



**Awareness raising seminars in the areas of non-discrimination and equality  
targeted at civil society organisations**

**- VT/2010/007 -**

**Training manual on discrimination**

**National context material**

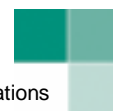
**MALTA**

**Human European Consultancy in partnership with the Migration Policy Group**

**2012**



**An initiative supported by the European Union's Programme for Employment  
and Social Solidarity – PROGRESS (2007 – 2013)**



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## 1 Profile of NGOs/trade unions working to combat discrimination

Although NGOs have been active in Malta for many years, a legislative framework to regulate their set up and structure was only introduced in October 2007 with the enactment of the Voluntary Organisations Act, 2007.<sup>1</sup> NGOs are mainly run on a volunteer part-time basis by their members and only very few NGOs employ professional persons. Within the field of discrimination it is generally found that NGOs focus on one particular ground of discrimination. Only two NGOs can be said to specifically deal with discrimination across all grounds, these being OPHR<sup>2</sup> and Aditus.<sup>3</sup>

There is a heavy trend for NGOs in Malta to work independent of each other. This may at times lead to resources being used for the same issue and also overlap of work. It is only in the last couple of years that networking can be seen between NGOs, but even here it would generally be for the purpose of implementing a large scale project the funding of which would require a number of partners. One such project was *Mosaic – one in diversity Project*.<sup>4</sup>

### Grounds of Discrimination covered by NGOs and Trade Unions in Malta

#### Gender

A number of NGOs have been set up with the aim of combating discrimination on this ground in Malta. These work towards the creation of awareness, provide training and empowerment services, and lobby for equality. Networking has been taken up in this area through the confederation set up under the acronym MCWO,<sup>5</sup> Malta Confederation of Women Organisations which brings together other NGOs who work towards gender equality or with women. Other NGOs working on this ground include the Malta Association of Women in Business<sup>6</sup> who focus on enterprise, and the Women's Study Group.<sup>7</sup> Other NGOs working with women are set up but these only marginally deal with gender discrimination, in that their main aim would be to raise awareness on issues related to women in general and female welfare. One can say that they deal with the consequences of gender discrimination rather than address gender discrimination specifically.

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<sup>1</sup> Act XXII of 2007, An Act to regulate voluntary organisations and their administration, <http://www.doi.gov.mt/en/parliamentacts/2007/ACT%20XXII%20English.pdf>.

<sup>2</sup> <http://www.ophrmalta.eu/>.

<sup>3</sup> <http://www.aditus.org.mt>.

<sup>4</sup> <http://www.mosaic.gov.mt/mosaic-ncpe?!=1>.

<sup>5</sup> [www.mcwo.net/](http://www.mcwo.net/).

<sup>6</sup> [www.mawb.eu/](http://www.mawb.eu/).

<sup>7</sup> [www.mcwo.net/about-us/](http://www.mcwo.net/about-us/).



## Age

The two main if not the only organisations in Malta working on age discrimination are the National Council for the Elderly<sup>8</sup> and the National Council for Youth.<sup>9</sup> Their mandate is to represent the interests of the elderly and the interests of youths respectively. Both bodies recognise the fact that persons below a certain age and those who have attained a certain age can be considered a minority and may many a time face difficulties in society as a result of this. They aim at protecting these disadvantaged age groups from marginalism and social exclusion.

## Race

Malta has been receiving a number of immigrants from southern African countries over the last couple of years and since then racism has increased. Consequently a large number of NGOs have been set up to address the consequences of irregular migration as well as the rise in discrimination on the ground of race and ethnic origin. These are made up of national and international organisations. They provide advocacy services to a number of persons who face racial discrimination in Malta, promote anti discrimination campaigns and awareness raising projects. Together with these NGOs there are also a number of international organisations such as the IOM,<sup>10</sup> JRS<sup>11</sup> and the UNHCR<sup>12</sup> which have set up office in Malta. Organisations include Get Up Stand Up,<sup>13</sup> FACES,<sup>14</sup> MRC,<sup>15</sup> MSM<sup>16</sup> and these provide support to victims of racial discrimination.

## Religion

There are no specific NGOs which deal or provide support to victims of religious discrimination in Malta but a number of religion-based organisations are set up. Their purpose is not however to address religious discrimination but normally to teach religion and to bring their followers together. Some also offer services related to social needs. The number of Roman Catholic organisations is numerous with each age group, and each village having its own youth association and association for the elderly, besides a number of different other religious groups. On the other hand, other religious communities have also set up associations and these include Islamic Community Malta<sup>17</sup> and the Indian Community Malta. Once again, these organisations are not specifically set up to address religious discrimination.

<sup>8</sup> <http://www.sahha.gov.mt/pages.aspx?page=88>.

<sup>9</sup> <http://www.knz.org.mt/>.

<sup>10</sup> <http://www.iom.int/jahia/Jahia/malta>.

<sup>11</sup> [www.jrsmalta.org/](http://www.jrsmalta.org/).

<sup>12</sup> <http://www.unhcr.org.mt/>.

<sup>13</sup> [www.getupstandup.org.mt/](http://www.getupstandup.org.mt/).

<sup>14</sup> [www.facescharity.org/](http://www.facescharity.org/).

<sup>15</sup> [www.resus.org.mt/](http://www.resus.org.mt/).

<sup>16</sup> [www.migrantsmalta.org/](http://www.migrantsmalta.org/).

<sup>17</sup> [www.ahmadija.org.mt/](http://www.ahmadija.org.mt/).



## Sexual Orientation

There are three main NGOs in Malta who deal with discrimination on the ground of sexual orientation; these being MGRM,<sup>18</sup> We Are<sup>19</sup> and Drachma.<sup>20</sup> They work by raising awareness, lobbying and also offer services to their members. The three, even though MGRM seems to be the most outspoken, participate in campaigns and act as lobby groups.

## Disability

A lot of different organisations have been set up to address the needs of one type of disability or other. This proliferation of organisations often leads to each group working alone rather than in a network and focusing on the needs of the group it represents. Most do not focus on the discrimination aspect or equality but address the physical and social needs of their group. A few of these NGOs include STAND, EPF,<sup>21</sup> EMPOWER<sup>22</sup> and Amputees4Amputees.<sup>23</sup>

There are also organisations which are professionally set up and employ a number of persons qualified in providing services to the disabled, such as INSPIRE.<sup>24</sup> The Mental Health Association,<sup>25</sup> and the Malta Federation of Organisations Persons with Disability<sup>26</sup> can be said to be the two main organisations that lobby against discrimination on this ground, while also provide members with services and assistance. However, it is the national designated equality body, that is the Commission Persons with Disability<sup>27</sup> who is seen as the main actor in addressing discrimination on the ground of disability.

## **Trade Unions**

There are two major trade unions in Malta, the UHM<sup>28</sup> and the GWU,<sup>29</sup> and both have pledged to work against discrimination on all grounds in the field of employment. There have been projects in which these trade unions have been partners with other NGOs to raise awareness and are also known to actively participate in training and seminars organised by NGOs in this field. Other unions do exist, which are either profession based or industry based, however they are not seen as taking an active

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<sup>18</sup> [www.maltgayrights.org/](http://www.maltgayrights.org/).

<sup>19</sup> [www.facebook.com/WeAreUoM](https://www.facebook.com/WeAreUoM).

<sup>20</sup> [drachmalgbt.blogspot.com](http://drachmalgbt.blogspot.com).

<sup>21</sup> [www.equalpartners.org.mt/](http://www.equalpartners.org.mt/).

<sup>22</sup> [www.empower-coop.org](http://www.empower-coop.org).

<sup>23</sup> [www.facebook.com/pages/Amputees4Amputees](https://www.facebook.com/pages/Amputees4Amputees).

<sup>24</sup> [www.inspire.org.mt/](http://www.inspire.org.mt/).

<sup>25</sup> [www.mhamalta.com/history-of-mha-malta](http://www.mhamalta.com/history-of-mha-malta).

<sup>26</sup> [www.mfopd.org/](http://www.mfopd.org/).

<sup>27</sup> [www.knpsd.org.mt](http://www.knpsd.org.mt).

<sup>28</sup> [www.uhm.org.mt/](http://www.uhm.org.mt/).

<sup>29</sup> [www.gwu.org.mt/](http://www.gwu.org.mt/).



role in the field of discrimination. One also finds the Confederation of Trade Unions<sup>30</sup> which brings together a number of unions who normally function independently of each other.

## Registration of NGOs/Trade Unions

Registration for NGOs is simpler than registration of trade unions in that registration of NGOs on the Register of Voluntary Organisations requires one only to follow an application and notification procedure whereby the NGOs seeking registration is required to provide details on its structure and administration. NGOs are registered with the Office of the Commissioner for Voluntary Organisations<sup>31</sup> and are then required to present annual returns indicating structure and administrative details as well as annual accounts. The documents that are needed for registration include the statute, a resolution indicating the members' consent for registration, annual accounts and an annual administration report. The registration fee is kept to a minimum of €40. NGOs do not generally find obstacles in registering or ensuring compliance with registration obligations. Registration of an NGO is optional and not obligatory and consequently some associations have opted not to register.

On the other hand, trade unions may be registered if a group of at least seven persons form a group with the aim of working as a union. It is illegal for a group to work as a trade union unless it is registered on the Register of Trade Unions.<sup>32</sup> Registration of trade union is regulated under both the Employment and Industrial Relations Act as well as through subsidiary legislation.<sup>33</sup> Although a number of criteria must be met it is not considered difficult to register a trade union.

## Size of NGOs/Trade Unions

NGOs in Malta vary in size, with some having only a handful of members. There are no statistics available to indicate the average number of members of any NGO in Malta. On the other hand, the main trade unions indicate that the GWU represents approximately 67% (36,000 workers) of the labour force, while the UHM represents approximately 27,000 workers.

## National/International Networks

### NGOs

Mostly NGOs work on a national level but a few are also members of either European Lobby Groups or else represent some International Organisation in Malta.

<sup>30</sup> <http://www.cmtu.org.mt/>.

<sup>31</sup> [https://secure3.gov.mt/socialpolicy/SocProt/others/voluntary\\_org/cvo\\_office/vos\\_information.aspx](https://secure3.gov.mt/socialpolicy/SocProt/others/voluntary_org/cvo_office/vos_information.aspx).

<sup>32</sup> Article 51, Employment and Industrial Relations Act, Chapter 452 of the laws of Malta ; <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918&l=1>.

<sup>33</sup> Trade Union Regulations, Legal Notice 368 of 1956, 20<sup>th</sup> June 1956, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11150&l=1>.



MGRM is a member of ILGA Europe and MCWO is a member of the European Women's Lobby Group. The National Council for the Elderly is a member of AGE whilst the National Council for Youths works within the European Youth Forum.

The European Anti-Poverty Network has a national network named Anti Poverty Forum Malta<sup>34</sup> which in turn is made up of a number of national NGOs.

#### Trade Unions

GWU and UHM form part of the European Trade Union Confederation<sup>35</sup> (ETUC) and the International Confederation of Trade Unions<sup>36</sup> (ITUC). However, their role is predominantly on the national level.

#### Locality

Trade unions are mainly situated in the capital city or prior to its entrance with easy accessibility provided to their locations by public transport. NGOs are spread over both islands and are often found at the heart of localities rather than in the Capital City. The short distance from one locality to another as well as the diffused system of public transport do not generally make accessibility to NGOs difficult.

#### Political or Societal weight of NGOs/Trade Unions

##### NGOs

The majority of NGOs in Malta focus on providing assistance to their members and on organising activities for their members, with only having taken up lobbying. Those who have taken up lobbying, such as MGRM and MCWO, do carry political weight in that their proposals are regularly received by both political parties represented in parliament. It is not however really possible to calculate in any definite manner their political or societal weight beyond indicating that NGOs are generally invited for dialogue with government representatives and also invited to make proposals. Assisting the voluntary sector is however a national priority and the government has also at times assisted organisations by providing offices, and grants.

The volume of organisations in Malta was considered by the National Statistics Office in the Non-Governmental Organisations Survey: 2007.<sup>37</sup> The survey was conducted among 330 organisations and indicated that a total of 86,125 persons were members of an NGO. Moreover beneficiaries of services provided by organisations was calculated at 76,101 persons. This survey also indicated that organisations in Malta were predominately either focused on social welfare or fell within a religious set up.

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<sup>34</sup> [info@apfmalta.com](mailto:info@apfmalta.com).

<sup>35</sup> [www.etuc.org/](http://www.etuc.org/).

<sup>36</sup> [www.ituc-csi.org/](http://www.ituc-csi.org/).

<sup>37</sup> [http://www.nso.gov.mt/statdoc/document\\_file.aspx?id=2395](http://www.nso.gov.mt/statdoc/document_file.aspx?id=2395).



Trade unions on the other hand have very strong political and societal weight. They have representatives in various government bodies and are known to have obtained their goals often through industrial action. Sectors which are of strategic importance to Malta such as the airline industry or the port workers or public transport are heavily trade unionised and changes in these sectors do not progress unless there is the backing of trade unions. Collective agreements for different industries and sectors are also negotiated with trade unions.

