

N.C.W. of Malta Publication to Commemorate the Twentieth Anniversary of the  
Universal Declaration of Human Rights.



**Report on Seminar**  
**on**  
**Human Rights**

*Organised by the  
National Council of Women of Malta  
17th — 18th June, 1967*

---

MOUNT ST. JOSEPH  
MOSTA — MALTA

**WOMEN AND HUMAN RIGHTS***by*

ENA CREMONA

*Dr Ena Cremona, B.A., LL.D., graduated first in Order of Merit from the Royal University of Malta in 1958. She has been the Legal Adviser to the National Council of Women of Malta since its foundation in 1964.*

When we speak about "Human Rights" we usually understand this as a reference to those rights set forth in the Universal Declaration of Human Rights — formulated by the Commission of Human Rights, established in 1946, by the Economic and Social Council of the United Nations, and adopted by the General Assembly of the United Nations in December, 1948.

The Second Article of this Declaration states that "all human beings are ..... entitled ..... to all the freedoms set forth in this Declaration without distinction of any kind such as race, sex, language, religion, etc.". This passage condemning distinctions on grounds of sex, would, on the face of it appear to be sufficient to ensure that women's rights would enjoy parity with those of men, and be safeguarded in the same manner. However, being aware that discrimination on grounds of sex did, in fact, exist in various degrees, in most countries of the world, and were not likely to diminish without a certain amount of pressure, the Commission on Human Rights did not limit itself to this mere allusion to the rights of women, for, according to its terms of reference, the Commission was to submit proposals, recommendations and reports to the Economic and Social Council regarding, among other things, the prevention of discrimination on grounds of race, sex, language or religion, and also concerning International declarations or Conventions on the Status of Women.

Furthermore, shortly after the establishment of the Commission on Human Rights in 1946, the Commission on the Status of Women was also established, its mandate being to promote equal rights for women in the political, educational, economic, civil and social fields, and to devise measures which would eliminate existing discrimination and improve the status of women.

In fact, a number of International Conventions in the field of Human Rights, either relating solely to women, or concerning them at least in part, have been concluded under the auspices of the

United Nations and its Specialised Agencies: such are the I.L.O. Convention and Recommendation on Equal Remuneration for Men and Women Workers for Work of Equal Value (1951), the Convention on the Political Rights of Women (1952), the Convention on the Nationality of the Married Woman (1957), the I.L.O. Convention and Recommendation on Discrimination in Occupation or Employment (1958), the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962), a Convention relating to employment of Women with family responsibilities.

I now propose to examine the position of women in Malta as regards "Human Rights", and since the Convention and Recommendations of the United Nations and its specialized agencies are usually considered as setting the standard in this field, I think it will be useful to compare the local position with the achievements and suggestions of the U.N. with special reference to the Commission on the Status of Women.

It will probably be best to divide the field of human rights in this connection into various headings — political rights, education rights, economic rights, rights and duties under Private Law, Nationality Laws.

(I) As to **POLITICAL Rights**, i.e. the rights to participation in the legislative, executive and judicial organs of Government, at the time of the signing of the U.N. Charter, women were granted political rights only in half the Sovereign Countries of the world. The Convention on the Political Rights of Women, adopted by the General Assembly in December 1952, ensures that in those countries which are parties to the Convention, women shall have the right to vote, to be eligible for election, to hold public office and to exercise all public functions on equal terms with men. Though this Convention has not yet been ratified by our Government, I think we can, at least in one respect, allow ourselves a small pat on the back for, five years before the adoption of this Convention, not only had Maltese women acquired the franchise, but one of their number had also become a Cabinet Minister, and there have been one or more women members of Parliament ever since. One civic right and duty is still being withheld from women in Malta — that of serving one's country in the capacity of juror. Whether women should, or should not, serve as jurors is a subject that has been publicly argued, over and over again, but the position remains unchanged. Apart from this, however, women in Malta cannot be said to be in an inferior position where political rights, in the broad sense, are concerned.

(II) In the matter of EDUCATION, the Commission on the Status of Women has, since its creation, been deeply concerned with the question of access of women to education. It has initiated and encouraged studies on the access of girls and women to education at all levels, and has had a special interest in the UNESCO Convention and Recommendation against discrimination in Education adopted in December 1960 by the General Conference of UNESCO.

In Malta, women do have, by law, the same access to education at all levels as men, and the obstacles to higher education for women formerly put forward by a prejudiced traditional outlook have now almost completely disappeared.

(III) As to ECONOMIC Rights — these may be split up into (a) the right and opportunity to work, (b) the right to a fair remuneration for one's work, and (c) tax legislation where applicable to women. The Commission for the status of women has always concerned itself with economic opportunities for women. It co-operated with I.L.O. in the elaboration of the principles embodied in the I.L.O. Convention and Recommendation on Discrimination in Occupation and Employment, adopted in 1951 and 1958 respectively.

