

Working Group on discrimination against women in law and in practice

Questionnaire on good practices

In accordance with its mandate, the UN Working Group on the issue of discrimination against women in law and practice has developed this questionnaire to gather information on “good practices” in eliminating discrimination and empowering women for its next thematic report. Given the centrality of the law to the Working Group’s mandate, the report will focus on the processes by which laws that support women’s equality and enjoyment of human rights come into being and are implemented in ways that support women’s enjoyment of their human rights and fundamental freedoms.

The questionnaire intends to solicit information on how a specific law aimed at addressing discrimination against women and promoting women’s substantive equality has come into being, was effectively implemented (I), and what impacts the law has had for women on the ground (II).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) clearly establishes State obligation to respect, protect and fulfill women’s human rights, ensuring the de facto enjoyment of those rights by women. CEDAW’s framework is founded on the principle of substantive equality, which requires States to take active measures to not only eliminate laws and practices that directly discriminate against women, but to create an environment in which women’s rights can be fulfilled. Good practices in the promotion of women’s human rights thus require a holistic approach that addresses both the causes and consequences of discrimination, and aim at social transformation.

Recognizing the aspiration of the Working Group to better understand the processes and elements which contribute to build “good practices” in legislation and its implementation the Working Group requests that you provide detailed information on at least **one law** adopted in a State that has been successfully implemented in that it has had a notably substantial impact on eliminating discrimination against women in the specific area related to that law and has enhanced women’s enjoyment of their human rights in your national context, such that you consider it a “good practice.” Processes of substantive change often take place over a period of many years, so the law need not be new: this survey should focus on a law whose impact has been substantiated and the impacts of which are still being seen.

The Working Group wishes to thank all stakeholders for responding to this questionnaire **by 12 September 2016**.

Moreover, subsidiary legislation to the Equality for Men and Women Act that came into force in 2008 (Legal Notice 181 of 2008 - *Access to Goods and Services and their Supply (Equal Treatment) Regulations*) extended NCPE's remit to cover gender equality in the access to and supply of goods and services.

In May 2016, another subsidiary legislation, Legal notice 173/2016 – *Exercise of Rights Conferred on Workers (Freedom of Movement) Regulations*, came into force. Persons who feel that they have encountered or are encountering obstacles to exercise, or have had or are having their right to free movement restricted without justification can file a complaint with NCPE's Commissioner.

5. Please provide a summary of the content of the law, its preamble or explanatory note, policy measures, dissemination and implementation regulations, and provisions for access to justice, as well a link to where all these can be found online.

This legislation prohibits discrimination in the areas mentioned in the previous reply. Moreover, it entitles spouses of self employed workers (not being employees or partners) who participate in the activities of the self employed workers to a fair compensation; prohibits sexual harassment; prohibits discriminatory advertisements of vacancies for employment; sets up the National Commission for the Promotion of Equality (NCPE), and delineates its functions as follows:

(a) to identify, establish and update all policies directly or indirectly related to issues of equality for men and women;

(b) to identify the needs of persons who are disadvantaged by reasons of their sex and to take such steps within its power and to propose appropriate measures in order to cater for such needs in the widest manner possible;

(c) to monitor the implementation of national policies with respect to the promotion of equality for men and women;

(d) to liaise between, and ensure the necessary coordination between, government departments and other agencies in the implementation of measures, services or initiatives proposed by Government or the Commission from time to time;

(e) to keep direct and continuous contact with local and foreign bodies working in the field of equality issues, and with other groups, agencies or individuals as the need arises;

(f) to work towards the elimination of discrimination between men and women;

(g) to carry out general and independent investigations with a view to determine whether the provisions of this Act are being complied with;

various campaigns, as well as training to different stakeholders. **Research studies** are also carried out to provide findings and factual data on specific subjects related to equality. NCPE also gives **feedback** to policies and proposed strategies and laws to ensure that equality is mainstreamed throughout.

