take more positions on issues of gender and racial equality even if these relate to government action.

3.6 Dealing with the lack in reporting of cases

Both equality bodies are empowered to initiate *ex officio* investigations and often where it identifies a situation of discrimination on which it has not received a complaint they would generally initiate such an investigation. However this is often the case where the action or treatment that is under review has an impact on more than one individual. For example, NCPE has investigated the effects of a circular issued to public departments, agencies and ministries by the head of human resources of the government on those who were making use of family friendly measures; while KNPD has initiated general investigations against national banks for lack of accessibility in their branches.

101. Moreover, where lack of reporting is identified, both equality bodies analyse the causes and also the type of victim. Then design awareness raising and empowering activities to address such a situation. Both equality bodies make use of the media and attend both TV and radio programmes to address different categories of societies. In the first few years of NCPE reporting of cases of gender discrimination were relatively few, however these have been increased through ongoing sensitisation of the public on what constitutes gender discrimination. At the same time it is to be noted that any analysis carried out in this regard, is an informal one and often an internal assessment made by the Commissions themselves



when assessing the needs to be addressed in national framework documents or through their annual plan.

102. Studies on under-reporting have not been undertaken. Only the 2009 EU-MIDIS, on European Union Minorities and Discrimination Survey⁷⁸ has formally considered this issue. However stakeholders, especially NGOs working with persons from racial minority, consider this to be of a grave level. In the areas of gender and disability there is much more reporting which could be the consequence of the various awareness raising campaigns that have to date been carried out in this respect. Essentially the general public has been sensitised and informed on the measures of redress available and on how the Commissions can assist them should be victims of discrimination. However the racial minority groups as such have not been targeted. Barriers in this respect can also include the fact that most members of the racial minority are irregular immigrants who reside in open centres.

⁷⁸ http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_GLANCE_EN.pdf



4. Activities

4.1 Complaints, cases and Procedures

4.1.1 Dealing with complaints

103. The 2008 annual report published by NCPE⁷⁹ does not provide numbers in relation to the queries it received or in relation to the complaints it received. It however states that ‘NCPE responds to several requests for information’ from public service employees, the media, general public, private companies and students. A list of topics indicating the subject matter on which these requests were received is provided as follows:

“Requests were made regarding:

- Family friendly measures (including maternity leave, reduced hours, parental leave and flexitime)
- Discrimination in advertising
- Gender inclusive language
- NCPE’s procedure for dealing with complaints
- NCPE’s website
- Directory of Maltese Women/Maltese Professionals
- Employment conditions
- Housing
- Sexual harassment
- Various publications and leaflets
- Social benefits
- Irregular immigrants
- Maltese women living in the first part of the 20th century
- Tax refunds
- Human rights issues
- Work of NCPE
- Role and legal position of women vis-à-vis marriage
- Role of company vis-à-vis sexual harassment at work
- Flexi time
- When to notify employer about one’s pregnancy
- Awarding of qualifications allowance to only one group of employees
- Discrimination in distribution of tasks at the place of work
- Legislations catering for family friendly measures”.

Similarly no specific number of complaints is provided for in this report but it indicates that the complaints received dealt with:

- Sexual harassment at the workplace
- Sexual harassment at partner’s workplace
- Gender discrimination during interview
- Discrimination in procedures related to race discrimination

⁷⁹ <http://www.equality.gov.mt/page.asp?p=8655&l=1>



- Gender discrimination in work opportunities
- Health and safety matters including gender related issues
- Issues related to family friendly measures (including maternity leave and parental leave)
- Gender discrimination in provision of school subjects
- Indecent clothing at the place of work

The report indicates that the majority of complaints received deal with sexual harassment and alleged discrimination in the availability of family friendly measures.

NCPE's annual report for 2007 does however indicate that for the year under review 50 new complaints were received. In this instance they dealt with issues of: social security, Family-friendly measures availability for senior posts within the Public Service, Sexual harassment, • Reduced hours, Harassment and bullying, Discrimination in promotion, Unfair dismissal due to pregnancy, Family-friendly measures within the public service, Teleworking, Discrimination based on gender identity, Discriminatory/offensive advertising, Maternity rights, Criteria for applying for public service examinations, Unfair dismissal due to family responsibilities, Dismissal whilst on probation allegedly due to pregnancy, Changes in working conditions, Childcare facilities, Gender discrimination vis-à-vis goods and services, Discrimination in work opportunities, Discriminations in conditions of work when offered employment, Tax credits, Discrimination in services offered by banks, Flexibility in work conditions, Gender discrimination in payments for services, Care and custody of children, Dismissal from training due to pregnancy, Discriminatory call for applications, racial Discrimination in recruitment, Different treatment towards EU nationals and Allegations of xenophobia (housing).

104. This report also indicates that it intervened in 62 cases of gender discriminatory adverts where it was brought to the attention of the advertising agency that an advert published or designed by it was contrary to the legal provisions. During this year requests for information focused on issues similar to those indicated for the year 2008. The annual report for 2006 indicates that it received 37 complaints however does not indicate the number of requests for assistance or information received. The issues dealt with in both these complaints and requests for information or assistance focus on the same issues indicated for 2007 and 2008. 55 complaints and 150 requests for information or assistance were received in the year 2005⁸⁰. Once again the predominant issues were use of family friendly measures and sexual harassment. Another 52 complaints and 93 requests for information were received for the year 2004⁸¹. These reports do not indicate that NCPE has assisted victims in pursuing court proceedings.