### **Level of cooperation**

The vast proliferation of organisations working in Malta often leads to each organisation being unaware of the work of the other organisations even if they work in the same field. Some cooperation is undertaken by a few organisations especially where this involves projects which require different partners. Often the lack of cooperation between organisations is found in difficulties of owning a project, however it is also important to note that most organisations work on a voluntary basis and consequently the type of activity they undertake would be localised. On the other hand, in the area of equality and discrimination NGOs and trade unions have been seen to cooperate with both the UHM and the GWU having also participated in training and projects organised by organisations working in this field.

Cooperation has worked more efficiently and effectively when a framework was set up regulating the relationship between the organisations. This has been seen in MCWO, the Malta Council for the Voluntary Sector<sup>38</sup> and other networks.

NGOs are normally seen to work on a national level. There have been limited examples of organisations who work on European wide projects such as OPHR<sup>39</sup> who has on a number of occasions been involved in pan-european networks, however this is generally limited to research work rather than lobbying, case work or campaigning.

NGOs and Trade Unions use both Maltese and English, with these languages being both national languages.

### **NGOs Activities in the field of discrimination**

NGOs are predominantly focused on social welfare issues and often provide assistance in this regard. However, those NGOs which work in the field of discrimination are generally known to focus on the needs of their members by assisting them in the obstacles they face and by referring them to relevant services offered by the government or guiding them through procedures. A few do also address the general picture by taking up campaigning and awareness raising activities. Even fewer are known to focus also on research in the field.

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<sup>38</sup> <http://www.maltacvs.org/>.

<sup>39</sup> <http://www.ophrmalta.eu/>.





Although the national equality legislation does provide NGOs with the possibility of assisting victims in judicial proceedings, as well as having legal representation of victims, yet these have not as yet taken up this challenge. While a few NGOs do provide support to victims who initiate such proceedings or refer them to professionals whose services they can contract, yet the organisations themselves do not generally have the resources, human and financial, to take up complaints themselves. There have been very few instances where an organisation has assisted persons to complain before the national equality body or the ombudsman.

On the other hand, trade unions are not only legislatively empowered to take up complaints but are known to have actually done so. Complaints taken up by unions are generally sought to be resolved through mediation. However trade unions can also assist a person with presenting a complaint of discrimination in employment before the Industrial Tribunal.

Class actions as such are not possible under Maltese law and any proceedings that are instituted alleging the occurrence of discrimination will require the victim to be a party to the proceedings even represented by third parties. This would therefore require evidence of specific and individual discriminatory behaviour experienced by the claimant. However, the designated equality bodies can institute judicial proceedings against third persons and claim that the latter are guilty of discrimination. This possibility has only been used by the National Commission Persons with Disability<sup>40</sup> who has instituted proceedings against business owners for having failed to render their place of business accessible.

### **Funding Accessibility**

In September 2009<sup>41</sup> a Voluntary Organisations Fund was established by the government with the aim of providing funds to organisations to assist them in projects as well as internal administration. Accessibility to these funds is however only limited to those NGOs who are registered on the Register of Voluntary Organisations. Other funding sources have also been made use of by organisations in Malta and these generally involve financing strategies that are initiated by the European Union.

### **Relations with Central Government and Local Councils**

Relations with central government is on the whole positive with organisations being well received for meetings organised by different stakeholders within government. The current government has also included social dialogue in one of the ministerial portfolios and this has given organisations a better footing.<sup>42</sup> Organisations as well as trade unions have also been given representation on two important dialogue

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<sup>40</sup> [www.knpd.org](http://www.knpd.org).

<sup>41</sup> <http://www.maltacvs.org/vo-fund/>.

<sup>42</sup> <http://www.mjdf.gov.mt>.



structures that have been set up. One of the core groups of MEUSAC<sup>43</sup> brings together government, political parties, constituted bodies, civil society and individual experts to jointly participate in the formulation of Malta's position on legislative developments in the European Union. On the other hand, trade unions are also called to actively participate as full and equal members on MCESD<sup>44</sup> which has an advisory role to the government and makes recommendations on matters of economic and social relevance.

Local Councils are also known to have established good relations with voluntary organisations set up within their locality and also assist them in funding or participating or supporting their projects. However, these local organisations are not generally the ones working in the field of discrimination but more often in the social welfare or cultural area.

### **Relations with the specialised bodies/ombudsman?**

NGOs and trade unions are known to have good relations with specialised bodies especially in the field of discrimination. NCPE has often undertaken projects with organisations and trade unions as partners, and where these are not partners their representatives often participate in activities organised by the designated equality body.

### **Staff qualifications in anti discrimination work**

NGOs are mainly made up of volunteers who are not necessarily qualified in the field of anti discrimination even if they come from various walks of life. However the main organisations working in this area have employed professional persons in the field who have either a legal or social work background. Those who do not employ such professionals or whose members lack knowledge in the field, often seek the voluntary assistance of professionals. Despite this, organisations enthusiastically attend training in the field when this is provided by national experts. Funding proposals and reporting are often written by their members who are not necessarily trained in this area. However, the assistance of third parties who are better qualified is often sought and MCESD also provides some assistance in preparing funding proposals.

Trade Unions generally have sufficient resources to employ persons who are qualified in the field. Furthermore, their members are also encouraged to attend training opportunities. Funding proposals and reports are generally written by in house employees or by third parties who are engaged for this purpose.

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<sup>43</sup> Malta EU Steering Committee, Set up with the aim of ensuring a consultation process on EU procedures and legislation; <http://www.meusac.gov.mt/fme/298/default.aspx>.

<sup>44</sup> Malta Council for Economic and Social Development, <http://www.mcesd.org.mt/mcesd/content.aspx?id=101553>.



## **Evaluation of their “success” and the quality of their anti-discrimination work?**

Evaluations of projects run by organisations are generally informal ones rather than through formally structured procedures.

### **Main problem faced by NGOs**

NGOs working in the field of anti discrimination suffer from poor resources, both human and financial. Funding is often lacking and consequently staff members are generally volunteers. Moreover, the implementation of projects heavily depends on obtaining outside funding which they often do not have the capacity to attain or the human resources and knowledge to implement. Persons who are known to have the relevant expertise are few and these are often already heavily committed. This situation may be less the case for larger NGOs or those who form part of an international structure.

### **Training needed by the NGOs/trade unions in order to perform their work the way they would wish to**

National NGOs are very active within civil society and often speak out on issues related to their area of work. However, they do not proceed on planned strategies and often adopt a reactionary approach rather than one which preempts. At times, NGOs shy away from advocating their cause and from participating in consultation, or are non-effective when they do so, due to a lack of skills in methods of lobbying and using advocacy tools.

The national NGO field is very fragmented with several NGOs working in the same field independently of the others. This often hurts the cause and reduces the effectiveness of advocacy. At the same time, NGOs often lack the necessary information on the structures of authorities and institutions they try to affect and find it difficult to establish contact. Training in networking and forms of cooperation would consequently allow a better use of a pool of resources.

National NGOs have not yet started to work with equality impact assessment methodologies and often they are not trained in this regard.

Training on the national anti discrimination and European legislative framework has often been provided to organisations as well as trade unions. Members of NGOs and trade unions do have a basic knowledge of this legislation but their knowledge is considered not to be sufficient for them to feel empowered to use legislative remedies.

Members of organisations are not generally known to be trained in policy formulation nor in advising government.

Organisations as well as trade unions are thought to need a strengthening of their skills to be better able to reach their clients, members or potential clients or members as well as to increase their credibility and status.



## 2 National legislation in the field of anti-discrimination

### 2.1 The transposition of the Directives into national law

Council Directives 2000/43/EC,<sup>45</sup> 2000/78/EC<sup>46</sup> and 2004/113/EC<sup>47</sup> were transposed into the national legal order through a number of legislative instruments. These include the primary legislation entitled: Employment and Industrial Relations Act,<sup>48</sup> the Equality for Man and Woman Act,<sup>49</sup> the *Equal Opportunities (Persons with Disability) Act*,<sup>50</sup> as well the following secondary legislation: *Equal Treatment in Employment Regulations*,<sup>51</sup> *Extension of Applicability to Service with Government (Equal Treatment in Employment) Regulations*,<sup>52</sup> *Equal Treatment of Persons Order*<sup>53</sup> and the *Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008*.<sup>54</sup>

#### 2.1.1 Protection against Discrimination in Employment

The *Employment and Industrial Relations Act*<sup>55</sup> provides protection against discrimination by defining 'discriminatory treatment' as "any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers' association" It also explicitly indicates that discriminatory treatment on the ground of sex includes:

- (a) "the engaging or selection of a person who is less qualified than a person of the opposite sex, unless the employer can prove that the action was based on acceptable grounds related to the nature of the work or on grounds related to previous work performance and experience;
- (b) actions which apply to an employee, terms of payment or employment conditions that are less favourable than those applied to an employee in the same work or work of equal value, on the basis of discriminatory treatment;
- (c) actions whereby the employer knowingly manages the work, distributes tasks or otherwise arranges the working conditions so that an employee is assigned a

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<sup>45</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>46</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>47</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

<sup>48</sup> Laws of Malta Chapter 452 incorporated on the 2<sup>nd</sup> December 2002.

<sup>49</sup> Laws of Malta Chapter 456 incorporated on the 9<sup>th</sup> December 2003.

<sup>50</sup> Laws of Malta Chapter 413.

<sup>51</sup> Legal Notice 461 of 2004.

<sup>52</sup> Legal Notice 54 of 2007.

<sup>53</sup> Legal Notice 85 of 2007.

<sup>54</sup> Legal Notice 181 of 2008.

<sup>55</sup> Laws of Malta Ch 452, articles 26 to 32.



clearly less favourable status than others on the basis of discriminatory treatment.”

Discrimination in advertising, access to employment as well as conditions of employment and dismissal are regulated therein together with a prohibition against unequal pay, victimisation and harassment.

The protection provided in Chapter 452 was later enhanced through the *Equal Treatment in Employment Regulations*<sup>56</sup> which increased protection against discrimination on the grounds of religion or religious belief, disability, age, sexual orientation, and racial or ethnic origin in the field of private sector employment by providing protection from direct and indirect discrimination, harassment, and instruction to discriminate. It also provided for the reversal of the burden of proof and gave associations, organizations or other legal entities having a legitimate interest in a case/s to participate in these proceedings either on behalf of or in support of the complainant. The coming into force of the *Extension of Applicability to Service with Government (Equal Treatment in Employment) Regulations*<sup>57</sup> extended the protection afforded in the previous Regulations to employees of the public sector, while *Equal Treatment in Self-Employment and Occupation Order*<sup>58</sup> further extended the protection to cover persons in self-employment and occupation from discrimination.

Prior to the implementation of the Directives, the *Persons with Disability (Employment) Act*<sup>59</sup> had established legal provisions with regard to the setting up of a national register for persons with disability, and the setting up of a quota system for the employment of persons with disability. Then the *Equal Opportunities (Persons with Disability) Act*<sup>60</sup> consequently prohibited discrimination in employment, education, access to premises, provision of goods, facilities or services.

## 2.1.2 Protection against Discrimination outside Employment

The *Equal Treatment of Persons Order*<sup>61</sup> transposed the provisions of Council Directive 2000/43/EC provides for protection on the ground of racial and ethnic origin with regard to social protection, including social security and healthcare; social advantages; education; access to and supply of goods and services which are available to the public, including housing; and access to any other service as may be designated by law.

The *Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008*<sup>62</sup> implemented the principle of equal treatment between men and women in the

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<sup>56</sup> Legal Notice 461 of 2004.

<sup>57</sup> Legal Notice 54 of 2007.

<sup>58</sup> Legal Notice 86 of 2007.

<sup>59</sup> Laws of Malta Ch 210.

<sup>60</sup> Laws of Malta Ch 413.

<sup>61</sup> Legal Notice 85 of 2007.

<sup>62</sup> Legal Notice 181 of 2008.



access to goods and services and their supply. In this regard, the Regulations protect against direct and indirect discrimination, harassment and sexual harassment as well as victimisation. The insurance and financial services sectors are specifically regulated in relation to equal treatment.

### Other relevant legislation

The Constitution<sup>63</sup> prohibits the discriminatory treatment of a person on the basis of race, country of origin, political opinions, colour, faith and sex; while the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe was incorporated into the national legal order.<sup>64</sup> The latter protection was brought into effect with the coming into force of the European Convention Act in 1987, but specific legislation of a more ordinary character only came about with the transposition of the European Union Equality Directives either for the purposes of EU accession or for their transposition following accession.

In this respect, therefore those basis of discrimination which are more amply addressed and for which persons are given a more efficient means of redress are limited to the basis of discrimination recognised in the Equality Directives, that is, gender, sexual orientation, disability, religion, ethnic origin, race and age. Although these groups are singularly identified in ordinary legislation, yet they have not received an equal political or policy backing in the eradication of the discrimination particular to each basis.