In Malta, as in many countries, in various professions and occupations, though there are no legal obstacles to the access of women, there is a certain amount of prejudice and inequality in fact. To quote just one example — shortly after I obtained my legal warrant, a kind friend recommended me, as a lawyer, to another female, omitting, however, to mention my sex. I still remember the horror which greeted her discovery that I was not a man.

In other jobs, women are, in fact, often preferred, merely for the reason that the principle of equal pay — towards the attainment of which Government has taken steps — is not recognised in private employment.

Another recent U.N. Convention concerned the employment of women with family responsibilities, and urged that they should be given every encouragement and facility to work outside the home. Now not only did our Government not adhere to this Convention, basing itself on (i) the traditional local outlook that the married woman's place is in the home and (ii) the present unemployment situation, but moreover the position is that, far from married women being encouraged to work, a female Government employee must relinquish her position on marriage. This is, of course, not a new rule, but has been in being for a long time. Private firms do not follow this principle. So much for opportunity to work.

(b) As to remuneration, everyone knows that in the last budget provision has been made for female Government employees to attain parity of remuneration with their male counterparts in 5 years' time, and the N.C.W. prides itself that it has played some small part in this achievement. It remains to be seen whether private firms will, of their own accord put this principle into practice or whether it will one day be universally enforced, and also whether in the long run, the removal of the economic advantage to the employer of employing women will cause a swing to more male employment — as some have suggested.

(c) Concerning tax legislation, the Economic & Social Council has supported the position taken by the Commission on the Status of Women that legislation should provide for equal treatment of men and women in regard to taxation of earned income and that, since no obstacles should impede the right to marry, Government should ensure that married persons do not pay tax on earned income at a higher rate than single persons. At the moment the income tax position in Malta of a man and woman both gainfully employed, is that, at least while they are childless, taxwise, living in sin is a better economic proposition than being united in Holy Matrimony.

(IV) PRIVATE LAW — in particular family law and property rights — is another important field in which women do not enjoy equality with men; this is so in many legal systems.

The Commission on the Status of Women, after extensive study of the status of women under national and family laws, recommended that Governments take all possible measures to ensure the equality of rights and duties of husband and wife in conformity with the Universal Declaration of Human Rights. The Economic and Social Council adopted the recommendation, as well as specific recommendations on particular aspects such as equal parental rights and duties, a married woman's right to work outside the home without her husband's authorization, for statutory matrimonial property systems giving women equal rights over Separate and Common property during marriage, as well as an equitable share of property after the dissolution of marriage, and for equality of inheritance rights of men and women.

In 1954 the General Assembly recommended that all States take the necessary measures for the abolition of those customs, laws and practices which affect the dignity of women as human beings and are inconsistent with the United Nations Charter and the Universal Declaration of Human Rights.

After detailed study on the subject matter in question, the Commission on the Status of Women drafted an International Convention and Declaration on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages, and this was adopted by the General Assembly in 1962. Only recently — in February of this year, the Commission on the Status of Women adopted a resolution containing 4 principles to guide States in ensuring equality between men and women in the exercise of parental rights and duties with respect to their children and invited the Economic and Social Council to endorse the principles. These principles concern the rights and duties of parents in respect to guardianship and exercise of parental authority over minor children and custody of children in the case of divorce, annulment of marriage, or judicial separation.

I will now enumerate the aspects of our private law — both as regards persons and as regards property — where women are not in a position of equality with men, and as an introductory remark I would like to remind you first, that the law was framed a hundred years ago and, moreover, that in places it seems to reflect the traditional Mediterranean and Eastern outlook on the man — woman relationship.

Starting with the personal relationship in marriage: The wife, says the law, must obey her husband; the conjugal place of residence is established by the husband. As to fidelity — for civil law purposes, this duty is reciprocal for husband and wife, but — and it is convenient to mention this here, though not a matter of Private Law — for Criminal Law purposes, one adultery by the wife is enough for her conviction, while, in the case of the husband, it must be proved that he introduced his mistress in the conjugal household, or kept her “notoriously elsewhere”.

Authority over children is vested in the husband — *Patria Potestas*. Though normally — apart from the lessening of the mother's dignity — it does not function badly in practice, difficulty arises in cases where the husband has deserted the wife without being legally separated and having lost authority over the children, or where he is on bad terms with his wife, and out of pique refuses to give his consent to his minor children to perform certain actions, advantageous to them, for which his consent is necessary. In these cases, recourse has to be had to the Courts, with consequent delay and expense.

As regards the property aspect of marriage — if the financial system adopted in the marriage contract is the Community of Acquest, or if no system is specified or there is no Contract — in

which case the law says that the Community of Acquests will come into force — then the husband is the **head** of the Community of Acquests and **administers** all the assets belonging to it — even money earned by the wife's industry during the marriage. As to the debits — while debts incurred by the husband are at the charge of the Community, those incurred by the wife will not be at the charge of the Community, unless she had her husband's consent to incur them. Moreover, for any financial transactions excluding small ones necessary for the daily running of the home, the wife needs her husband's consent and assistance. Moreover, a married woman cannot, without her husband's consent and assistance, enter into any contract, or contract any obligation, even when such contract seems advantageous to her, e.g. accepting a donation. Nor can she sue or be sued without such consent and assistance.