105. Victims of discrimination often approach NCPE either by phone or email and a few attend its offices. Immediately upon initial contact being made the victim is invited to present a formal complaint on the complaints form and asked if assistance is required in this regard. Where assistance is not required, the complainant is asked to submit the formal written complaint, however where assistance is required, the victim is asked to meet with the member of staff entrusted with the task of providing assistance. At times, the legal advisor of NCPE is also present for such meetings. Following this the Commissioner initiates an investigation in

⁸⁰ <http://www.equality.gov.mt/filebank/documents/ncpeannualreport2005.pdf>

⁸¹ http://www.equality.gov.mt/filebank/documents/ncpe_annualreport_2004.pdf



which he/she will ask the employer or service provider against whom the complaint has been registered to provide a report in writing on the alleged facts and will also invite this person to submit itself to the investigation. Whether the employer or service provider agrees that the outcome of the investigation will be binding upon him/her or not, the Commissioner will call all persons who may have knowledge or information of the alleged discriminatory treatment to meet with the Commissioner and the members of the commission who assist the Commissioner in investigations so as to provide information. Following this, the Commissioner will draw a conclusion which is forwarded to both the victim and the employer or service provider. Where evidence is found that may give rise to a criminal offence the Commissioner will bring this to the attention of the police authorities. Where the parties agree to be bound by this conclusion the Commissioner invites the parties for mediation with a view to finding a method of redress. Where this is not the case, NCPE may then assist the victim in instituting proceedings before the civil court or the industrial tribunal.

It may be commented that the majority of complaints received by NCPE focus on gender discrimination rather than racial discrimination. This can be due to its remit being extended to cover also racial discrimination only a few years after it started its work on gender discrimination, but is also to be related to the situation identified by national stakeholders that victims of racial discrimination do not feel empowered to and are at times weary of reporting cases of racial discrimination. At the same time it seems that the majority of the cases dealing with gender discrimination focus on sexual harassment and use of family friendly measures. There are no clear indications as to the cause for this, except that both seem to deal with situations which often reach a point whereby the victim is lead to make a choice between continuing in employment under the same conditions or leave that employment.

106. The Commissioner does not select complaints for investigation but investigates all complaints received. Moreover, confidentiality is also demanded of the parties participating in the investigation and the victim is not made to be present for those sessions where either the perpetrator or other witnesses are called to provide information.

107. KNPD indicates in its annual reports that in 2009 it received 172 new complaints, in 2008 98 new complaints, in 2007 it received 105 new complaints, in 2006 it received 92, in 2005 it received 91, in 2004 it received 71, in 2003 it received 75, in 2002 it received 76 and in 2001 it received 95 new complaints⁸². The number of complaints received indicates an increase between those received in 2009 and the number of complaints received in previous years. The issue that was reported to remain the topic most complained of was that of access and this throughout the years. The other sector of access to goods and services and also the education sector remain high on the list. The majority of complaints were made against government department, then the private sector, parastatal organisations, church and then against local councils.

108. KNPD's reports indicate that they make use of court proceedings and arbitration proceedings more frequently than NCPE. Its 2009⁸³ report indicates that in that year it took legal action in 7 cases; 4 of which by the presentation of a judicial protest. Those on which a judicial protest has been presented in court deal with physical accessibility in public places such as clubs, bars, banks and function hall. The three cases pending before court however deal with physical accessibility and the administration of medication to students with

⁸² <http://www.knpd.org/pubs/pdf/eoarpt09e.pdf>

⁸³ <http://www.knpd.org/pubs/pdf/eoarpt09e.pdf>



disability in schools. It is known that the arbitration procedure mentioned in this report the conclusion was against KNPD, and that the judicial proceedings already determined by the courts were also against KNPD⁸⁴.

109. Often where cases involve specific individuals it is only with the consent of such individuals that judicial action is instituted. For the grounds protected through equality bodies, it seems that victims prefer confidentiality and non-exposure by using the Commissions' procedures rather than be involved in public proceedings such as court proceedings. In fact when one considers the proceedings that were instituted by KNPD it becomes clear that these cases deal with physical accessibility to premises and consequently do not identify a specific victim. Moreover, cases of discrimination are not set to follow a fast track procedure and the first instance proceedings would be mainstreamed with other proceedings, thereby taking about three to four years for determination. Another two to three years on average would be required at appeal stage. Proceedings already determined are very few and it is therefore not really adequate to consider success rate; especially when one considers that so far it seems to be an equal number of lost and won cases.

110. Victims of discrimination reach KNPD in a similar manner as is above described for NCPE. In this respect therefore victims approach KNPD who then offer assistance for the formulation of the complaint. Once this is affected, the Commission will initiate its investigation by giving notice to the person who allegedly is responsible for the unlawful act of discrimination informing him/her of KNPD's intention to investigate and asking him/her to provide a written report in this regard indicating whether he/she intends to take any action to remedy the situation. Following this KNPD will request any persons having information on the case to attend before the Commission and to provide it with the information known to him/her. Once a conclusion is reached, if this indicates that discrimination has occurred KNPD will bring its conclusion to the attention of the parties and will also invite them to implement remedial action. In default it will initiate judicial proceedings. KNPD does not select the complaints that it will investigate but in fact considers all complaints received.