The Criminal Code itself does not provide for an offence of discrimination but considers other offences which are carried out on the basis of one's religious belief or racial or ethnic origin to be deserving of a higher punishment.<sup>65</sup> On the other hand, offences of discriminatory treatment, harassment as well as sexual harassment are established in the Equality for Men and Women Act as well as the Employment and Industrial Relations Act. Punishment for these offences includes the imposition of a fine or up to six months imprisonment or else both the fine and imprisonment. Incitement to hatred against persons or a group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion is also tantamount to a criminal offence in terms of article 82A of the Criminal Code. This offence is punishable with a term of imprisonment for a term from six to eighteen months. On the other hand, should one publicly condone, denies or grossly trivializes crimes that are directed against a person or a group defined by reference to any of the above mentioned grounds will be liable to a term of imprisonment between eight months and two years where this is likely to incite violence or hatred towards that person or group or is likely to disturb public order or if it is threatening, abusing or insulting.<sup>66</sup>

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<sup>63</sup> The Constitution Chapter 1 of the Laws of Malta.

<sup>64</sup> Chapter 319 of the Laws of Malta.

<sup>65</sup> Laws of Malta, Criminal Code.

<sup>66</sup> Laws of Malta, Article 82C of the Criminal Code.



## Directives and Previous legislation

On all the grounds the implementation of the Directives has transformed the legislative protection from being redressed through extraordinary legal proceedings under the Constitution or the European Convention Act, to being redressed through ordinary proceedings which can be judicial, quasi-judicial as well as administrative in character. The Directives as transposed have also made the different classifications of discrimination clear as well as the spheres to which they apply. While it is therefore thought that the Constitution as well as the European Convention Act would have provided similar protection, yet the Directives have brought about ordinary measures of redress against discrimination.

On the other hand, the national legislative framework for the ground of disability is by far much wider than the protection provided in the Directives since it does not only protect from discriminatory treatment in employment but also in relation to access, and goods and services.

Council Directive 2000/43/EC and Council Directive 2000/78/EC prohibit discrimination on the basis of religion or belief, disability, age, sexual orientation, race or ethnic origin. It may therefore be noted that Maltese law provides also for marital status, pregnancy or potential pregnancy, sex, political opinion, membership in a trade union or in an employers' association as grounds of discrimination, besides those mentioned in the Directives, and may be open to additional grounds in line with judgements by the European Court on Human Rights and the case-law of the Industrial Tribunal.

## Designated Equality Bodies

Two designated equality bodies were established under the mentioned equality legislative framework. The first equality body that was established was the National Commission Persons with Disability<sup>67</sup> established under the Equal Opportunities (Persons with Disability) Act.<sup>68</sup> The second equality body is that established under the Equality for Men and Women Act<sup>69</sup> and named the National Commission for the Promotion of Equality for Men and Women.<sup>70</sup> 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.

<sup>67</sup> Known by its acronym, KNPD, <http://www.knpd.org/>.

<sup>68</sup> 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](http://docs.justice.gov.mt/lom/legislation/english/leg/vol_13/chapt413.pdf).

<sup>69</sup> 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](http://www.equality.gov.mt/filebank/documents/chap456_updated.pdf).

<sup>70</sup> Known by its acronym, NCPE.





The remit of the National Commission for the Promotion of Equality for Men and Women was later through Legal Notice 181 of 2008<sup>71</sup> strengthened. 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.

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 2007<sup>72</sup> which essentially encompasses an Order made under the European Union Act.<sup>73</sup> The purpose of this Order was to transpose the provisions of Council Directive 2000/43/EC of 29<sup>th</sup> June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Through Act IX of 2012<sup>74</sup> NCPE has now also been provided with a remit that covers the six grounds of discrimination recognized in the Directives.

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 also protected from discrimination on the six grounds in legislation that relates to employment. In this respect, therefore one must also mention the Employment and Industrial Relations Act<sup>75</sup> which provides for protection against discrimination related to employment 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 2004<sup>76</sup> 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.'<sup>77</sup> However the

<sup>71</sup> Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008; <http://www.doi.gov.mt/EN/legalnotices/2008/08/LN%20181.pdf>.

<sup>72</sup> Equal Treatment of Persons Order, 2007; <http://www.doi.gov.mt/EN/legalnotices/2008/08/LN%20181.pdf>.

<sup>73</sup> 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](http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_14/Chapt460.PDF).

<sup>74</sup> [www.doi.gov.mt](http://www.doi.gov.mt).

<sup>75</sup> 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](http://docs.justice.gov.mt/lom/legislation/english/leg/vol_14/chapt452.pdf).

<sup>76</sup> <http://www.doi.gov.mt/EN/legalnotices/2004/11/LN461.pdf>.

<sup>77</sup> 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>.



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, and does not have the powers entrusted to the equality bodies by the relative EU Equality Directives.

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.

### **Background Information about the Process of Implementation**

During the implementation process, the full implementation of the Council Directive 2000/78/EC in national legislation was queried on a number of occasions through parliamentary questions (mainly asked by an Opposition MP to the Minister during the period December 2003 – March 2004). In his questions the Opposition MP had focused on the implementation of the Directive with regard to the sharing of the burden of proof, the rights of same-sex couples to equal treatment and the recognition of cohabitating couples. No questions with regard to the implementation of Council Directive 2000/43/EC were made at that time. Instead, the inadequate implementation of Directive 2000/43/EC was raised on the agenda of the Permanent Committee on European and Foreign Affairs during February-March 2007 with regard to the *Communication from the Commission to the Council and the European Parliament on the Application of Directive 2000/43/EC of 29 June 2000 implementing the Principle of Equal Treatment between Persons irrespective of Racial or Ethnic Origin (COM (2006) 643 Final)*.

Other than these Parliamentary discussions, little public discussion has taken place as the introduction of the various Legal Notices did not gather much media attention.

### **Grounds of Non-Discrimination covered in National Legislation**

The grounds of discrimination or discriminatory treatment that are found under the Maltese legal instruments are:

- (a) *Constitution of Malta* - race, place of origin, political opinions, colour, creed or sex.
- (b) *European Convention Act* - any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- (c) *Employment and Industrial Relations Act*, the Legal Notices issued there under, and *Equal Treatment in Self-Employment and Occupation Order* - marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion, membership in a trade union or in an employers' association, racial or ethnic origin, age and sexual orientation;



- (d) *Equal Opportunities (Persons with Disability) Act*, - disability on the basis of physical and/or mental impairment.
- (e) *Equal Treatment of Persons Order* – racial and ethnic origin
- (f) Equality for Men and Women Act - promote equality of persons on all six grounds within the fields of employment, banking and financial services and education and vocational guidance.

### **Aspects of Discrimination which are not covered by the Directives**

The national equality legislative framework for discrimination on the ground of disability goes beyond what the Directives contain and in this respect the Equal Opportunities (Persons with Disability) Act does not only cover employment and access to goods and services, but also provides protection on accessibility.

It is only in this regard, that the national equality legislative framework goes beyond what is not covered by the Directives.

### **UN Committees on Discrimination in Malta**

#### **CERD**

In concluding its 79<sup>th</sup> session the Committee on the Elimination of Racial Discrimination issued concluding observations on the reports presented by Malta.<sup>78</sup> These were issued on the 2<sup>nd</sup> September 2011. The Committee, having reviewed the combined fifteenth through twentieth periodic reports was positive about the legislative, institutional and policy developments which had taken place in Malta to combat racial discrimination. It specifically mentioned the amendments to the Criminal Code made in 2002 and 2009, by means of Act No. III of 2002 and Act No. XI of 2009 which respectively introduced the offence of incitement to racial hatred and racial violence into the Criminal Code, as well as offences of condoning or trivializing genocide, crimes against humanity, war crimes and crimes against peace directed against a group defined by reference to race, colour, religion, descent or national or ethnic origin; and liability of corporate bodies for such offences. The legislative amendments also included article 141 of the Criminal Code, which increased by one degree the punishment of a public officer for an offence relating to racism; Act No. XI of 2009, which introduced into the legislative framework the concept of an aggravation of an offence whenever this was motivated by xenophobia and also made possible for any offence to be considered as racially or religiously aggravated or motivated by xenophobia; the reversal of the burden of proof in civil proceedings involving racial discrimination, by means of the Equal Treatment of Persons Order (LN 85 of 2007); and the introduction of the Immigration Appeals Board in the Immigration Act by means of Act XXIII of 2002, which enabled migrants to appeal decisions taken by the Principal Immigration Officer.

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<sup>78</sup> [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/56416D9AFF8F6789C12578-FF0040CDAE?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/56416D9AFF8F6789C12578-FF0040CDAE?OpenDocument).



Despite this, the Committee expressed concern about the absence of information on the practical impact on the ground of such measures and their effectiveness. It recommended that Malta take concrete measures to effectively implement its legislation and other institutional and policy measures taken to combat racial discrimination, to allocate them sufficient resources and to periodically evaluate their effectiveness for the persons or groups particularly targeted. Another concern that was raised was related to discriminatory discourse and hate speech by some politicians and was also concerned about the phenomenon of dissemination of racism and racial discourse in the media, including through the Internet.

It recommended that appropriate means be taken to counter and strongly condemn racism and hate speech by politicians, as well as manifestations of racism in the media, including through the Internet, in particular by effectively prosecuting those responsible whatever their status.

The Committee was concerned about the recurrence of riots against conditions of their detention (2005, 2008 and 2011) by detained immigrants in detention centres, and about the reported excessive use of force to counter them. It consequently recommended that Malta take appropriate measures to improve conditions of detention and refrain of resorting to excessive use of force to counter riots by immigrants in detention centres.

Female immigrants were specifically mentioned by the Committee who stated that as a group they face obstacles in accessing education, social services and the labour market. In this regard, it recommended that focused measures be taken to favour immigrant women and to integrate the racial dimension in all policies related to policies seeking to enhance opportunities for women.

## **CEDAW**

The following are a number of concerns and recommendations expressed by the CEDAW Committee.

The committee felt that it is of utmost importance for Malta to recognise the Convention as the most pertinent, broad and legally binding international instrument in the sphere of the elimination of discrimination against women through the incorporation of all substantive provisions of the Convention into domestic law. It felt that the Maltese government should take proactive measures to enhance awareness of the Convention, in particular amongst the judiciary, the legal profession, political parties, Parliament and Government officials, including law enforcement officials, as well as the general public, in order to strengthen the use of the Convention in the development and implementation of all legislation, policies and programmes aimed at the practical realization of the principle of equality between women and men. Malta ought to accede to the Optional Protocol of the Convention and expedite its efforts towards the withdrawal, within a concrete time frame, of its declaration to article 11, and its reservations to articles 13, 15 and 16 paragraph 1 (e), of the Convention



especially since its reservations to article 16 are incompatible with the Convention and therefore impermissible.

The committee expressed its concern as to the national machinery for the advancement of women in Malta, which, it considers to be heavily dependent on European Union funding for the implementation of its programmes, and that it may thus endanger the continuity of its work and send a wrong signal about the importance of the State party's equality work for women. In order to better its position Malta should secure sufficient and sustainable resources from the State budget for the work of the Commission in all its aspects, as well as for the relevant ministries working on gender equality it should State consider applying temporary special measures in various forms in areas in which women are underrepresented or disadvantaged and allocate additional resources, where needed, to accelerate the advancement of women.

The persistence of patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and in society are still very strong in Malta. The committee suggested that Malta should adopt a comprehensive policy, targeted at men and women, and boys and girls, which could help in overcoming traditional stereotypes regarding the roles of women and men in society and in the family.

The fact that domestic and family responsibilities are still primarily borne by women, many of whom interrupt their careers or engage in part-time jobs to meet family responsibilities has always been of concern for the CEDAW Committee. It recommended that the Maltese government should step up its efforts to assist women and men in striking a balance between family and employment responsibilities, *inter alia*, through further awareness-raising and education initiatives and to improve the availability, affordability and quality of childcare facilities for school-age children in order to facilitate the re-entry of women into the labour market. It felt that Malta should also consider amending the Employment and Industrial Relations Act in order to enable employees in the private sector to benefit from similar flexible working arrangements and special leave provisions as employees in the public sector. It is also important to monitor the use of parental leave provisions by women and men as an indicator of shared family responsibilities and to develop incentives to encourage more men to avail themselves of parental leave and to facilitate child care services for all working parents.

The committee expressed its concern on the high prevalence of violence against women and the persistence of socio-cultural attitudes still condoning domestic violence and deterring women from reporting cases to the police. Although the Domestic Violence Act empowers the police to start court proceedings on domestic violence without the victim having to file a report, the Maltese courts consider that they have discretionary powers to stay the proceedings when the victim refuses to testify before them, even when the perpetrator has admitted the offence and evidence is available. The Committee suggested that Malta should strengthen its

efforts to ensure that female victims of violence have immediate protection, including the possibility of expelling the perpetrator from the family home, effective recourse to a shelter, and access to free legal aid and psycho-social counselling. It recommends ensuring that public officials, especially law enforcement officials, members of the judiciary, health-care providers and social workers, are fully sensitized to all forms of violence against women. Malta should systematize data collection on violence against women, including domestic violence and set up structures within its system to help female victims of violence rebuild their lives, including through the creation of job opportunities. Awareness-raising campaigns through the media and public education programmes should be carried out to make such violence socially unacceptable.