Further information on the commitments and initiatives carried out by NCPE (as well as a copy of the *Equality for Men and Women Act* and its subsidiary legislation) are available on NCPE's website on: http://ncpe.gov.mt/en/Pages/NCPE_Home.aspx

Subsidiary laws to the Equality for Men and Women Act came into force throughout the years:

- *Access to Goods and Services and their Supply (Equal Treatment) Regulations* – 2008
- *Procedure for Investigation Regulations* – 2011
- *Exercise of Rights Conferred on Workers (Freedom of Movement) Regulations* - 2016

These laws are available online on:

<http://justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=456>

6. When was the first draft of this law introduced, and when was it adopted (please specify dates of first draft and adoption?)

In March 2002 the White Paper on Gender Equality Legislation was launched at a press conference called by the Ministry for Social Policy. A number of meetings and discussions were held with different stakeholders to discuss the White Paper. This White Paper was followed by the publication of the Bill and eventual enactment of the Act in December 2003¹.

The Law's Compliance with CEDAW

7. In your view, does the law in question place a positive duty on the State to achieve substantive equality for women?

Yes (X) No ()

If yes, please explain:

Yes, this law prohibits gender discrimination in the areas mentioned above. In addition, it also allows for:

“measures of positive action for the purpose of achieving substantive equality for men and women.”

¹ Department for Women in Society. *Women in Society – Annual Report 2002*.

implementation of the law? Does the Constitution have an equality and non-discrimination provision?

Yes, Article 14 of the Constitution of Malta states that:

“The State shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise; the State shall in particular aim at ensuring that women workers enjoy equal rights and the same wages for the same work as men.”

Moreover, Article 45 also states that:

“(1) ... no law shall make any provision that is discriminatory either of itself or in its effect.

(2) ... no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

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

11. Does the law contain provisions that address discrimination against women from an intersectional perspective, taking into account a diversity of women’s social identities, statuses and experiences?

Yes () No (X)

If yes, please explain which social identities, statuses and/or intersectional factors are explicitly noted in the law:

12. Whom of the following are bound by the law?

The State Yes (X) No ()

Public Authorities/Bodies Yes (X) No ()

Civil society organisations Yes (X) No ()

NHRI () _____
NGOs/CSOs (X) _____
Other social groups (specify) () _____

4. Was there opposition to the law?

Yes () No (X)

If yes, please explain from whom and why, and how it was addressed:

6. Were there other laws that needed to be reformed in order to enact this law?

Yes (X) No ()

If yes, please list and explain:

The Employment and Industrial Relations Act (Cap 452) also covers protection against discrimination related to employment.

7. Were any international human rights treaties or mechanisms referenced in the law's creation?

Yes () No (X)

If yes, please list and explain:

8. Did any international/regional/national human rights mechanism issue recommendations to the State in regard to amendment or formulation of this law, or regarding effective implementation? If yes, was this recommendation formulated prior, during or after the adoption of the law?

Yes () No ()

If yes, please list and explain:

9. What measures to support implementation were built into the law or developed immediately after (and as a result of) its passing? This could include such measures as budgetary and resource allocation, monitoring mechanisms, data collection, impact measurement mechanisms, independent monitoring, etc. Please list and explain, providing any relevant documents.

The Equality for Men and Women Act set up NCPE, and one of its functions is:

"to keep under review the working of this Act, and where deemed required, at the request of the Minister or otherwise, submit proposals for its amendment or substitution".

Having sufficient resources to implement NCPE's functions and remit is a challenge. In this regard, NCPE makes use of EU funds to support its work.

12. What kinds of roles are being carried out by civil society/women's organizations in supporting the implementation and impact of the law? How are these activities being financed?

NCPE has a good working relationship with civil society organisations. Relevant organisations also partner with NCPE when carrying out actions that promote equal treatment in line with the *Equality for Men and Women Act* and other equality legislation. They are also invited to attend and participate in events carried out by NCPE, and to discuss relevant matters during set meetings.