111. It is only lately that complaints involving issues of multiple discrimination are coming to the attention of the Commissions, especially in relation to the combination of gender and disability. There is no legal procedure or regulation in this regard as yet and no formal or informal policy either.

4.1.2 Conflict resolution

112. In this respect before either of the equality bodies proceed with judicial proceedings they will seek to have the conflict resolved either through mediation, friendly settlement or arbitration. NCPE is bound to mediate between the parties, when they agree to be bound with its conclusion following an investigation. In this regard, NCPE will itself act as mediator between the complainant and the alleged perpetrator with a view to reaching a friendly settlement in respect of measures of redress. Mediation may be used in all cases as long as

84

http://www2.justice.gov.mt/sentenzi/judgm_result.asp?FrmNo=&FrmYear=&FrmSeq=&FrmDate=&FrmDate2=&FrmCourt=&FrmJudge=&FrmOkkjo=kummissjoni+nazzjonali&FrmOkkjo2=&Frmkeywords=&FrmMatch=All&search=Search&FromThis=1&FrmPageNo=1&FrmProcessyear=ALL&FrmSection=1&lng=ENG&FrmList=10



the parties agree to be bound by the conclusion of the Commissioner following an investigation. Mediation may provide to be effective protection since it retains the veil of confidentiality, thereby not exposing the complainant to the public eye. In effect it neither exposes the person against whom the complaint has been presented and in most cases this would be preferred by the employers or service providers. It may also provide the complainant with a faster remedy than what could be obtained in judicial proceedings which may take an average of 3 years for determination.

113. On the other KNPD follow the approach of trying to reach a friendly settlement whereby representing the victim it would seek redress through agreement. Where this fails the Procedure for the Investigation of Complaints Regulations, 2001⁸⁵ enables it to refer the matter to arbitration rather than to institute court proceedings. This may be availed of only if the interested parties are in agreement.

114. It is not possible from the information available to ascertain with exactness the number of mediations that either of the Commissions has undertaken to date. NCPE's annual reports does not make any reference or provide information that can lead to a conclusion in this respect, while the reports of KNPD at times indicate that complaints have been settled.

4.1.3 Other Issues

115. Neither of the equality body is empowered to impose sanctions or liquidate compensation and consequently follow up activities are only restricted to ensuring that the outcome of mediation, friendly settlement, arbitration ruling or judgment, is effectively implemented.

116. KNPD may be said to be proactive in strategic litigation since it has initiated a number of court proceedings in its own name and sought court direction in this respect. Two proceedings that are currently pending before the national courts include the Kummissjoni Nazzjonali Persuni B'Dizabilita vs Banif bank (Malta)Plc⁸⁶ and Kummissjoni Nazzjonali Persuni B'Dizabilita vs Direttur Generali tas-Sahha⁸⁷. The first case refers to lack of adequate physical access to the premises of the bank, while the second case refers to lack of adequate physical access to health clinics. NCPE has not as yet done so. However, both are empowered to take action at their own initiative without requiring approval.

117. The Commissions do not really have the power to enter proceedings as an amicus curiae as such but more may assist the victim in bringing proceedings. NCPE has never made use of this function nor has it presented proceedings itself or on behalf of a victim, however KNPD has presented proceedings before the civil courts in its own name and it seems it has done so in about four instances; each procedure related to issues of accessibility to premises.

4.2 Knowledge development

118. KNPD and NCPE are both entrusted with the function to develop knowledge on issues of equality. Research, more than surveys, is regularly carried out by both equality bodies.

⁸⁵ Legal Notice 13 of 2001 and 3 of 2002; http://www.knpd.org/pubs/pdf/eoaregulations_e.pdf

⁸⁶ Application number 294/2009, pending before the First Hall of the Civil Court

⁸⁷ Application Number 590/2005, pending before the First Hall of the Civil Court



However not all research undertaken is published as often the equality bodies carry out research in the performance of their tasks which is used to address or resolve an issue at hand, without then turning that research into a publication. NCPE's research documents may be found not only on its website but are also widely disseminated to the sectors which they address. These have included manuals and tool kits for use by particular sectors such as the Racial and Ethnic Origin Equality Manual and reports focusing on Gender Mainstreaming, Equality through Education, and family friendly measures⁸⁸. It has also published guidelines, such as those for monitoring visual adverts and also sample policies on equality and sexual harassment⁸⁹.

119. The published research of NCPE has covered to some extent all the grounds and spheres assigned to it, but has also gone beyond these grounds. This is indicative of the research published under the Voice for All project⁹⁰ where research was compiled on all the grounds of discrimination. However as can be seen from the projects so far implemented focus on gender equality and mainstreaming was predominant in the research carried out. Moreover often it has not been a case whereby the research analysed the national position, except for the case of Voice for All project, but more so that research was carried out to aid in the publication of information booklets or leaflets.

120. Although NCPE is entrusted with a monitoring function yet it does not seem that monitoring is implemented through surveys or other formal procedures or measures. In this manner it monitors developments or the situation of equal treatment through informal procedures and does not seem to engage in reporting in this regard. This could be due to its limited human and financial resources.