The Committee urges the State party to define the crimes of rape and violent assault as crimes against the physical and mental integrity of women and as a form of sex and gender based-discrimination that seriously inhibits women's ability to enjoy their human rights and fundamental freedoms on a basis of equality with men. It further urges the State party to review the definition of rape so as to place the lack of consent at its centre.

There is a scarcity of data when it comes to analysing trafficking of persons and exploitation of prostitution in Malta according to the committee. The granting of temporary residency permits to victims, based on cooperation with the authorities in legal proceedings may enhance such crimes. Malta should take all appropriate measures to ensure better identification and investigation of trafficking cases, particularly through the establishment of a mechanism to proactively ensure identification of and support for trafficked persons as well as enhanced training and capacity-building efforts for law enforcement officials, including immigration officials, so as to increase their ability to identify potential victims of trafficking.

Maltese women are still underrepresented in the National Parliament (8.7% in 2008), in senior positions within the public administration, including the diplomatic service and the judiciary, as well as the private sector, thus limiting women's participation in decision-making processes in all areas. The committee recommended that Malta should consider opting for temporary special measures so as to accelerate the achievement of women's full and equal participation at all levels and in all areas.

Notwithstanding that equality in employment legislation has been enacted and is seriously being implemented indirect or even sometimes direct wage gaps between women and men is still present together with the fact that a significant number of women leave the workforce after childbirth. The government was urged to consider including more temporary special measures to avoid this and it should conduct regular reviews of its legislation with a view to eliminate the barriers women face in the labour market, including the obstacles to achieve managerial positions monitor the impact of measures taken and results achieved.

Easier access to reproductive health-care services for women should be provided since the current health care services are not sufficient. The committee pointed out



that the National Policy on Sexual Health, which is being finalized, should ensure that family planning and reproductive health education are widely promoted and targeted at girls and boys, with special attention to the prevention of early pregnancies of underage girls including the control of sexually transmitted diseases and HIV/AIDS. Malta should also consider its stand on abortion since abortion is illegal in all cases under its laws and women who choose to undergo abortion are subject to imprisonment. The legislative should re consider and review the general prohibition of abortion for cases of therapeutic abortion and when the pregnancy is the result of rape or incest. It further urges the State party to remove from its legislation the punitive provisions for women who undergo abortion.

The Committee expressed its concerns with regards to refugee and asylum seeking women in Malta. It held that they are at a disadvantage when trying to access to education system and social services, they also face a number of problems when they find themselves receiving assistance from male public officers or male interpreters since there is a minority of female officers or interpreters in Malta. It urged the government to consider creating more possibilities for refugees and asylum seekers to access the education system and it should carefully monitor the impact of its laws and policies on women migrants, refugees and asylum-seekers with a view to taking remedial measures that effectively respond to the needs of those women.

## **CRC**

The following are a number of concerns and recommendations expressed by the CRC Committee.

Malta does not have any specific provisions in its legislation which criminalize the compulsory recruitment of a person under 18 or any other violation of the provisions of the Optional Protocol. It also noted that Malta does not assume extraterritorial jurisdiction over the war crime of conscripting or enlisting children under the age of 15 into the armed forces or using them to participate actively in hostilities. On this note the committee held that these provisions should be explicitly prohibited by Maltese law.

Malta, has not, as yet carried out the necessary dissemination and training of the CRC Optional Protocol, the committee recommended that training on this protocol should be provided to the armed forces in particular together with a number of systematic awareness-raising, education and training programmes on the provisions of the Optional Protocol specifically addressed to all relevant groups working with and for children. Such as, professionals working with children who have come from countries affected by armed conflict such as medical professionals, social workers, police officers, teachers, lawyers and judges.



According to Title II of the Armed Forces Act,<sup>79</sup> it is prohibited to recruit a person under the appropriate minimum age (which in Malta is 17 years and 6 months) “unless consent to the enlistment has been given in writing” by the parents or by any other person in whose care the person offering to enlist may be. The committee recommended that an absolute minimum age should be established by the legislator.

The committee also noted that in practice unaccompanied minors entering Malta from countries affected by armed conflict are still detained in detention centres pending the finalization of the process for their release notwithstanding the policy providing that children should not be detained. The committee felt that Malta should carefully identify and examine the situation of these children, prohibit their detention in any case and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with article 6, paragraph 3, of the Optional Protocol, as well as, providing training to persons who work in this field.

While the media often reported the recommendations made by the above mentioned committees, yet these reports were not followed up. The Malta Confederation of Women Organisations as well as the Malta Gay Rights Movement had presented a shadow report before the Committee for the Elimination on All Forms of Discrimination against Women and consequent to the concluding observations published by the Committee, these were also reported. However one cannot really say that there was a meaningful public reaction to either the concluding observations nor to the content expressed in the shadow reports.

### **Opinion Polls and Research**

Rather than opinion polls one could here refer to a recent study carried out in Malta as part of EU funded project and in which questions as to the reasons for lack of effectiveness of the legislative framework were raised. The Underreporting of Discrimination sought the participants opinion as to whether they are aware of the anti discrimination legislation and the protection it provides to victims of discrimination in Malta and sought to find out the reasons as to why victims of discrimination do not report. The outcome of the result shows that there is generally lack of awareness of the legislative protection afforded as well as lack of awareness of the remedies available. The stigma of reporting discriminatory treatment as well as the thought that nothing would come out of their report were also reported as being two of the main reasons for not reporting incidents of discrimination experienced by the participants.

Measures to address the lack of effectiveness of legislative measures were not necessarily taken by the Government as such but by the designated equality bodies through their work of awareness raising as well as determining complaints. In a similar manner, NGOs work mainly on raising awareness rather than assisting victims

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<sup>79</sup> Chapter 220 of the Laws of Malta  
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8725>.





to report and make use of the measures of redress established at law. While trade unions also do so, however trade unions often represent the victim with his/her employer with the aim of resolving a conflict without necessitating recourse to legal remedies.

Quantitative and qualitative research is often carried out by the designated equality bodies within the ambit of EU funded projects. These often test the level of awareness of the public in relation to the Directives, and their perception and acceptance of equality and non-discrimination. Research studies carried out so far include: Unlocking the Female Potential Research Report<sup>80</sup> which dealt with different issues of gender discrimination and considered entrepreneurs and vulnerable workers, economic independence and inactivity for women; I'm Not Racist, But ...<sup>81</sup>, a project carried out by NCPE and other partners considered racial discrimination by focusing on immigrant and ethnic minority groups and the difficulties they encounter in housing and accommodation; under the project Think Equal<sup>82</sup> NCPE organised a Symposium on Multiple Discrimination in which the concept of multiple discrimination was analysed; within the same project 'Think Equal' NCPE also published a research report on LGBT Discrimination, Measurement of Discrimination among Youths and Racial Discrimination in Malta.

- [1]. Previous surveys that focused on the level of tolerance of diversity and which focused on the Maltese situation include the outcome of the Voice for All Evaluation.<sup>83</sup> Within the Maltese forum discrimination on grounds of sexual orientation and ethnic origin are perceived to be most widespread. The results of the Evaluation were similar to the findings of July 2008 Eurobarometer.<sup>84</sup> According to the findings of the evaluation, the two grounds whereby discrimination was perceived as very widespread were sexual orientation (61.7%) and race (59%). A substantial share of respondents think that discrimination on the grounds of disability, age, religion or belief and gender is also widespread.
- [2]. In the Voice for All questionnaire, respondents were asked whether being a member of a specific category in Malta, is a disadvantage. Results show that 72% perceive homosexuality to be a disadvantaged group, followed by race (61%), disability (53%) and religion (48%). Furthermore 61.7% perceive sexual orientation to be the most widespread discrimination in Malta with that on the basis of race and ethnic origin coming second with 59%.

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<sup>80</sup> [https://secure3.gov.mt/socialpolicy/SocProt/equal\\_opp/equality/resources/research\\_-\\_outcomes.aspx](https://secure3.gov.mt/socialpolicy/SocProt/equal_opp/equality/resources/research_-_outcomes.aspx).

<sup>81</sup> [https://secure3.gov.mt/socialpolicy/SocProt/equal\\_opp/equality/projects/i\\_m\\_not\\_racist\\_but.aspx](https://secure3.gov.mt/socialpolicy/SocProt/equal_opp/equality/projects/i_m_not_racist_but.aspx).

<sup>82</sup> [https://secure3.gov.mt/socialpolicy/SocProt/equal\\_opp/equality/projects/think\\_equal.aspx](https://secure3.gov.mt/socialpolicy/SocProt/equal_opp/equality/projects/think_equal.aspx).

<sup>83</sup> Carried out by the Organisation for the Promotion of Human Rights and Commissioned by the National Commission for Equality; Published January 2009.

<sup>84</sup> Special Eurobarometer 296 Discrimination in the European Union: Perceptions, Experiences and Attitudes. Fieldwork February – March 2008. Publication July 2008 European Commission.

- [3]. Perception of discrimination on the basis of gender has considerably diminished with participants indicating 16.8% for discrimination suffered by females and 8.4% for discrimination suffered by males in the Voice for All questionnaire.
- [4]. When indicating their personal experience of discrimination 31.5% of respondents of the Voice for All survey have stated that they met with a form of discrimination. In the evaluation the most common basis of self reported discrimination was that of age, followed by gender and sexual orientation. Moreover, out of 355 respondents, 118 stated that they had experienced discrimination personally, 101 claimed that a friend of theirs had experienced discrimination while 66 said that the victim of discrimination was a member of their family.
- [5]. Participants in the Voice for All evaluation also indicated their position were they to have a person within their family or as a neighbour falling within one of the identified disadvantaged groups. 10.1% of respondents claimed that they would be totally uncomfortable with a neighbour who is gay followed by race with 5.7%. On the other hand they would be very comfortable if such neighbour were a disabled person (48.9%) or from a different religion (41.7%). The Voice for All questionnaire also asked participants to indicate their acceptance of diversity within the family. In this respect, participants are also more open to diversity within the family in respect of disability and least open to diversity with the family in respect to sexual orientation and race.

Lack of awareness was addressed through the actions, projects and campaigns implemented by the designated equality bodies, while policy action was taken by the government by ensuring implementation of the EU Directives into legislation and by accompanying this with amendments to criminal law. In this respect, the current Criminal Code<sup>85</sup> now makes it an offence not only to incite hatred on the basis of race, but also on the ground or religion and sexual orientation.

## 2.2 Procedures – administrative and legal channels appropriate for challenging violations of anti-discrimination legislation

### 2.2.1 Employment and occupation related - all grounds

#### Remedies that Exist at National Level

Maltese legislation provides various procedures that one may follow should he/she feel that he/she has been subjected to discriminatory treatment. Apart from recourse to action before the Civil Court, First Hall, sitting in its Constitutional jurisdiction and before the Constitutional Court, there exist other specific fora and other procedures that can be followed. These include:

- (a) The Industrial Tribunal:- established under Article 73 of the *Employment and Industrial Relations Act*. Article 30 of the Act provides that if a person alleges

<sup>85</sup> Chapter 9 of the Laws of Malta, [www.justiceservices.gov.mt](http://www.justiceservices.gov.mt).

- that his employer is, or that the conditions of employment are, in breach of Articles 26 to 29, he/she may lodge a complaint to the Industrial Tribunal. This complaint must be lodged with the Industrial Tribunal within four months of the alleged breach. The Industrial Tribunal may declare that the applicant has been a victim of discriminatory treatment, and proceed to liquidate compensation. This is applicable to proceedings against both private and public bodies.
- (b) The National Commission, Persons with Disability:- established under Article 21 of the Equal Opportunities (Persons with a Disability) Act. Amongst the various functions of the Commission, one finds the power to carrying out general investigations with a view to determining whether the provisions of the Act are being complied with; the investigation of individual complaints as may be made to them regarding a failure to comply with any provision of the Act; the provision of assistance, including legal and financial assistance, to persons with disabilities in enforcing their rights under the Act; and the keeping under review the working of the Act.  
The Equal Opportunities Compliance Unit within the Commission is responsible for investigating allegations of discriminations on the basis of disability. Investigations take place both against private and public bodies.
- (c) The National Commission for the Promotion of Equality:- established under Article 11 of the Equality for Men and Women Act. Amongst the functions that are assigned to it one finds the carrying out of general ex officio investigations with a view to determine whether the provisions of the Act are being complied with and the investigation of individual complaints which may lead to mediation between the parties; and assistance of victims in seeking redress. Investigations are carried out against both private and public bodies and on the 6 grounds of discrimination.
- (d) The Ombudsman, appointed in accordance with Article 3 of the Ombudsman Act:-<sup>86</sup> in accordance with this Act, should a person feel that he/she has been subjected to discriminatory treatment in actions performed by the Government of Malta, any statutory body or partnership in which the Government or said body has effective control as well as at the hands of any local council and their committees including officers and staff members, such person can also request the Ombudsman to investigate.
- (e) A number of trade unions in Malta also assist their members when they are experiencing discriminatory treatment at work by representing them in discussions with their employer.
- (f) Judicial Proceedings before the First Hall of the Civil Court:- established under article 19 of the Equality for Men and Women Act a person who alleges that any other person has committed in his or her regard any act of direct or indirect discrimination, harassment and sexual harassment has a right of action before the civil court requesting the court to order the defendant to desist from such unlawful acts and to order the payment of compensation for damage suffered through such unlawful act.