The husband also administers the dotal property; and though paraphernal property (i.e. property not named dotal in the Contract of Marriage) may be managed by the wife, if the fruits of such property fall under the Community of Acquests, they will have to be administered by the husband.

Those in general are the discriminations against the wife in marriage.

As to unmarried women, they also, under private law, suffer from disabilities to which men are not subject. Thus, no woman may be a guardian of children, except a widow in the case of her own children. Nor can a woman make a donation of over £50, without the necessary authorization, if married from her husband, if not from her father or the Court of Voluntary Jurisdiction — in this women are placed on a par with persons over 70 years old.

(V) Finally we come to NATIONALITY LAWS. In 1957 The General Assembly adopted a Convention on the Nationality of Married Women — prepared by the Commission on the Status of Women — and this came into force in August 1958. According to the provisions of this Convention marriage to an alien shall not automatically affect the nationality of the wife. It provides for special privileged naturalization procedures, however, for a wife who wishes to take the nationality of her husband. Our Government has become a party to this Convention, and under our present Constitution it is provided in S. 27, Chapter III, that a woman is entitled to acquire Maltese nationality on marriage to a Maltese citizen on making the necessary application — but she does not do so automatically, and therefore, need not take her husband's nationality if she does not wish to do so.

Having given a broad outline of the actual position of women in Malta vis-a-vis human rights, I would now like to pass a few general remarks. To start with I hope my fellow females will not consider that I am letting down the side if, instead of adopting a radical suffragette attitude, I proceed with a certain amount of caution.

First of all, though the Recommendations, etc., of the Commission on the Status of Women are the fruit of long and careful study, by experts in the field, from nations with different backgrounds, still, they are majority decisions, and we should not rush to clamour for their immediate and total adoption without first having made sure that they can beneficially, at that particular moment, and bearing in mind all circumstances, be put into force here.

Nor do I think we should make odious comparisons between our laws and those of newly emergent countries with recent civilizations — for though on paper their laws might seem to be perfectly in conformity with generally accepted modern theories on human rights — they might, in practice be a dead letter.

Thirdly, when some long-established institution has defects from the point of view of women's rights, for example the System of Community of Acquests, rather than trying to jettison it completely, I think we should first try to amend it, and then only, if it remains unsatisfactory, proceed to further action.

And fourthly, it is well to remember, and be prepared to face the fact that equal rights entail equal duties.

Finally — what is the outlook as regards the Maltese woman's future enjoyment of human rights on equal footing with her male counterpart?

To enable us to reach some conclusion, three relevant things should be considered — recent legislation, policy and attitude of the Government as also the outlook of members of Parliament in general, and general attitude of the Country as a whole.

Starting with legislation, our Constitution affirms the principle that every person in Malta ..... "whatever his race, place of origin, political opinion, colour, creed or sex, is entitled to the fundamental rights and freedoms of the individual".

Moreover, in Chapter II, S. 1 (a) "the State recognizes the right of all citizens to work, and shall promote such conditions as

will make this right effective". Though, on the one hand, one wonders how much in accordance with this principle is the above-mentioned long-standing rule re relinquishment of their post by female Civil Servants on marriage, as also the non-ratification of the U.N. Convention about the employment of women with family responsibilities.

Still on the other hand, it is heartening to see that a new field of employment — the Diplomatic Service, has not been restricted to men; moreover, while formerly women could not be witnesses on a Notarial deed, let alone be Notaries, this state of affairs was some time ago remedied.

In Chapter II. S. 1 (b), the Constitution says that the State shall aim at ensuring that women workers enjoy equal rights and the same wages for the same work as males — and this last, at least as regards Government employees, has now been done.

As to Government attitudes, I believe I could not be wrong in saying that when the National Council of Women have had interviews with powers-that-be, they have always had a sympathetic hearing, and results have been seen in at least two cases — equal pay, and an increased number of women on Government Boards. Members of Parliament have also, on various occasions, lent a sympathetic ear.

And finally — "the man in the street". Of course, in the long run, it is the general attitude of the people of the country that determines the rate of progress in any matter — firstly, because the force of public opinion can often bring about changes in the law, and then also because, however favourable to equality of rights the law may be, the barriers of prejudice may be much more insurmountable than any legal obstacle.

In this connection, not only can the N.C.W. and its Affiliated Organizations play their part by encouraging study of, and information on, various problems, but women in general can show that they are mature and responsible enough to obtain and make use of their human rights.

Bearing the above in mind, I do not think you will disagree if I say that, while things are not moving at breakneck speed, the outlook for the future should be one of cautious optimism.

We considered the fact that in the latter case, while the mother has to shoulder the responsibilities of the children —

National Council of Women of Malta  
Publication No. 1  
1968

Printed at the Department of Information  
MALTA