121. Under the Living Equality project NCPE produced research on Gender Responsive Budget, and a gender sensitivity manual. Voice for All project enabled the publication of research collating the position of the grounds of discrimination in Malta. Gender Mainstreaming – the Way Forward project enabled the publication of research on the introduction of family friendly measures at the work place, the gender pay review, and also career paths and conditions of work for graduates. Gender Aspect from a legal Perspective brought about the publication of manuals for different sectors⁹¹.

122. On the other hand, KNPD also produces a number of publications which seem more to address empowerment and awareness raising rather than taking stock of the current situation on disability discrimination and providing analysis of the causes. Its publications are also made available on its website⁹² as well as being disseminated extensively to the sectors they address. The number of research projects undertaken is not known.

123. Monitoring of discrimination and equal treatment is also not carried out through formal procedures or through reporting. Informal monitoring is undertaken by KNPD in relation to the occurrence of discrimination. However it monitors compliance with the enabling Act through a committee which it has established and which consists of 3 persons, including

⁸⁸ <http://www.equality.gov.mt/page.asp?p=8655&l=1>

⁸⁹ <http://www.equality.gov.mt/page.asp?p=8655&l=1>

⁹⁰ <http://www.voiceforall.gov.mt/pages/publications.aspx>

⁹¹ <http://www.equality.gov.mt/page.asp?p=8782&l=1>

⁹² <http://www.knpd.org/>



KNPD's legal advisor. It does not seem however that reports are published in this respect but that these reports are used by KNPD for its work.

124. The reports and publications here mentioned has generally assisted in providing the equality bodies with an assessment of the situation on the ground thereby allowing them to identify the needs. On a different level, however, both Commissions have also published research materials and toolkits/manuals through which they have sought to empower stakeholders. Despite this initiatives have not really consisted in generating data on discrimination such as discrimination testing. However, NCPE is currently implementing a project which will undertake a number of qualitative studies related to females in employment under the project Unlocking the Female Potential and which are expected to generate needed data on gender discrimination.

125. Often both equality bodies undertake research and study work through projects which are not funded by the government recurrent vote but through other for example EU funds. It has not been possible to identify with exactness the number of surveys or research projects carried out but on average both Commissions generally would be working on 2 projects with each project having a research component or a knowledge development component.

4.3 Promotional work

126. Initiatives defining or supporting good practice in equality or diversity are generally limited to the promotion of such practices by way of example in the training that is provided by both equality bodies. However one could consider two projects activities implemented by NCPE which can be viewed as supporting good practice. The first activity has already been implemented within the framework of the Voice for All project whereby a competition was held to identify and award good practices in equality and diversity.⁹³ Another activity that is currently being implemented is the provision of an equality certification process that is being undertaken by NCPE of private companies and businesses⁹⁴. The certification is awarded only to those companies who show that gender equality is a core value in the administration of their business.

127. At the same time both equality bodies promote good practice in the recommendations they provide both state actors and also stakeholders in the private sector. Although recommendations for the implementation of good practices made to state actors are generally not published yet one can indicate the publication entitled 'Self Advocacy'⁹⁵ published by KNPD and the Sexual Harassment guidance and sample policy provided by NCPE as containing recommendations promoting good practice.⁹⁶

128. Both NCPE and KNPD are specifically mandated to promote equality issues and both are active in this area. One could say that the racial discrimination is the ground that has least

⁹³ <http://www.voiceforall.gov.mt/pages/competition.aspx>

⁹⁴ <http://www.equality.gov.mt/filebank/documents/Equality%20Mark%20Campaign%20info.pdf>

⁹⁵ http://www.knpd.org/pubs/pdf/sa_doc.pdf

⁹⁶ http://www.equality.gov.mt/filebank/documents/sexual_harassment_code_of_practice.pdf



been addressed thus far, with disability and gender issues having been at the forefront for a number of years. The legislation framework on racial discrimination was promulgated some time after legislation on discrimination on the ground of disability or sex and cultural change also seems more difficult in respect of racial discrimination. NCPE has so far not undertaken a project that focuses only on racial discrimination but at the same has implemented projects addressing racial discrimination together with other grounds.

129. Training initiatives by both NCPE and KNPD have taken a number of forms. Both Commissions provide ongoing training in established university academic programmes, at places of employment and service providers as well as within the public sector. Training to NGOs and stakeholders has however been provided mainly through EU funded projects.

4.4 Awareness work

130. Both equality bodies under review are very active in raising awareness, which is in fact one of the functions assigned to them. This is predominantly done through the provision of training, implementation of projects and publications. A few of the major methods used to raise awareness is the participation of persons from the equality body on TV and radio programmes whereby issues related to diversity and equality are addressed. Another method used is the publication of booklets or leaflets which are widely disseminated. In this respect one can mention the Equal Opportunities information booklet⁹⁷ and the report entitled Rights not Charity – Guidelines towards an inclusive society and a positive difference⁹⁸ which were published by KNPD. For NCPE one can mention the promotional brochures targeting different sectors of society which were published under the Voice for All project⁹⁹; the awareness raising campaign implemented in the project entitled: The Gender Aspect from a Legal Perspective¹⁰⁰; and the materials produced through the project entitled Taking Gender Equality to Local Communities¹⁰¹.

131. The media is quite responsive to action taken by the equality bodies and it is usual for them to be invited on programmes broadcasted or aired on TV and radio as well as in articles published on newspapers. Press releases made by both equality bodies are also taken up by the media, even if this form of promotion is not regularly used by the equality bodies. Equality was for example the focus of a prime time discussion programme on the national TV channel¹⁰² wherein different stakeholders were brought together. It is also normal practice for journalists to put questions to the equality bodies and to seek their comments on stories and articles that are published in the national newspapers¹⁰³.