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<sup>86</sup> Laws of Malta Ch. 385 , [www.justiceservices.gov.mt](http://www.justiceservices.gov.mt).



All the above remedies, unless otherwise stated, apply equally to both the public and private sectors.

### **Applicable Situations**

The provisions referred to in the section above are applicable to: (a) advertising of posts, (b) recruitment procedures, (c) selection, (d) terms and conditions, (e) pay, (f) discrimination in the workplace, (g) sexual harassment, (h) working hours, (i) promotion, (j) allowances and bonus payments, (k) dismissal, (l) occupational pensions, (m) access to vocational training, (n) dress codes, (o) workplace disciplinary procedures, and (p) social security payments.

### **Internal or Administrative Remedies**

Regulation 9 of *Legal Notice 461 of 2004* states that the person making the allegation, shall have the right 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. On receipt of such notification, the respondent shall submit a written reply within ten working days of the date of receipt of such notification, giving the respondent's version of events and any grounds for disputing the allegations, as well an explanation of any relevant procedures adopted by the respondent to prevent discriminatory treatment. This, however, shall not apply if proceedings had already been initiated on the matter in front of the Industrial Tribunal or other Court. The Director of the Department for Industrial and Employment Relations can also act as a mediator.

However as such there is no requisite for a person to exhaust any internal or administrative remedy to be able to have recourse to the remedies set out above.

### **2.2.2 Non-employment or occupation related - race and ethnic origin**

Legal Notice 85 of 2007<sup>87</sup> provides for the protection against racial discrimination carried out through direct and indirect discrimination as well as harassment and instruction to discriminate. It is also considered to be a default for the management of any establishment to fail to suppress harassment. The prohibition applies to any physical person, establishment or entity, be it within the private or public sector and includes also public bodies. The sphere of protection afforded is 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. The Minister retained the discretion to add any other service to the sphere of application but this discretion has not as yet been exercised.

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<sup>87</sup> Equal Treatment of Persons Order,  
<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11800&l=1>.



The prohibition also refers to advertisements making it illegal for any advert to be published that promotes discrimination or is discriminatory. The banking, financial and insurance sector is specifically addressed in this legislation and the sector is prohibited 'in the grant of any facility in respect of the establishment, equipment or in the launching or extension of any business or the launching or extension of any form of self employment or the insurance of that business or the person in self employment' from discriminating against the applicant. The conditions under which the facility or insurance cover are offered are only allowed as long as these reflect genuine considerations based on the financial risk in the grant of such facility or cover.<sup>88</sup>

### Remedies that Exist at National Level

Besides the extraordinary legal remedies that are available under the Constitution and the European Convention Act,<sup>89</sup> whereby an individual could claim racial discrimination through recourse before the Civil Court, First Hall, sitting in its Constitutional jurisdiction and before the Constitutional Court, the Equal Treatment of Persons Order establishes the following remedies:

- (a) Criminal Offence, Regulation 6:- Harassment on the ground of race and the treatment of a person less favourable than another by reason of such person having rejected or submitted to such harassment amount to an offence and on conviction one is liable to a fine of not more than € 2,349.37 or to imprisonment for not more than 6 months or to both;
- (b) Investigation by Commissioner, Regulation 11:- The Commissioner for the Promotion of Equality may investigate allegations of racial discrimination both ex officio as well as upon receipt of a complaint;
- (c) Personal Liability of Directors, Regulation 14:- If an offence under this Order is committed by a company, partnership, association or body of persons, then every person who at the time of the offence was a director, manager, secretary or other similar officer of such body of persons, even if he/she was purporting to act in any such capacity, is deemed to be guilty of that offence unless he/she proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent its commission.
- (d) Civil Proceedings, Regulation 15:- a person who alleges the occurrence of discrimination under this Order has a right of action before the civil court and request that court to order the defendant to desist from such unlawful acts and where applicable, to order the payment of compensation for such damage suffered through such an unlawful act. In these proceedings the plaintiff is required to prove that he/she has been treated less favourably and it is then incumbent on the defendant to prove that such less favourable treatment was justified. Where a court declares the allegation to be founded, then damages

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<sup>88</sup> Regulation 5, Equal Treatment of Persons Order.

<sup>89</sup> Chapter 319 of the laws of Malta, [www.justiceservices.gov.mt](http://www.justiceservices.gov.mt).



- may be awarded for both actual physical damages as well such amount as the court considers reasonable for moral damages.
- (e) The Ombudsman, appointed in accordance with Article 3 of the Ombudsman Act:-90 in accordance with this Act, should a person feel that he/she has been subjected to discriminatory treatment in actions performed by the Government of Malta, any statutory body or partnership in which the Government or said body has effective control as well as at the hands of any local council and their committees including officers and staff members, such person can also request the Ombudsman to investigate.
  - (f) A number of trade unions in Malta also assist their members when they are experiencing discriminatory treatment at work by representing them in discussions with their employer.
  - (g) Other Criminal Offences:-

Aggravation of an Offence, Section 251A and B Criminal Code: - The offence of harassment or causing others to fear that violence will be used against them established under Sections 251A and B are considered to be aggravated if these are religiously or racially motivated. Normally for such a prosecution to take place the complaint of the victim is required. However once a complaint is presented, although the victim may participate as a party to the proceedings, the prosecution is carried out by a public prosecutor.

Besides the recognition of crimes against humanity and war crimes carried out against persons of different racial or ethnic origin, a number of provisions inserted in the *Criminal Code* have criminalised a variety of actions related to discriminatory treatment practiced not only by public officers but also by private persons. Section 139A established the crime of affecting torture, degrading or humiliating treatment or punishment for reasons based on discrimination. There are no qualifications as to the grounds of discrimination and therefore this would also apply to discriminatory treatment in relation to race or ethnic origin, however this crime refers to actions imposed by a public officer or a person acting in official capacity.

Section 82A provides for the crime of racial incitement committed by any person, whether a public officer or a private individual. The action used may be “any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner,” as long as there is the intention to stir up racial hatred.

In regulating the punishment due for crimes committed against a person, and therefore crimes that include injury to a person, the *Criminal Code* has introduced an increase in punishment if the act is religiously or racially aggravated and that is if the offence is motivated by hostility towards a race or if the offender demonstrates

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<sup>90</sup> Chapter 385 of the Laws of Malta, [www.justiceservices.gov.mt](http://www.justiceservices.gov.mt).

hostility towards a victim because the latter is a member of a different race or religion.<sup>91</sup>

The prosecution of these offences is done always through the public prosecutor, that is representatives of the Police or the Attorney General's office, and do not require the complaint of the victim for their institution. Despite this, the victim may seek authorization to participate in the proceedings as an interested party.

### **2.2.3 Where a choice exists of avenues for raising either an employment related or a non-employment related complaint:**

- (a) Criminal Offences:- As with all criminal proceedings a legally binding solution is found only in the punishment of the offender. Facts are assessed on the basis of the evidence adduced in the proceedings and in this regard the criminal court may require that the evidence reaches at least a level of probability and not a mere allegation. Legal representation of the victim is not required but should the victim wish to participate in the proceedings, then legal representation is desirable. Victims are not provided with legal assistance or legal aid. This procedure does not provide for financial compensation for the victim. The procedure may have an impact on public opinion and awareness raising if the media give space to the reporting of the proceedings. The procedure cannot be instituted by a group but only on the request of an identified victim or victims. The costs for the victim include only the fees of her/his legal representative should one be engaged.
- (b) Investigation by Commissioner:- The outcome that a complainant can obtain from an investigation by the Commissioner is a declaration that the allegation is founded and that the person committing the discrimination is called for mediation with a view to finding a remedy. However, the Commissioner's investigations are not legally binding unless the offender submits to the investigation and the Commissioner does not have the power to liquidate compensation nor to order its payment. The Commissioner may however report the occurrence to the Police or assist the individual to initiate legal proceedings. There is no time limit established for complaints investigated by the Commissioner but the Order only applies as of 2007. The Commissioner decides on the basis of probabilities and adopts the reversal of the burden of proof. Legal representation is not required but if opted for the Commissioner does not provide legal assistance. Mediation following a decision of the Commissioner could lead to reinstatement or the payment of compensation. The impact of this procedure is mainly on the individual, however the publication of the conclusion could be used by NGOs to raise awareness and to impact public opinion. Group complaints are possible since the Commissioner can also investigate ex officio. There are no costs incurred by those reporting discrimination to the Commissioner nor are any costs incurred by the victim in any investigation. The Commissioner for the Promotion of Equality may

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<sup>91</sup> Section 222A, Chapter 9 of the Laws of Malta, [www.justiceservices.gov.mt](http://www.justiceservices.gov.mt).

- investigate allegations of racial discrimination both ex officio as well as upon receipt of a complaint;
- (c) Civil Proceedings:- The outcome of civil proceedings is an order issued against the defendant whereby the court orders the defendant to desist from the discriminatory behaviour, as well as to pay compensation to the victim in the amount liquidated by the court. The proceedings are instituted by the victim who does need legal representation. There is a possibility for the proceedings to be instituted by an NGO or the national equality body in which case costs can be paid for by the NGO or the equality body rather than the victim. Where a discriminatory approach is found to occur by the designated equality Commissioners and where this is of general application, then the equality body may institute proceedings without requiring a specific victim. KNPD<sup>92</sup> has instituted such proceedings against business enterprises for lack of accessibility to their business place. The reversal of the burden of evidence is taken to apply in these proceedings. Proceedings of this type can produce judgments which can be put to use by NGOs and the equality bodies against other offenders and which can also be used to empower and raise awareness. These judgments can have an effect on public opinion if the media reports the proceedings.
- (d) Proceedings before the Ombudsman:- The Ombudsman will only investigate upon the receipt of a complaint. The complainant is not required to have legal representation and the personnel at the Ombudsman's Office will also assist the complainant in presenting the case. There are no costs or fees that are related to these proceedings. Although the outcome is not binding upon the public body investigated yet the Ombudsman publishes its reports annually. This could be used by NGOs to promote better adherence to the equality legislation and to raise awareness. The Ombudsman's report is thought to influence public opinion.
- (e) Industrial Tribunal:- Proceedings before the Industrial Tribunal need to be initiated by the victim alleging discrimination related to employment. Legal representation is not obligatory and there is also the possibility for the victim to be assisted by a trade union. Costs incurred in these proceedings are generally considered to be minimal. The Tribunal can order compensation and/or reinstatement. The outcome of the proceedings could be used to raise awareness and to address similar cases.

#### 2.2.4 What are the technical procedural requirements of each available remedy?

##### Employment Discrimination – all grounds

*The Industrial Tribunal Procedure Rules, 1957*, lay down the procedural requirements for the hearing of a case once a complaint is lodged with the Tribunal. On receipt of a reference the Secretary informs the Chair who fixes a date for the hearing of the reference or for its consideration as the case may be. The Secretary then informs the

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<sup>92</sup> [www.knpd.org.mt](http://www.knpd.org.mt).



parties to the dispute under reference of the date of hearing, and asks them to provide five true copies of the statement of case to reach the Secretary in a sealed cover seven clear days before the day set for the hearing. On receipt of the said documents, the secretary gives a copy of the statement of each party to the Chair and one copy of the statement of each party is to be served on the other party to the case at his last known address. Copies of the statements shall also be given to each of the other members of the Tribunal at the same time or as soon as they are nominated. At this point the parties must inform the Secretary as to who is going to represent them at the sittings. The statement of case must contain a list of all the witnesses that the party intends to produce in support of his case. Besides the name and address of each witness such list must contain an indication of the proof that it is intended to make by the production of each witness. Witnesses not mentioned in the list of witnesses may not be produced to give evidence, unless the Tribunal is satisfied that the omission of the name of such witness is justified on the grounds that the party intending to produce such witness did not know of such evidence on the date of the submission of the statement of case, or that the need to produce such evidence arose after the submission of the statement of case or for any other reason to the satisfaction of the Tribunal. The party making the claim or seeking to alter the *status quo* shall open the case. On conclusion of the opening statement, the evidence is to be put forward. Following this, the opposite party will then open his case, commenting, if necessary, on the case made by the other party, and thereafter shall call his/her evidence. If any further evidence is then necessary or a further statement is to be made, the Tribunal shall, at its discretion, allow such proceedings to take place. The party which opens the case shall have the right to reply, however if further points are raised, it will be open to the Tribunal to allow the other party to reply. Where the question in dispute is of a nature that neither party can be said to be making the claim or seeking to alter the *status quo* but is one which both parties are raising for settlement, the Tribunal shall decide which party should begin, as well as the procedure generally. Finally, it should be noted that decisions and awards of the Tribunal shall be in writing and shall not specify in detail the reason for such decision or award, but may make reference to the main evidence heard. The Tribunal, however, shall make it quite clear from its decision or award that all the relevant arguments put forward by both sides shall have been taken into consideration. In cases where the Tribunal decides that the employee has been unfairly dismissed, if there is no specific request for reinstatement or re-engagement or the Tribunal decides not to make an order for reinstatement or re-engagement, the Tribunal shall make an award of compensation, to be paid by the employer to the complainant, in respect of the dismissal.