III. The impacts that the law has had for women on the ground

1. Did the adoption of the law result in the creation of any policies?

Yes (X) No ()

If yes, please list and explain:

NCPE's actions and commitments led to the strengthening of the Government **policy on gender mainstreaming** that has been in place since 2000. In April 2012, following a series of discussions with NCPE, the Office of the Prime Minister issued a Circular, '*Gender Mainstreaming in Practice*', which reiterates the implementation of gender mainstreaming in the public administration. This Circular strengthens the monitoring of the implementation of gender mainstreaming in the public administration, since each department/entity is required to prepare a brief report on the measures taken and the progress achieved in the sphere of gender equality and mainstreaming. This commitment was further supported in January 2015, whereby the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC) issued a letter circular to all Ministries, departments and public entities with an amended version of the reporting template on which each entity essentially reports on how their policies, planned actions and practices were gender mainstreamed during the previous year.

Moreover, as part of its ongoing work, NCPE assists entities to draft and implement equality policies and sexual harassment policies. To this end, NCPE developed guidelines (available

- In 2015, a **decrease in the number of discriminatory advertisements** was registered when compared to the previous calendar year – 54 in 2015 compared to 83 in 2014. This indicates that publishers or advertisers are becoming more aware of the use of inclusive language and images in their adverts.
- Throughout 2015, NCPE had 125 **contributions in the local media**, more than double the amount of the previous year, including press statements, answers to journalists' questions, articles and features, as well as participation in television and radio shows.
- Further awareness and commitments towards gender equality and gender mainstreaming in the public administration.
 - In 2016, NCPE received **93 gender mainstreaming reports** from different departments/entities and is currently carrying out an analysis of the information received. Based on this analysis, NCPE will prepare a report for the attention of the Permanent Secretary on the situation with regards to gender mainstreaming in the public sector.
- Further awareness on violence against women and girls
 - A set of initiatives were carried out in this regard, including research studies on female genital mutilation, violence on older women and men, and violence, harassment and bullying in schools. Training was also given to multidisciplinary professionals and legal experts, and two sets of **video clips** were developed: 5 clips to promote zero tolerance to violence against women (with more than 47,000 views till August 2016); and 6 video clips on violence, harassment and bullying in schools, and among children and youths (with more than 63,000 views till August 2016).
- Further actions to challenge stereotypes and gender segregation
 - NCPE carried out a mentoring programme to assist women aspiring to reach decision making positions. NCPE also set up a **Directory of Maltese Professional Women** to give further visibility to their competences to enhance their opportunities of being appointed on decision-making boards or committees in different fields. By end of July 2016 the Directory listed 233 profiles of professional women.

The outcomes above can be quantitatively measured by NCPE. Yet, NCPE's functions and work yields to other outcomes that cannot be quantified. For instance, NCPE reaches various stakeholders through the publication of research studies on specific matters related to equality

6. Is there data on how the law has affected some groups of women differently (i.e. based on race, ethnicity, religion, social class, age, etc.)?

Yes () No ()

If yes, please explain the differential impacts and provide any relevant documents.

NCPE carries out various actions to raise awareness on equal treatment on different grounds. In particular, studies were also carried out to analyse in further detail aspects related to equality of women and men from different groups. NCPE's studies are available on: [http://ncpe.gov.mt/en/Pages/Our Publications and Resources/Research published by NCPE.aspx](http://ncpe.gov.mt/en/Pages/Our_Publications_and_Resources/Research_published_by_NCPE.aspx)

7. Has there been independent monitoring of the law?

Yes () No ()

Please provide information.

NCPE is not aware of an independent monitoring of the law.

In order to strengthen the human rights and equality framework in Malta, the Government embarked on a process to restructure current legislation regulating the sector. On 10 December 2015, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties presented drafts of the **Bills towards a Human Rights and Equality Commission Act and the Equality Act** during a public seminar. NCPE gave its feedback to these Bills.