⁹⁷ <http://www.knpd.org/>

⁹⁸ <http://www.knpd.org/>

⁹⁹ <http://www.voiceforall.gov.mt/pages/publications.aspx>

¹⁰⁰ <http://www.resourcepack.equality.gov.mt/awareness-raising>

¹⁰¹ http://www.equalityincommunity.gov.mt/lang_english/downloads.html

¹⁰² Xarabank produced by Where's Everybody on the national station TVM; <http://www.pbs.com.mt/> and <http://www.we.com.mt/>

¹⁰³ <http://www.timesofmalta.com/search;>



132. Media often needs to be solicited to report or write about issues of equality. However when they are solicited action is usually taken by members of the media with newspapers and journalists writing on particular cases or even on projects. However it does not seem that either KNPD or NCPE have developed a relationship with members of the media whereby the commissions initiates work by the media on equality issues. Both commissions however respond positively and participate when called upon by journalists. When reports are made by journalists these are generally narrative of the circumstances without expression of a favourable or negative tone.

133. In the last few months a few journalists have reported issues related to discrimination on a more frequent basis especially in relation to racial equality. This has given NCPE the opportunity to comment on situations described in the reports and for the Commission's position in this regard to be quoted. However, on average one would not really find a mention of either NCPE or KNPD in media forums more than once a month.



5. Role of Equality bodies in legal development and policy making

134. Although the enabling Acts for both Commissions indicate that NCPE and KNPD are to advice on legal developments, however there does not seem to be a binding policy on government entities which requires the involvement of NCPE or KNPD in drafting legislation and preparing policy. This has led to a situation whereby some government entities do involve the equality bodies and seek their comments and recommendations on both legislation and policies and others do not even notify NCPE and KNPD that a law or policy is being drafted. Government entities are often therefore at opposite sides of each other in this respect, with those who recognise the valuable assistance that these equality bodies can provide being regularly in contact with the Commissions while others do not approach the Commissions at all. It often depends as to whether a policy or legislation being drafted is thought of by the drafting Ministry as one related to equality or otherwise. So that for example if the Ministry responsible for employment were to be drafting laws or policy would not ask NCPE or KNPD to contribute towards this drafting, even if the law/policy at hand will have an effect on different disadvantaged groups, such as gender, racial minorities or the disabled. This occurs where the law or policy being drafted is considered as being related to employment issues and not to equality issues.

135. There is a mixed perception as to the issues in which the equality bodies are considered as important actors. Government entities consider the equality bodies as having both legal expertise and also knowledge of what is happening on the ground. However stakeholders such as NGOs have indicated¹⁰⁴ that they perceive the equality bodies as not being in touch with the grassroots and also expressed that the background of some of the persons appointed on the commissions does not indicate these persons to have expertise in equality issues.

136. NGOs have also indicated that KNPD is more proactive in indicating where it disagrees with government policy or where this ought to be made better than NCPE. In so far as the latter, NGOs have stated that they consider it rather weak in this respect. Despite this, NGOs are aware of the potential that both Commissions have and seem available to assist in their development. They do however comment that both commissions must undertake self-appraisals on a regular basis, seek executive powers especially in providing redress to victims and also establish a formal contact with NGOs rather than infrequent or according to need basis.

137. However as indicated above, when government entities do approach the equality bodies for their participation in the development of law and policy, they do so because the equality bodies are perceived as having more specialised knowledge of equality issues at play. The equality bodies are important actors in the promotion of diversity and non-discrimination, and NGOs consider this to be so not only because of the high level of EU finances that are provided to them in closed calls, but also because NGOs recognise that the equality bodies are

¹⁰⁴ Stakeholders have been approached to express their opinion and indicate how they perceive the equality bodies and also to suggest how the equality bodies can develop their potential further. These stakeholders have included NGOs who work on the recognised six grounds of disability. Representatives were brought together at a meeting held on Friday 30th April 2010 with the author of the report.



in direct contact with government entities and are consequently perceived as having more power of influence than the NGOs themselves. However, stakeholders are of the opinion that neither commission has reached its full potential. They are however aware of the beneficial work that both equality bodies have been providing and are also aware of the restrictions imposed through resources. Stakeholders also positively appreciate the dedication of the employees of the equality bodies and consider their employees to be the best asset that both equality bodies have.

138. Equality bodies are generally involved in the drafting of laws with which they will be working; so that legislation which will provide them with a wider remit or affect their powers is generally drafted either with the equality body being continuously consulted or even with the draft being proposed by the equality body itself. On the other hand, where legislation does not deal with the equality bodies themselves then often consultation with the equality bodies would not be undertaken.



6. Networking

139. Although both equality bodies have some contact with stakeholders it may be said that the most frequent of contact is with the government departments. Other stakeholders, such as NGOs, trade unions, business networks are generally only contacted by the equality bodies on a need basis, such as for example when application for projects requires this. In this respect therefore stakeholders have indicated that there is no formal structure whereby they can provide their input even if they express a willingness to participate and to offer their knowledge and experience. This must also be put in contrast with the indications provided by the equality bodies who indicated that they are in contact with stakeholders on a weekly or monthly basis. Considering the information provided by the equality bodies and that provided by the stakeholders, predominantly NGOs, one cannot but help comment that there is a distance between the equality bodies and NGOs the cause of which is not identified.