*Contact Details:*

Mr Vincent Micallef

Industrial Tribunal

Tel: +356 2123 982, 1Fax: +356 2122 3818

Email: [vincent.a.micallef@gov.mt](mailto:vincent.a.micallef@gov.mt)



## Racial or Ethic Discrimination – all areas other than employment

The National Commission for the Promotion of Equality Complaints Board meets regularly to process complaints received from the general public with regard to gender discrimination. The Commission's widening of the remit through *Equal Treatment of Persons Order* means that it will equally be looking at cases of racial and ethnic origin discrimination that arise after 3<sup>rd</sup> April 2007 in line with the non-employment provisions of Directive 2000/43/EC.

The NCPE has bound itself in its *Quality Service Charter* to follow strict procedures in the handling of complaints and requests for information that are received from the general public. Furthermore, while the Commission is yet to develop a specific Complaints Form for the grounds of racial or ethnic origin, such a form is already available for the grounds of gender and can serve as a good reference for complainants on the grounds of racial or ethnic origin. The procedures of the Commission state the following:

- (a) The National Commission for the Promotion of Equality (NCPE) can only act upon complaints made in writing. Where it is not possible for the complainant to write a letter of complaint, the NCPE will appoint an officer to write down a statement made by the complainant. The statement is then read to the complainant who will sign in order to confirm all that is written are he/she version of the facts. This will be done in front of another witness who will also sign the complainant's declaration (complainant, officer who writes statement and another witness).
- (b) NCPE ensures that each case presented for investigation is managed with confidentiality.
- (c) Every complaint is acknowledged in writing within 3 working days of its receipt at the office of NCPE.
- (d) The NCPE's Complaints Sub-Committee, circumstances permitting, shall endeavour to meet for the purpose of discussing the complaint within 10 working days from the receipt of the written complaint.
- (e) After viewing the complaint, NCPE proceeds to write to the parties against whom the complaint was made, informing them of the allegations made and asking for their version of the facts within a stipulated timeframe.
- (f) In order to investigate each case, NCPE may send for any person/s who may throw light on the case, and are questioned by members of the Complaints sub-committee at the NCPE premises during the Sub-Committee's meeting.
- (g) At this stage, the Commission, may at its earliest possibility, endeavour to summon both parties and mediate to find a solution acceptable to all involved, subject to consent from both parties.
- (h) The NCPE reserves the right to take any necessary action deemed fit, within the provisions of the law, if a person summoned refuses to comply with the above. Furthermore in the case when a person/s refuses to submit hi/he/she/their position when requested, NCPE reserves the right to proceed on the matter at

- hand, even though without the statement of the alleged offenders, thus coming to a conclusion according to the circumstances and the information available.
- (i) NCPE shall make an effort to ensure that each complaint is dealt with in the least possible timeframes. Nevertheless, this may at times prove to be challenging in view of the fact that feedback in connection with each complaint made may be requested from other entities, who then have their own procedures.
  - (j) NCPE has the right to investigate a complaint or otherwise on the grounds set out in the provisions of *Equality for Men and Women Act* and *Equal Treatment of Persons Order*. The final decisions taken by the NCPE regarding each complaint are not open to questioning.

*Contact Details:*

Executive Director,  
National Commission for the Promotion of Equality (NCPE),  
Gattard House, Blata l-Bajda HMR 02  
Tel: +356 2590 3850, Fax: +356 2590 3851  
Email: [gender.equality@gov.mt](mailto:gender.equality@gov.mt), Website: [www.equality.gov.mt](http://www.equality.gov.mt)

## **Disability Discrimination**

*Procedure for the Investigation of Complaints Regulations* provide for the procedure which is to be followed in cases in which the National Commission Persons with Disability receives a complaint from an aggrieved person, including instances of alleged discrimination. In terms of this Legal Notice, the Commission shall first try and find an amicable solution to the matter. If, however, this is not forthcoming, the Commission is empowered to refer the case to the Civil Court, First Hall. When commencing an investigation, the Commission shall notify by means of a registered letter all the parties concerned that it intends to carry out an investigation. In the letter to the person who allegedly is responsible for the unlawful act of discrimination the Commission informs the person that it has reasons to believe that that person allegedly committed or is committing an unlawful act, and grants him seven days from the service of the letter referred to in this regulation within which to state in writing to the Commission whether he considers the complaint justified, and which course of action he will be taking to remedy the situation. The Commission may request any information as may be required to carry out its investigation. By means of a written notice, the Commission may request any person –

- (a) to provide it with any information that may be described in the said notice;
- (b) to attend and give oral information about the matter specified in the notice and to produce all documents in his possession or control relating to any such matter.

It should be noted that a person shall not be obliged to give information or produce a document requested by the notice if that person is deemed to be exempt from providing that information or producing the document before the Court in civil proceedings. However, if the person concerned fails to provide, or if the Commission



has reason to believe that that person has decided not to provide, the written information, the Commission may request the Court, by means of an application before the Civil Court, First Hall, to order the person referred to in sub-regulation (2) to comply with the said notice. The Court may also be requested to give any other order which it may consider appropriate and required according to the specific circumstances of the case. When the Commission concludes that an unlawful act constitutes a breach of any provision of the Act, it shall communicate its conclusion to the interested parties by means of a registered letter requesting the said 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. The interested parties may request the Commission to extend the time limit if the circumstances of the case so warrant. Such a request shall be made within fifteen days of receipt of the registered letter referred to in this regulation. In the event that the interested parties, having been served with a registered letter fail to take the necessary remedial action within the specified time limit, or the time limit mutually agreed upon, the Commission may request the Court, by means of an application to be filed before the Civil Court, First Hall, to order the person to undertake all necessary remedial action.

**Contact Details:**

The Equal Opportunities Compliance Unit  
National Commission Persons with Disability (KNPD),  
Istituto Vincenzo Bugeja, Ċentru Fiddma Soċjali,  
Triq Braille, Santa Venera FMR18  
Tel: +356 2148 7789, Fax: +356 2148 4609  
Text tel: +356 2144 6536  
Email: [helpdesk@knpd.org](mailto:helpdesk@knpd.org) , Website: [www.knpd.org](http://www.knpd.org)

Some other stakeholders who can offer assistance include the following:

**Office of the Ombudsman**

11, St Paul Street Valletta VLT 07  
[office@ombudsman.org.mt](mailto:office@ombudsman.org.mt)

**Department of Industrial and Employment Relations (DIER)**

121, Melita Street, Valletta, VLT 1121  
[ind.emp.relations@gov.mt](mailto:ind.emp.relations@gov.mt)

**General Workers Union (GWU)**

Workers' Memorial Building, South Street, Valletta - VLT 11  
[info@gwu.org.mt](mailto:info@gwu.org.mt)

**Union Haddiema Maghqudin (UHM)**

"Dar Reggie Miller", St. Thomas Street, Floriana FRN 1123  
[agrima@uhm.org.mt](mailto:agrima@uhm.org.mt)



**Agenzija Appogg**

36, Triq San Luqa Tal-Pieta', Gwardamanga PTA 1027  
[www.appogg.gov.mt](http://www.appogg.gov.mt)

**Organisation for the Promotion of Human Rights (Malta)**

80/2 St Monica Street, Gwardamangia PTA1117  
[contact@ophrmalta.eu](mailto:contact@ophrmalta.eu)

**INSPIRE – The foundation for Inclusion**

Bulebel, Zejtun, ZTN 3000  
[info@inspire.org.mt](mailto:info@inspire.org.mt)

**ADITUS**

[www.aditus.org.mt](http://www.aditus.org.mt)  
[info@aditus.org.mt](mailto:info@aditus.org.mt)

**National Council of Women (NCW)**

Pope Pius XII Flats, Mountbatten Street, Blata I-Bajda HMR 1579  
[info@ncwmalta.com](mailto:info@ncwmalta.com)

**Drachma**

<http://drachmalgbt.blogspot.com/>  
[drachmalgbt@gmail.com](mailto:drachmalgbt@gmail.com)

**Malta Gay Rights Movement (MGRM)**

32, Parish Street, Mosta, MST 2021  
[mgrm@maltagayrights.org](mailto:mgrm@maltagayrights.org)

**Migrants Solidarity Movement (MSM)**

<http://migrantsmalta.org>  
[migrantsmalta@gmail.com](mailto:migrantsmalta@gmail.com)

**Islamic Community Malta**

[Islamic.community.malta@gmail.com](mailto:Islamic.community.malta@gmail.com)

**Malta Red Cross Society**

[www.redcross.org.mt](http://www.redcross.org.mt)  
[info@redcross.org.mt](mailto:info@redcross.org.mt)

**National Council for the Elderly**

Workers' Memorial Building, South Street, Valletta - VLT 11  
[kna@onvol.net](mailto:kna@onvol.net)

**Equal Partners Foundation**

[www.equalpartners.org.mt](http://www.equalpartners.org.mt)  
[info@equalpartners.org.mt](mailto:info@equalpartners.org.mt)



### **Jesuit Refugee Service Malta (JRS)**

St. Aloysius' Sports Complex, 50 Triq ix-Xorrox, Birkirkara BKR 1631  
[info@jrsmalta.org.mt](mailto:info@jrsmalta.org.mt)

### **Mental Health Association**

[www.mhamalta.com](http://www.mhamalta.com)  
[assistance@mhamalta.com](mailto:assistance@mhamalta.com)

### **UNHCR (Malta)**

72, Market Street, Floriana FRN 1080  
[buhagiar@unhcr.org](mailto:buhagiar@unhcr.org)

### **IOM (Malta)**

191, Merchant Street, Valletta  
[iommalta@iom.int](mailto:iommalta@iom.int)

## **2.2.5 What support exists at national level for accessing the different procedures, and what can be done to overcome any impediments/obstacles?**

The National Commission for the Promotion of Equality is empowered to assist complainants in seeking an investigation by the Commissioner as well as in instituting legal proceedings. Support is provided in that the individual is assisted in compiling the relevant documentation and is also directed towards other service providers working in the field such as counsellors or legal representatives.

The National Commission Persons with Disability is empowered to assist a complainant of alleged discriminatory treatment on the grounds of disability. This Commission is empowered to provide, where appropriate, assistance, including legal and financial assistance, to persons with disabilities in enforcing their rights under the Act. Furthermore, if it appears to the Commission that a person wishes to make a complaint under Article 32(2) of the Act and that person requires assistance to formulate the complaint orally and/or in writing, it is the duty of the Commission to take reasonable steps to provide appropriate assistance to that person.

NGOs working in the field generally assist by providing moral support and assistance in formulating the complaint as well as assist in providing statistical evidence that could be used by the victim in his/her proceedings.

Some obstacles that victims face when deciding whether to take action against discrimination experienced by them relate primarily to the lack of confidentiality of proceedings. Often victims would decide to seek an investigation by the equality Commissioners or by the Ombudsman rather than seek redress through the Industrial tribunal or court or even seek criminal prosecution. Lack of familiarity with the Directives and national legislation and even more so lack of previous caselaw in



this respect is often considered by victims as a negative point since they are unable to attain an insight in the risk involved for them should they institute proceedings.

It is already possible for the designated equality bodies and NGOs to take a more active role of support in cases of discrimination however this has been lacking. Possibly this is the result of lack of human and financial resources on their part.

