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THE INCLUSION OF PRINCIPLES RELATED TO THE ENVIRONMENT AND SUSTAINABILITY IN THE LIST OF FUNDAMENTAL RIGHTS OF THE INDIVIDUAL IN THE CONSTITUTION OF MALTA (An initial contribution)

The Constitution of Malta, in Chapter 2 (Declaration of Principles), states that:

“9.

(1) The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.

(2) The State shall protect and conserve the environment and its resources for the benefit of the present and future generations and shall take measures to address any form of environmental degradation in Malta, including that of air, water and land, and any sort of pollution problem and to promote, nurture and support the right of action in favour of the environment.”

Therefore, our Nation's Constitution already affirms that the State (as represented by the Government) is duty-bound to protect and ‘conserve’ the environment and its resources both for the benefit of present and future generations. It also clearly outlines that it is the duty of the State to act against pollution and environmental degradation using text that is significantly wide-ranging.

It is clear that if these principles which are already enshrined in Malta's Constitution are observed, the environment in Malta would already benefit greatly. To what extent this is taking place in Malta is a matter for discussion in its own right.

The KA believes that it is indeed very positive that the Constitution of the Country sees the State as a prime guarantor for Environmental quality and conservation in the Maltese Islands.

Unfortunately, Art 21 of Constitution also states that these principles “shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws”. The KA is of the opinion that the Constitution should not include romantic poetry and aspirations that are not enforceable in any court.

Therefore, the KA feels that during the forthcoming Constitutional Reform, the country should

- (i) discuss how these principles are going to be enforceable in any court and**
 - (ii) take another bold step and declare that the principles listed hereunder should be added to the Fundamental Rights and Freedoms of the Individual (Chapter 5), alongside the other inalienable rights of the individual among which the rights to life, protection, privacy, security and freedom of association, religion and association:**
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- 1. The right of present and future generations for a clean and healthy environment;**
- 2. The right of present and future generations to be protected from adverse climatic changes;**
- 3. The right of present and future generations for the enjoyment of the environment, including its aesthetic value, as a public good;**
- 4. The right of present and future generations to water resources in a quality and quantity sufficient to guarantee a good quality of life;**
- 5. The right of present and future generations for an environment that does not in any way impinge negatively on their physical and mental health and wellbeing;**
- 6. The right of present and future generations of the inhabitants of the Maltese islands to the lawful access to all genetic resources present in the Maltese territory.**

It is recommended that the following assertion (inspired by the Constitution of the State of Pennsylvania, USA) be adopted:

‘Malta’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the State shall conserve and maintain them for the benefit of all the people’

Finally, it is also recommended that the present Office of the Guardian of Future Generations be elevated to that of an Ombudsman for the protection of the interests of Future Generations.

ADDITIONAL COMMENTS ON THE CONSULTATION PROCESS AND THE INTENDED OVERALL MECHANISM FOR CONSTITUTIONAL REFORM

1. The sole representation of the two major political parties in Malta on the Committee for Constitutional Reform is a serious affront to Maltese Civil Society, and indeed to all those who participate and contribute towards the life and progress of this Nation.
2. This process should not be spearheaded by politicians.
3. We believe that such a fundamental process should not be hastened in any manner, and should be the widest possible exercise in inclusivity. Particular attention should be paid to ensure that the voice of those who are either under-represented or not represented at all is heard well. Children, the poor, the destitute, prisoners, the vulnerable, and others are among those cohorts that should be afforded particular recognition and involvement.
4. All stages, roles, information, documentation and any other material component of this Constitutional Reform Process should be available in the public domain, freely and easily accessible to all, and adequately explained in both Maltese and English, so that everyone would be able to participate in a meaningful manner.

1st November 2019