140. Networking with others is one of the functions assigned to both equality bodies. KNPD has taken this a step further than NCPE and has established a ‘Consultative Committee’ for which persons with intellectual disability were asked to apply¹⁰⁵. This call received such strong response that the committee was actually divided into three groups. This seems to be the only structure wherein stakeholders are consulted, even if one is to note that the committee is made up of individuals and not of NGOs.

141. On the other hand, , both equality bodies are involved in regional and international networks. KNPD has been part of the following networks: Equinet, the European Disability Action for Mainstreaming Assessment Tool, the European Design for All e-Accessibility Network together with the national representative, and the Academic Network of European Disability experts. NCPE is a member of Equinet. Membership in networks, especially for KNPD, provides the national bodies with training, information on good practices in other countries and also with exposure that helps them gain fruitful contacts to learn from the experience of others, and gives them the opportunity to seek assistance or to consult with others in their same position. These networks at times also offer training to the employees of the equality bodies.

¹⁰⁵

National Commission Persons with Disability Annual Report 2009; www.knpd.org



7. Good Practice

*Please fill in the template provided in Annex 2 and state **reasons** why you consider it good practice! (e.g. above EU standards, innovation, effectiveness and impact, sustainability, transferability)*

7.1 Structure and Organisation

Please fill in the template provided in Annex 2

7.2 Enforcing the legislation

Please fill in the template provided in Annex 2

7.3 Knowledge development

Please fill in the template provided in Annex 2

7.4 Building awareness

Please fill in the template provided in Annex 2

7.5 Promotion

Please fill in the template provided in Annex 2



ANNEXES

Annex 1 – Tables and Statistics

Please complete the table below, fill in a separate table for each equality body in your country.

	2000	2001	2002	2003	2004	2005	2006	2007	2008
<i>Budget in €</i> <i>KNPD/</i>					580K/	580K/	580K/	580K/	Info Not avail
<i>NCPE Govt. Vote</i>					167K	174K	233K	256K	256K
<i>Number of staff</i> <i>(full time</i> <i>equivalent)</i> <i>KNPD</i>								18/	18/
<i>NCPE</i>								10	10
<i>Number of</i> <i>professional/legal</i> <i>staff (full time</i> <i>equivalent)</i>								none	none
<i>Complaints/queries</i> <i>received by</i> <i>equality body</i> <i>KNPD</i>	Info not avail/Info not available	95	76	75	71	91	92	105	98
<i>NCPE</i>		Info not available	Info not available	/Info not available	/52	/55	/37	/50	/Info avail



<i>Procedures (investigations, audits etc.) initiated by equality body at own initiative</i>	Info not available	Info not available	Info not available	Info not available	Info not available	Info not available /93	Info not available /150	Info not available /62	Info not available
<i>Number of cases (please break down according to different grounds¹⁰⁶)</i>									
<i>Number of surveys KNPD¹⁰⁷/ NCPE¹⁰⁸</i>						1	1	1	1
<i>Number of research projects¹⁰⁹</i>									
<i>Number of awareness initiatives</i>									
<i>Number of training actions</i>									

¹⁰⁶ KNPD only deals with ground of disability and consequently the numbers provided in the previous two boxes deal only with disability discrimination; NCPE deals with gender and racial discrimination, however it deals with racial discrimination only since April 2007 and its reports do not provide specific numbers in this respect.

¹⁰⁷ For these years KNPD published statistics from the National Register of Persons with Disability; www.knpd.org.mt

¹⁰⁸ NCPE published a survey about perceptions of discrimination in Malta within the framework of Voice for All project; <http://www.voiceforall.gov.mt/>

¹⁰⁹ NCPE seems to undertake a project every year which includes a research component in the sense of providing a report. However the research component is only one of the activities of the projects. KNPD produces a number of booklets and also guidelines but not really published research.



<i>Number of promotional initiatives to support good practice</i>									
<i>Follow up activities of promotional equality body, once problems were established (please disaggregate according to type of follow up activity: mediation, informal intervention, representation at court/tribunal, etc.)</i>									
<i>For tribunal bodies: Number of decisions, typology of sanctions and/or compensation</i>									



Annex 2 - Template for Good Practice Examples

7.1 Structure and Organisation

<ul style="list-style-type: none"> • Area:¹¹⁰ • 	Securing stakeholder involvement in the development of initiatives
<ul style="list-style-type: none"> • Title (original language) • 	<ul style="list-style-type: none"> • MOSAIC
<ul style="list-style-type: none"> • Title (EN) • 	<ul style="list-style-type: none"> • MOSAIC
<ul style="list-style-type: none"> • Organisation (original language) Resp. for implementation Resp. for financing 	Kummissjoni Nazzjonali għal promozzjoni ta' l-Ugwaljanza bejn irgiel u nisa
<ul style="list-style-type: none"> • Organisation (EN) Resp. for implementation Resp. for financing 	<ul style="list-style-type: none"> • National Commission for the Promotion of Equality • Financed by the European Commission through the European Year of Equal Opportunities for All 2007 and co financed by the government.
<ul style="list-style-type: none"> • Government / Civil society Resp. for implementation Resp. for financing 	<ul style="list-style-type: none"> • A number of NGOs were involved including: European Network against Racism, Malta Federation of Organisations of People with Disability, Malta Confederation of Women's Organisations, and Malta Gay Rights Movement • Government established entities involved included: Commissioner for Children's Office, National Council of the elderly, National Youth Council, National Council of Women and National Youth Information Centre
<ul style="list-style-type: none"> • Internet link • 	<ul style="list-style-type: none"> • http://www.mosaic.gov.mt/about-us?l=1
<ul style="list-style-type: none"> • Type of initiative • 	The Project included training workshops for NGOs and other stakeholder, an information campaign to raise awareness aimed at the general public
<ul style="list-style-type: none"> • Main target group • 	<p>Awareness raising was aimed at the General Public</p> <p>Training was aimed at stakeholders including human resources managers</p>