## 2.2.6 Public national authorities working on anti-discrimination

1. The Office of the Prime Minister is a key authority in respect of equality and non-discrimination not only because it is the administrative headquarters of central government and is also responsible as an employer towards public employees, but is seen as the Office which acts as a catalyst for policy development and priority setting which is then followed or further developed by the Ministries. In this respect therefore it plays a number of roles, that of policy setter giving it a standing to provide impetus towards the development of a policy and the setting of priorities, as well as that of ensuring that in providing employment to persons within the public sector employment policies are in line with equality and non-discrimination principles.
2. the Ministry for Justice, Dialogue and the Family is specifically responsible for equality and non-discrimination, with this forming part of its official remit since January 2012. Equality being viewed as a component of social policy is generally taken to fall within the remit of the Ministry to which social policy is assigned, however it is the first time where equality has come to fall within the remit of a Ministry that is assigned both justice affairs (that is legislation) as well as the Family which includes social policy. So far this has played an important role since while previously equality policy was drafted only by the Ministry for Social Policy, often that policy would only find its way to legislation with some delays. Recent events however now show that with the equality policy falling within the remit of the same Ministry as issues of justice, regulating or legislating against discrimination may have to pass through less bureaucracy. For example, upon a homophobic incident gaining public recognition on newspapers, an immediate response by the Prime Minister was issued that provided the Ministry for Justice, which also happens to be the Ministry for Social Policy with directions on ensuring that adequate legislation and policy is in place in this respect. Legislative amendments were proposed within a relatively short time and these are now already awaiting Parliament's approval.
3. The Ministry's portfolio includes the Courts of Justice, Attorney General's Office, Data Protection, Social Policy, Family Policy, Child Policy, Social Security, Solidarity Services, Social Housing, Equality, Industrial and Employment Relations, the Malta Council for Economic and Social Development, and the EU Information. Although establishing equality policy is legislatively a function entrusted to the designated equality bodies, their role can be said to be more of 'pressure putting' for a policy or a priority to be recognized rather than for them



to actually draft or develop policy. It therefore remains within the functions of the Ministry's directorates to draft and develop policy.

4. According to article 12 of the Equality for Men and Women Act<sup>93</sup> and article 22 of the Equal Opportunities (Persons with Disability) Act<sup>94</sup> one of the functions of the equality bodies is to identify, establish and update all policies directly or indirectly related to issues of equality as well as to monitor the implementation of national policies related to equality. In this respect therefore, policy may be initiated by the equality bodies. Often the equality bodies push for an issue to become a priority and this is then translated into policy by the relevant Ministry, and that consequently policy drafting is carried out in practice by the relevant directorate within the Ministry rather than by the equality body. However, the equality bodies play an important role in equality policy drafting even when this is being done by a Ministry directorate since the equality bodies are generally consulted and participate in this process.
5. The Ministry's main policy development organ is the Policy Development and EU Affairs – Social Policy Directorate which is entrusted with the coordination of the Ministry's response in EU and other international fora, as well as to draw up the Ministry's policies in matters relating to social affairs. The Directorate also includes a Social Inclusion Office<sup>95</sup> which is principally responsible to promote social inclusion as well as develop, coordinate and monitor the implementation of Malta's National Action Plan for Social Inclusion.<sup>96</sup> A Research Unit is also located within this Directorate and is entrusted with data and research analysis required in the formulation of policy development related to social affairs. Two of the core functions of this Directorate which include the following:
  - To develop and consolidate the policy development structures of the Ministry and to identify key areas in line with general Government policy by employing international best practice and local evidence and reflecting appropriate consultations with interested stakeholders;
  - To proactively identify areas of key strategic importance in social affairs where the EU institutions are engaging in discussion and formulation of proposals and act as the focal point in preparing EU positions following consultation both within the Ministry and outside the Ministry, including with external stakeholders, and place it at the centre of developing policies in relation to equality. It is understood that policy development is undertaken by the Directorate upon receiving instructions in this regard

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<sup>93</sup> Chapter 456 of the Laws of Malta,  
<http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotolD=456>.

<sup>94</sup> Chapter 413 of the Laws of Malta,  
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1>.

<sup>95</sup> [https://secure2.gov.mt/socialpolicy/socprot/others/policy\\_dev\\_eu\\_affairs/ey2010/social\\_inclusion\\_office.aspx](https://secure2.gov.mt/socialpolicy/socprot/others/policy_dev_eu_affairs/ey2010/social_inclusion_office.aspx).

<sup>96</sup> [https://secure2.gov.mt/socialpolicy/socprot/others/policy\\_dev\\_eu\\_affairs/ey2010/national\\_report\\_strategies.aspx](https://secure2.gov.mt/socialpolicy/socprot/others/policy_dev_eu_affairs/ey2010/national_report_strategies.aspx).



from the Minister or his/her permanent secretary and that once the Directorate has formulated a draft policy this is then presented back for approval to the Minister by the Director.

Contact details of the Ministry for Justice, Dialogue and the Family, Minister Hon. Dr Chris Said, [www.mjdf.gov.mt](http://www.mjdf.gov.mt)

## 2.2.7 National public policies on anti-discrimination

- i. Malta's National Reform Programme Under the Europe 2020 Strategy<sup>97</sup> published by the Ministry of Finance, the Economy and Investment places emphasis on measures related to employment and lifelong learning for older workers, women and the disabled.
- ii. National Strategic Reference Framework, Malta, 2007 – 2013,<sup>98</sup> December 2006 published by the Ministry of Finance, the Economy and Investment focuses on gender equality.
- iii. Inclusive Education Policy regarding students with a disability,<sup>99</sup> published by the Ministerial Committee on Inclusive Education on the 15<sup>th</sup> July 2000.
- iv. Strategies for Social Protection and Social Inclusion, 2008 – 2010<sup>100</sup>

## 2.3 Societal issues

### Religious Discrimination

The dominant religion remains that of Roman Catholics, with the Constitution declaring this to be the religion of the State,<sup>101</sup> while at the same time guaranteeing religious freedom.<sup>102</sup> Moreover, protection of religious freedom is also guaranteed through the European Convention Act.<sup>103</sup> Although there are no official statistics on the number of persons who profess one religion or other in Malta, yet the Roman Catholic Church still holds a firm standing in Malta often being said to have 98% of the Maltese population as members of this Church. This, however, has not curtailed the practice of other religions and a number of other smaller religious communities also exist and are freely allowed to practice their religious cultures. Churches and places of worship of other religions are also freely established in Malta, those who

<sup>97</sup> <http://finance.gov.mt/image.aspx?site=MFIN&ref=NRP-final>.

<sup>98</sup> <http://finance.gov.mt/image.aspx?site=MFIN&ref=NSRF – English>.

<sup>99</sup> <http://www.knpd.org/pubs/pdf/educinclusive.pdf>.

<sup>100</sup> <http://ec.europa.eu/social/keyDocuments.jsp?policyArea=750&subCategory=753&type=0&country=17&year=0&advSearchKey=nsr+spsi&mode=advancedSubmit&langId=en>.

<sup>101</sup> Article 2 of the Constitution of Malta; [www.mjha.gov.mt](http://www.mjha.gov.mt).

<sup>102</sup> Article 40 of the Constitution of Malta; [www.mjha.gov.mt](http://www.mjha.gov.mt).

<sup>103</sup> Chapter 319 of the Laws of Malta; [www.mjha.gov.mt](http://www.mjha.gov.mt).



are more mentioned being the Muslim religion, the Protestant Church and Jehovah Witnesses.

Despite the overwhelming predominance of the Roman Catholic religion which does receive more visibility also through politics, yet other faiths have not indicated forms of harassment or discriminatory treatment. In this respect, it is interesting to note the position of the Muslim faith, whereby the Muslim community administers not only a Mosque but also its school. Religious tolerance is also practised between members of different faiths, with for example, teachers at the Muslim school who are members of the Roman Catholic faith.

In this respect, however, the Voice for All Evaluation, above mentioned, indicated that religious discrimination is perceived by participants to be the fourth widespread from among the basis of gender, age, sexual orientation, ethnic origin, religion, race and disability. In fact 34.1% indicated this to be very widespread and 30.1% indicated this to be fairly widespread. With only 7.2% indicating this basis to be rare and 21.5% indicated this basis of discrimination to be fairly rare.

### **Discrimination on the ground of disability**

Statistics from the National Statistics Office offer some data in respect of this disadvantaged group. According to the publication of the 15<sup>th</sup> May 2008 of the National Statistic Office,<sup>104</sup> in 2007 Eur 37,022,893 was paid out as pensions in respect of invalidity and Eur 9,339,667 was paid out as a disability pension or allowance from the public social benefits fund. Moreover according to another statistical publication published by the National Statistics Office<sup>105</sup> 10,291 persons were registered as having a disability in 2007; from these 5,527 were males and 4,706 were females. The highest number is indicated as having a physical impairment with 6,556 persons as opposed to 1,054 who indicated a psychological impairment. These represent 2.5% of the population. These statistics also show that a high percentage of persons suffering from impairment are illiterate.

Although legislation<sup>106</sup> is in force which establishes quotas for the employment of persons with a disability, yet this does not seem to have been very effective mainly since it does not address SMEs but addresses commercial entities of a certain growth. Moreover, statistics indicate that in 2007 319 of all persons with a disability were registered on the unemployment register. Of these 253 were males and 66 were females. These statistics however do not indicate the number of persons with a disability who are in employment.

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<sup>104</sup> [www.nso.gov.mt](http://www.nso.gov.mt).

<sup>105</sup> International Day of Persons with Disabilities, 2008, published by the National Statistics Office, 2nd December 2008, Theme: Population and Social Conditions; [www.nso.gov.mt/statdoc/document\\_file.aspx?id=2372](http://www.nso.gov.mt/statdoc/document_file.aspx?id=2372).

<sup>106</sup> Act II of 1969 establishes a quote of 2% of disabled persons to be employed for every 20 workers within any commercial or employment activity.



The Voice for All Evaluation indicated that only 35.1% of participants see disability based discrimination to be very widespread with another 29.1% indicating this to be fairly widespread. In this respect, this basis of discrimination has been indicated as being the third most widespread. Moreover, 53% of participants indicate it to be a disadvantage to suffer from a disability due to discrimination. On the other hand, in the July 2008 Eurobarometer the Maltese position was indicated as 21% perceiving this discrimination to be either very widespread or fairly widespread and Malta was in fact the last ranked in this respect vis-a-vis other EU Member States.

### **Discrimination on the ground of sexual orientation**

LGBT persons remain the group suffering the most disadvantage within the Maltese society. During 2011 and 2012 political will has been more forthcoming in addressing this situation and legislation criminalising incitement to hatred on the basis of sexual orientation has been introduced in the Criminal Code.

Within this group those who have undergone a sex change remain particularly at a disadvantage with obstacles still being found in the legal procedure one has to follow for a change in a person's sexual identity in official documents. In this respect for example, for a person to have changes effected to his/her official documents needs to institute legal proceedings in which he/she is subjected to medical examination even though that person would have obtained medical certification of the therapy and operations undertaken by those medical persons who have treated him/her.

This group also suffers from the predominance of the Roman Catholic Church and the stronghold that this religion has within the Maltese society. The teachings of the Roman Catholic Church in relation to homosexuality have been preached upon on a number of occasions not only by the Bishops of Malta and Gozo but also by ordinary priests. This has continued to bring about an inappropriate perception of LGBT persons in society. The Voice for All Evaluation in fact indicates that the most widespread discrimination perceived in the Maltese society is that on the basis of sexual orientation with 61.7% of the participants indicating this discrimination to be very widespread and 20% indicating this to be fairly widespread. Moreover, 72% of the participants indicated being a member of the LGBT group to be a disadvantage.

### **Discrimination on the ground of ethnicity and race**

The ethnic composition of the Maltese population is predominantly of European origin and white skinned. Most inhabitants are actually of Maltese descent and come from families who have for generations inhabited the islands. Despite this, marriages to foreigners are a common trend with 26.2% of marriages carried out in 2007 having only one spouse of Maltese citizenship.<sup>107</sup>

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<sup>107</sup> Demographic Review, 2007; Published by the National Statistics Office in 2008; [www.nso.gov.mt](http://www.nso.gov.mt).



Although Malta had an average of 410,290 residents in 2007, the number of such residents who held a Maltese citizenship amounted to 96.2% of the total population, yet almost 64% of the total population increase was attributed to an increase in foreign residents in Malta.<sup>108</sup> A trend was also identified that of a higher proportion of male immigrants as opposed to female immigrants.

It is interesting to note for analysis of distinction on the basis of race or ethnic origin, that in 2007, 319 babies were born to foreign mothers; 62 mothers were nationals of another EU country, 105 were citizens of African States while 50 were mothers from the Asian continent. Adoptions of children from other cultures amounted to 76 in 2007. These represented a number of countries of origin with 20% from Ethiopia, 4% from Thailand, 1% from Bulgaria, 3% from Cambodia, 4% from Pakistan and 52% from Russia.

Diversity in culture is also represented by those granted legal protection. One is also to consider that due to the detention policy adopted by the Government, persons who arrive in Malta irregularly are excluded from participation in the Maltese society due to their detention either for the first eighteen months where their application takes longer to be decided upon, or when refused until they are deported.

The arrival of persons in irregular ways has spurred a discriminatory racial attitude towards any person of colour with members of society failing to distinguish between those who may have entered illegally, those who have received refugee or humanitarian status and those who are in fact coloured but legally residing in Malta such as citizens of other EU Member States.

The Voice for All Evaluation indicates that racial discrimination is perceived to be the second most widespread with 59% indicating this to be very widespread and 20.7% to be fairly widespread. Moreover, 61% identify being of a different ethnic origin or race to be a disadvantage in Malta. The spur of racial discrimination or that based on ethnic origin was for some time also stark in blogs and letters to the editors in all the local newspapers wherein it was evident that the issue of racial and ethnic origin discrimination is clouded with issues related to irregular migration.

Within the social sphere it is more likely for LGBT persons, persons with a disability and persons from different ethnic origins to be disadvantaged. In this manner LGBT persons face harassment and mockery within the family and at places of entertainment. Access to housing is also sometimes made difficult for LGBT persons. The main societal issue that negatively impacts on equal opportunities for LGBT persons is possibly the position taken by the Roman Catholic. In this respect, one can refer to instances where Bishops and priests have referred to LGBT persons as sinners, not living a moral life, living an unnatural life, and the use of other derogatory

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<sup>108</sup> Demographic Review, 2007 published by the National Statistics Office in 2008; [www.nso.gov.mt/statdoc/document\\_file.aspx?id=2325](http://www.nso.gov.mt/statdoc/document_file.aspx?id=2325).



language.<sup>109</sup> Persons in same sex relationships are placed at an unequal footing in respect of for example social services, social security, tax rates, and protection from eviction under the rent laws. The report issued by the Fundamental Rights Agency entitled *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States*<sup>110</sup> raises a number of issues related to homophobia in Malta. Primarily, the equality legal framework until 2012 only prohibited discrimination on grounds of sexual orientation in the field of work and employment, leaving other spheres unprotected. Homophobic speech or hate crimes aimed at LGBT persons have only been introduced in the Criminal Code recently by Act VIII of 2012.<sup>111</sup>

Persons with a disability are predominantly faced with lack of accessibility to public facilities and a culture of viewing such persons as dependent rather than empowering persons with a disability to gain their own independence. Although laws<sup>112</sup> are in place requiring at least new public projects to be accessible to persons with a disability yet this does not address other public places.

Persons from different ethnic origins are also strongly disadvantaged in the social sphere facing obstacles such as exclusion, harassment, lack of access to places of entertainment, lack of access to housing. These obstacles are consequences to a rise in the level of racist views expressed in public. Public debate about racial equality is often tarnished with issues which are related to irregular immigration rather than equality, thereby negatively impacting the public debate on racial equality.

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<sup>109</sup> <http://gozodiocese.org/2008/09/04/kristu-helisna-biex-nghixu-ta%e2%80%99-nies-hielsa-omelija-ta%e2%80%99-mons-isqof-mario-grech-pellegrinagg-djoces-an-ghal-san-pawl-il-bahar-malta-20-tawwissu-2008/#more-1159>.

<sup>110</sup> <http://fra.europa.eu/fraWeb/search.do>.

<sup>111</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>.

<sup>112</sup> Circular PA 3/99 issued by the Malta Environment and Planning Authority; Circular PA 4/01 issued by the Malta Environment and Planning Authority both available on [www.knpd.org](http://www.knpd.org) Chapter 413 of the Laws of Malta Equal Opportunities (Persons with Disability) Act available on [www.mjha.gov.mt](http://www.mjha.gov.mt).



### 3 Template on specific information relating to the modules

#### 3.1 Collecting information and planning action

The national legislation that relates to access to public information is the Freedom of Information Act, Chapter 496 of the Laws of Malta which was enacted by Act XVI of 2008 and brought into effect on three different dates, 31<sup>st</sup> July 2009, 21<sup>st</sup> April 2010 and 1<sup>st</sup> September 2012.<sup>113</sup> Data Collection, data protection and processing of sensitive data is then protected through the Data Protection Act, Chapter 440 of the Laws of Malta enacted by Act XXVI of 2001<sup>114</sup> and brought into effect on three separate dates, the 22<sup>nd</sup> March 2002, 15<sup>th</sup> November 2002 and 15<sup>th</sup> July 2003.

Statistics that are generally of use when collecting information include the following:

1. officially compiled statistics by the National Statistics Office<sup>115</sup>
2. quantitative and qualitative research compiled by the NCPE<sup>116</sup>
3. quantitative and qualitative research compiled by the KNPD<sup>117</sup>
4. dissertations presented by graduates at the University of Malta<sup>118</sup>
5. quantitative research published by the Eurobarometer<sup>119</sup>

#### 3.2 Media

Television and Radio media is regulated by the Broadcasting Authority Act, Chapter 350 of the Laws of Malta.<sup>120</sup> This provides any individual with a right of recourse before the Board of the Broadcasting Authority to present his/her complaint on any programme aired on television or radio and which could be in violation of the regulatory framework. The Broadcasting Authority<sup>121</sup> is also the authority who issues guidelines or subsidiary legislation and has in this respect specifically addressed grounds of discrimination. Gender discrimination has been addressed through the Gender Equality and Gender Portrayal in the Broadcasting Media Guidelines<sup>122</sup> as well as through the Broadcasting Authority Policy on Sexual Harassment. The Requirements as to Standards and Practice on the Promotion of Racial Equality<sup>123</sup> regulate the obligation of the media to ensure racial equality in its productions, while the Requirements as to Standards and Practice applicable to Participation in Media

<sup>113</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>.

<sup>114</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1>.

<sup>115</sup> [www.nso.gov.mt](http://www.nso.gov.mt).

<sup>116</sup> [www.equality.gov.mt](http://www.equality.gov.mt).

<sup>117</sup> [www.knpd.org.mt](http://www.knpd.org.mt).

<sup>118</sup> [www.um.edu.mt](http://www.um.edu.mt).

<sup>119</sup> [ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm).

<sup>120</sup> <http://www.justiceservices.gov.mt/LegalServicesSearch.aspx?type=lom&pageid=29>.

<sup>121</sup> <http://www.ba-malta.org/home>.

<sup>122</sup> <http://www.ba-malta.org/codes-guidelines-policies>.

<sup>123</sup> Subsidiary Legislation 350.26, [www.justiceservices.gov.mt](http://www.justiceservices.gov.mt).



Programmes of Vulnerable Persons<sup>124</sup> deal amongst others with persons with a disability and their portrayal and inclusion on the media.

Written media is then regulated by the Press Act,<sup>125</sup> Chapter 248 of the Laws of Malta which regulates the right of reply as well as provides for an offence for whoever through written media threatens, insults, or exposes to hatred, persecution or contempt, a person or group of persons because of their gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion, political opinion or other opinion, and disability. A code of Journalistic Ethics is also followed by the Institute of Maltese Journalists.

Important stakeholders in this regard are the following:

1. Broadcasting Authority,<sup>126</sup> 7, Mile End Road, Hamrun, HMR 1719, Tel. (+356) 21221281
2. Institute of Maltese Journalists,<sup>127</sup> Room 120, 3<sup>rd</sup> Floor, 280/3, Republic Street, Valletta, VLT 1112, Tel. (+356) 21316958
3. Press Ethics Commission,<sup>128</sup> 280/3, Republic Street, Valletta, VLT 1112, Tel. (+356) 21316958

### 3.3 Advocacy

Advocacy tools must be produced in line with national laws. The following are a few principles that are to be followed:

1. Personal data is not to be used unless the consent of the person identified is obtained (data protection law);
2. Images of persons are not to be used unless the consent of the person identified is obtained (data protection law);
3. Statements, even if made publicly on television media, by persons who are not public figures are not to be used in advocacy tools without their consent. (developed through caselaw);
4. Images used in advocacy tools are to be used only with the approval of their creator (copyright law);
5. Images used must not be immoral, portray children in ways that convey sexual connotations (criminal law);
6. Words used must not be libelous (criminal law);
7. Manifestations, public gatherings and demonstrations require a police permit which is sought from the Commissioner of Police (criminal law).

<sup>124</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10170&l=1>.

<sup>125</sup> <http://www.justiceservices.gov.mt/LegalServicesSearch.aspx?type=lom&pageid=29>.

<sup>126</sup> <http://www.ba-malta.org/home>.

<sup>127</sup> <http://www.maltapressclub.org.mt/index.html>.

<sup>128</sup> <http://www.maltapressclub.org.mt/pec.html>.



The following are sites where you can find examples of advocacy tools that have been used by stakeholders in Malta:

1. Projects implemented by NCPE and advocacy tools produced or used in these projects can be found on: [https://secure3.gov.mt/socialpolicy/SocProt/equal\\_opp/equality/projects/intro.aspx](https://secure3.gov.mt/socialpolicy/SocProt/equal_opp/equality/projects/intro.aspx)
2. Projects implemented by JRS and advocacy tools produced or used in these projects can be found on: <http://www.jrsmalta.org/>
3. Projects implemented by MGRM and advocacy tools produced or used in these projects can be found on: [www.maltagayrights.org](http://www.maltagayrights.org)
4. Projects implemented by OPHR and advocacy tools produced or used in these projects can be found on: <http://www.ophrmalta.eu/home>
5. Projects implemented by Aditus and advocacy tools produced or used in these projects can be found on: <http://www.aditus.org.mt/aditus/Home.html>

### 3.4 Partnerships

NGOs that work on the five grounds of discrimination include:

#### **Organisation for the Promotion of Human Rights (Malta)**

80/2 St Monica Street, Gwardamangia PTA1117 [nathania.tabone@gmail.com](mailto:nathania.tabone@gmail.com)

#### **ADITUS**

[www.aditus.org.mt](http://www.aditus.org.mt)

[info@aditus.org.mt](mailto:info@aditus.org.mt)

Non governmental key players include:

#### **Office of the Ombudsman**

11, St Paul Street Valletta VLT 07

[office@ombudsman.org.mt](mailto:office@ombudsman.org.mt)

#### **Department of Industrial and Employment Relations (DIER)**

121, Melita Street, Valletta, VLT 1121

[ind.emp.relations@gov.mt](mailto:ind.emp.relations@gov.mt)

#### **General Workers Union (GWU)**

Workers' Memorial Building, South Street, Valletta - VLT 11

[info@gwu.org.mt](mailto:info@gwu.org.mt)

#### **Union Haddiema Maghqudin (UHM)**

"Dar Reggie Miller", St. Thomas Street, Floriana FRN 1123

[agrima@uhm.org.mt](mailto:agrima@uhm.org.mt)





### **National Commission for the Promotion of Equality (NCPE)**

NCPE, Gattard House, National Road, Blata I-Bajda, Malta, HMR 9010  
[equality@gov.mt](mailto:equality@gov.mt)

### **National Commission for Persons with a Disability (KNPD)**

KNPD, Bugeia Institute, Braille Street, Santa Venera, SVR 1619, Malta  
[helpdesk@knpd.org](mailto:helpdesk@knpd.org)

### **Agenzija Appogg**

36, Triq San Luqa Tal-Pieta', Gwardamanga PTA 1027  
[www.appogg.gov.mt](http://www.appogg.gov.mt)

National legislation on registration of NGOs and partnerships include the following:

- i. Voluntary Organisations Act, 2007<sup>129</sup>
- ii. Civil Code<sup>130</sup>

## **3.5 Monitoring**

Collection of data is to be carried out in line with the Data Protection Act especially where this data includes the collection of sensitive data that is personal to the individual. Where such collection of data identifies the individual, even if following its process the outcome would not identify the individual, then the individual's consent is to be sought. In the collection of data it is important to obtain directions from the office of the Data Protection Commissioner as to whether you require approval and consequently be bound by the obligations of the Data Protection Act. In this event, a data controller may need to be appointed. Queries are to be made at the Office of the Data Protection Commissioner,<sup>131</sup> Airways House, Second Floor, High Street, Sliema, SLM 1549, Tel. (+356) 23287100 and email [idpc.info@gov.mt](mailto:idpc.info@gov.mt)

## **3.6 Codes of conduct**

One can only find different manuals that have been published by NCPE on different aspects of discrimination. These include:

1. An equality assessment toolkit on Gender Mainstreaming
2. Sexual Harassment: A Code of Practice
3. Racial and Ethnic Origin Equality Manual
4. Guidelines for authors and/or publishers of adverts
5. Racial and Ethnic Origin Equality Manual Toolkit
6. Local Good Practices – Public Service/Sector and Local Councils

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<sup>129</sup> Act XXII of 2007, An Act to regulate voluntary organisations and their administration, <http://www.doi.gov.mt/en/parliamentacts/2007/ACT%20XXII%20English.pdf>.

<sup>130</sup> Chapter 16 of the Laws of Malta;

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580&l=1>.

<sup>131</sup> <http://idpc.gov.mt/>.



These resources can be found on

[https://secure3.gov.mt/socialpolicy/SocProt/equal\\_opp/equality/resources/tools.aspx](https://secure3.gov.mt/socialpolicy/SocProt/equal_opp/equality/resources/tools.aspx)  
but a copy can also be obtained from the offices of NCPE above indicated.

### **3.7 Situation testing**

The law is silent on situation testing and consequently one is to be cautious on how and if evidence collected from this type of situation is sufficient to prove an allegation of discrimination. Generally, a juridical interest is required in any judicial proceeding and this requires a direct link between the victim and the perpetrator's actions.