¹¹⁰ Specify whether the initiative aims at individual redress, awareness raising, impact on legislation or policy, impact on institutional practice, enhance legal certainty, promote cultural change at societal level, etc.



<ul style="list-style-type: none"> • Brief description (max. 1000 chars) • 	<ul style="list-style-type: none"> • The Project, Mosaic – One in Diversity, brought together 9 stakeholders to implement a project highlighting the six grounds of discrimination recognised in EU legislation. It also provided information on the Year of Equal Opportunities for All and brought to the spotlight the special attention that the EU block was placing on these issues. The project included wide ranging activities, such as training for ngos, human resources managers and other stakeholders, publication of leaflets indicating the falsehood of stereotypes for each ground, and putting up of adverts and posters in public spaces. The partners were heavily involved in the implementation of the project and the end products were approved by the stakeholders.
<ul style="list-style-type: none"> • Evaluation or quality control • 	<ul style="list-style-type: none"> • <input type="checkbox"/> no • <input type="checkbox"/> yes how? There is no indication that evaluation of the project was carried out and none is found on the project website. Quality control was the task of NCPE as the project leader.
<ul style="list-style-type: none"> • Involvement of stakeholders • 	<ul style="list-style-type: none"> • <input type="checkbox"/> no • <input type="checkbox"/> yes who0? A number of NGOs were involved including: European Network against Racism, Malta Federation of Organisations of People with Disability, Malta Confederation of Women’s Organisations, and Malta Gay Rights Movement • Government established entities involved included: Commissioner for Children’s Office, National Council of the elderly, National Youth Council, National Council of Women and National Youth Information Centre • and how? Partners in the project were broad together for a number of meetings and were asked for their input for all activities. Each partner also nominated a person from their organisation to act as trainer or expert in the area of discrimination in which the organisation works.
<ul style="list-style-type: none"> • Why good practice? • 	<ul style="list-style-type: none"> • <input type="checkbox"/> above EU standards <input type="checkbox"/> <u>effectiveness and impact</u> <input type="checkbox"/> <u>transferability</u> • <input type="checkbox"/> innovation <input type="checkbox"/> sustainability The project was also a good practice for Malta as it was one of the first instances, and in fact if not the only instance, when NGOs from different grounds were brought together to act together on a project focused on equality.

7.2 Enforcing the legislation

<ul style="list-style-type: none"> • Area:¹¹¹ • 	<p>Enforcing legislation on accessibility to public buildings</p>
<ul style="list-style-type: none"> • Title (original language) • 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Title (EN) 	<ul style="list-style-type: none"> • Access for All Design Guidelines

¹¹¹ Specify whether the initiative aims at individual redress, awareness raising, impact on legislation or policy, impact on institutional practice, enhance legal certainty, promote cultural change at societal level, etc.



•	
• Organisation (original language) Resp. for implementation Resp. for financing	• Kunsill Nazzjonali Persuni b'Dizabilita
• Organisation (EN) Resp. for implementation Resp. for financing	• National Commission Persons with Disability, financed through their budget
• Government / Civil society Resp. for implementation Resp. for financing	• none
• Internet link •	• www.knpd.org following the link for publications and document is entitled Access for All Design Guidelines
• Type of initiative •	Formal structure ensuring that the equality body for disability reviews all applications for the development of buildings which are to be available to the general public and to consider whether the proposed plans are in line with the guidelines established by the same equality body.
• Main target group •	Developers and operators of property accessible to the public
• Brief description (max. 1000 chars) •	• Formal consultation with KNPD is required of all developers of buildings which are to be accessible to the public. When submitting an application for development before the national authority, developers must obtain approval of the proposed plans from the equality body. The latter considers whether the plans are in line with the accessibility guidelines which are published by the equality body. KNPD also holds pre submission meetings with developers and their architects prior to submission of development permission applications to the Malta Environment and Planning Authority. In those instances where the developer is allowed an exemption at law, are also to make such a request to a board set up for this purpose by KNPD. The board will consider whether there are grounds of reasonableness to permit such an exemption.
• Evaluation or quality control •	• <input type="checkbox"/> no however considering that this process often relates to high profile development applications KNPD seeks to ensure quality and professionalism in implementing this service • <input type="checkbox"/> yes how?
• Involvement of stakeholders •	• <input type="checkbox"/> no • <input type="checkbox"/> yes who? Developers and architects and how? Meetings whether prior to submission of planning development applications and also after
• Why good practice? •	• <input type="checkbox"/> above EU standards <input type="checkbox"/> effectiveness and impact <input type="checkbox"/> transferability • <input type="checkbox"/> innovation <input type="checkbox"/> sustainability



7.3 Knowledge development

<ul style="list-style-type: none"> • Area:¹¹² • 	<u>None identified</u>
<ul style="list-style-type: none"> • Title (original language) • 	•
<ul style="list-style-type: none"> • Title (EN) • 	•
<ul style="list-style-type: none"> • Organisation (original language) Resp. for implementation Resp. for financing 	•
<ul style="list-style-type: none"> • Organisation (EN) Resp. for implementation Resp. for financing 	•
<ul style="list-style-type: none"> • Government / Civil society Resp. for implementation Resp. for financing 	•
<ul style="list-style-type: none"> • Internet link • 	•
<ul style="list-style-type: none"> • Type of initiative • 	e.g. training, information campaign, study, survey, etc.
<ul style="list-style-type: none"> • Main target group • 	e.g. general public, potential victims of discrimination, policy makers, etc.
<ul style="list-style-type: none"> • Brief description (max. 1000 chars) • 	•
<ul style="list-style-type: none"> • Evaluation or quality control • 	<ul style="list-style-type: none"> • <input type="checkbox"/> no • <input type="checkbox"/> yes how?

¹¹² Specify whether the initiative aims at individual redress, awareness raising, impact on legislation or policy, impact on institutional practice, enhance legal certainty, promote cultural change at societal level, etc.



<ul style="list-style-type: none"> • Involvement of stakeholders • 	<ul style="list-style-type: none"> • <input type="checkbox"/> no • <input type="checkbox"/> yes who0? and how?
<ul style="list-style-type: none"> • Why good practice? • 	<ul style="list-style-type: none"> • <input type="checkbox"/> above EU standards <input type="checkbox"/> effectiveness and impact <input type="checkbox"/> transferability • <input type="checkbox"/> innovation <input type="checkbox"/> sustainability

7.4 Building awareness

<ul style="list-style-type: none"> • Area:¹¹³ • 	<p style="text-align: center;"><u>None Identified as being innovative or providing a higher level than the EU standard set in Directives.</u></p>
<ul style="list-style-type: none"> • Title (original language) • 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Title (EN) • 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Organisation (original language) Resp. for implementation Resp. for financing 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Organisation (EN) Resp. for implementation Resp. for financing 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Government / Civil society Resp. for implementation Resp. for financing 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Internet link • 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Type of initiative • 	<p>e.g. training, information campaign, study, survey, etc.</p>
<ul style="list-style-type: none"> • Main target group • 	<p>e.g. general public, potential victims of discrimination, policy makers, etc.</p>
<ul style="list-style-type: none"> • Brief description (max. 1000 chars) • 	<ul style="list-style-type: none"> •

¹¹³ Specify whether the initiative aims at individual redress, awareness raising, impact on legislation or policy, impact on institutional practice, enhance legal certainty, promote cultural change at societal level, etc.



<ul style="list-style-type: none"> • Evaluation or quality control • 	<ul style="list-style-type: none"> • <input type="checkbox"/> no • <input type="checkbox"/> yes how?
<ul style="list-style-type: none"> • Involvement of stakeholders • 	<ul style="list-style-type: none"> • <input type="checkbox"/> no • <input type="checkbox"/> yes who0? and how?
<ul style="list-style-type: none"> • Why good practice? • 	<ul style="list-style-type: none"> • <input type="checkbox"/> above EU standards <input type="checkbox"/> effectiveness and impact <input type="checkbox"/> transferability • <input type="checkbox"/> innovation <input type="checkbox"/> sustainability

7.5 Promotion

<ul style="list-style-type: none"> • Area:¹¹⁴ • 	<p style="text-align: center;"><u>None Identified as being innovative or providing a higher level than the EU standard set in Directives</u></p>
<ul style="list-style-type: none"> • Title (original language) • 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Title (EN) • 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Organisation (original language) Resp. for implementation Resp. for financing 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Organisation (EN) Resp. for implementation Resp. for financing 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Government / Civil society Resp. for implementation Resp. for financing 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Internet link • 	<ul style="list-style-type: none"> •

¹¹⁴ Specify whether the initiative aims at individual redress, awareness raising, impact on legislation or policy, impact on institutional practice, enhance legal certainty, promote cultural change at societal level, etc.



<ul style="list-style-type: none"> • Type of initiative • 	e.g. training, information campaign, study, survey, etc.
<ul style="list-style-type: none"> • Main target group • 	e.g. general public, potential victims of discrimination, policy makers, etc.
<ul style="list-style-type: none"> • Brief description (max. 1000 chars) • 	•
<ul style="list-style-type: none"> • Evaluation or quality control • 	<ul style="list-style-type: none"> • <input type="checkbox"/> no • <input type="checkbox"/> yes how?
<ul style="list-style-type: none"> • Involvement of stakeholders • 	<ul style="list-style-type: none"> • <input type="checkbox"/> no • <input type="checkbox"/> yes who0? and how?
<ul style="list-style-type: none"> • Why good practice? • 	<ul style="list-style-type: none"> • <input type="checkbox"/> above EU standards <input type="checkbox"/> effectiveness and impact <input type="checkbox"/> transferability • <input type="checkbox"/> innovation <input type="checkbox"/> sustainability